

64074-7

64074-7

NO.64074-7-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

KARL E. SAGNER,

Respondent,

v.

RORY B. SAGNER,

Appellant.

2009 NOV 18 PM 3:40
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I

BRIEF OF APPELLANT

G. Geoffrey Gibbs, WSBA No. 6146
Attorneys for Appellant

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ORIGINAL

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I. APPENDIX.12

A. IDENTITY OF THE PARTIES

Rory Sagner is the mother of Keira and Appellant herein

Karl Sagner is the father of Keira and Respondent herein.

Keira Sagner is the child of the parties, now over the age of 18 years. Her post-secondary educational support constitutes the underlying issue in this case.

B. TABLE OF AUTHORITIES

1. Statutory Authority

RCW 4.16.130..2, 5
RCW 4.16.170.....2, 3, 5, 8
RCW 26.09.170(3).....6, 7
RCW 26.09.140.10
RCW 26.12.010.....6

2 Case Law

Gimlett v. Gimlett , 95 Wn.2nd 699 (1981)6, 9
Curtis v. Kline, 666 A.2nd 265 (Pa. 1995)6
In re Marriage of Kelly, 85 Wash.App. 785 (1997).....6
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In re Marriage of Hunter, 52 Wn.App. 265, review denied, 112 Wn.2nd 1006 (1989).....11
Rains v. State, 98.Wash.App. 127 (1999).....6,10

C. ASSIGNMENTS OF ERROR

1. When the Father filed a *Petition to Modify Child Support* (to establish post-secondary educational support) only days prior to the expiration of support under the *Order of Child Support* then in effect but did not serve the mother with copies of his pleadings within 90 days of filing, the trial court erred in not dismissing the case for failure to “serve” the opposing party within 90 days of filing pursuant to RCW 4.16.170 and thereby not complying the clear language of the *Order of Child Support* then in effect limiting the ability to seek post-majority support.

2. When the Father filed a *Petition to Modify Child Support* (to establish post-secondary educational support) only days prior to the expiration of child support under the *Order of Child Support* then in effect but did not serve the mother with copies of his pleadings within 90 days of filing, the trial court erred in applying a general statute of limitations per RCW 4.16.130 and not dismissing his petition for post-secondary education.

3. When the Father filed a *Petition to Modify Child Support* (to establish post-secondary educational support) only days prior to the expiration of child support under the *Order of Child Support* then in effect but did not serve the mother with copies of his pleadings within 90 days of filing, and the father further failed to plead or show extraordinary

circumstances that might equitably justified the trial court in allowing the matter to proceed despite failure to timely file and serve, the Court erred in not dismissing the action.

D. ISSUES

1. Can a parent establish a right and jurisdiction over post-secondary educational support merely by “filing” the action prior to the 18th birthday of the child and graduation from high school (whichever occurs later) while delaying service of process upon the other parent beyond the 90-day period allowed by statute for the perfection of legal actions ? (Assignments of Error C 1, 2 and 3).

2. If the Order of Child Support “reserves” the establishment of post-secondary educational support so long as that right is exercised prior to the child’s 18th birthday or graduation from high school (whichever occurs later), can a parent file, serve and prosecute an action for post-secondary support after the expiration of the latter of those two terminal dates without a showing of exceptional circumstances ? (Assignment of Error C 1, 2 and 3).

3. By the mere filing of a *Summons* and *Petition to Modify Child Support*, without service of process on the other party within the time period allowed by RCW 4.16.170, can a litigant avoid the application of the limiting language creating such right in the *Order of Child Support*

(child turning 18 or graduating from high school, whichever occurs later) and thereby prosecute and maintain such an action months or years later. (Assignments of Error C 1, 2 and 3).

E. STATEMENT OF CASE

In this matter, the “child” turned 18 years of age on Sept. 4, 2007¹. She graduated from high school on June 6, 2008.² The *Order of Child Support* then in effect (filed on Feb. 27, 2003) provided as follows:

“Support shall be paid until the child reaches the age of 18 or as long as the child remains enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.” *Order of Child Support* of 2/27/2003 at ¶ 3.13.³

“The right to petition for post-secondary support is reserved, provided that right is exercised before support terminates as set forth in Paragraph 3.13.” *Order of Child Support* of 2/27/2003 at ¶ 3.14.⁴

The Father filed this action on June 3, 2008, only 3 days prior to Keira’s graduating from high school (she had already attained her majority).⁵ He served the action by mailing it to the Mother (Appellant) on October 8, 2008, more than 137 days after filing.⁶

¹ See *Respondent’s Motion for Summary Judgment*, CP 71.

² See *Respondent’s Motion for Summary Judgment*, CP 71.

³ See *Order of Child Support*, filed Feb. 27, 2008, at CP 33.

⁴ See *Order of Child Support*, filed Feb. 27, 2008, at CP 34.

⁵ See *Summons & Petition for Modification of Child support*, at CP 93-97.

⁶ See *Proof of Service*, CP 91-92.

RCW 4.16.170 provides as follows:

“For purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within 90 days from the date of filing the complaint. . . . If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to have not been commenced for purposes of tolling the statute of limitations.”

These issues were brought before the trial court within a *Motion for Summary Judgment*.⁷ The Court declined to dismiss the action for failure to “serve” the Summons and Petition in a timely fashion under RCW 4.16.170 and instead found that RCW 4.16.130 controlled and

“provides a parent a period of 2 years to file and serve a Petition for Modification seeking to establish post-secondary support. That period would begin on the date the child reaches their majority (age 18) or graduates from high school (June 6, 2008 in this case) if the last Order of Child Support so provides.”⁸

Based on that ruling, the court then found RCW 4.16.170 to be irrelevant.⁹

The Court did not require the petitioning parent to make any showing of exceptional circumstances or justify the delay in service of process.

⁷ CP 71-90.

⁸ *Order Denying Summary Judgment*, CP 54-55

⁹ CP 55

F. ARGUMENT

The basis for requiring post-secondary educational support is not “fundamental” or constitutional in nature. In fact, at least one state has ruled that to require post-majority support is unconstitutional.¹⁰ The issue is treated with wide variations among the states. Rather, in Washington the issue is rooted in statute. Our court has ruled that jurisdiction over this issue flows from RCW 26.12.010¹¹ and Chapter 26.09 as a whole.¹² RCW 26.09.170 (3) provides as follows:

“(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.”

Thus, absent clear language exempting this case from the statute, the obligation for support, post-secondary or otherwise, terminated on the date Keira graduated from high school.

In interpreting RCW 26.09.170, our court has stated that a parent’s obligation to provide support terminates upon emancipation but the obligation may continue if it is expressly provided for in the orders of the case.¹³ Our court has also mandated the use of standardized forms. The standard *Order of Child Support* contains the language that extends the

¹⁰ *Curtis v. Kline*, 666 A.2nd 265 (Pa. 1995).

¹¹ *In re Marriage of Kelly*, 85 Wash.App. 785 (1997).

¹² *Gimlett v. Gimlett*, 95 Wn.2nd 699 (1981).

¹³ *Rains v. State*, 98 Wash.App. 127 (1999)

potential obligation to pay child support beyond the 18th birthday (emancipation) of a child under certain specific conditions. The Order of Child Support utilized and in effect in this case utilized the options stating as follows:

“Support shall be paid until the child reaches the age of 18 or as long as the child remains enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.” *Order of Child Support of 2/27/2003 at ¶ 3.13.*¹⁴

“The right to petition for post-secondary support is reserved, provided that right is exercised before support terminates as set forth in Paragraph 3.13.” *Order of Child Support of 2/27/2003 at ¶ 3.14.*¹⁵

The key word in this latter paragraph is “exercised”. As the Court is aware from the preceding, the Father filed his *Petition* to establish post-secondary support only a few days prior to the “graduation from high school” of Keira, but did not “serve” the *Summons* and *Petition* until more than 135 days had elapsed. Does this constitute “exercise” of this potential to seek further post-majority support ? We think not as the case is still a modification and subject to the strict rule announced in RCW 26.09.170(3)(cited above), to wit, if there is not agreement or specific language in the court’s order, support terminates. This is analogous and similar to numerous other types of cases involving statutes of limitations.

¹⁴ See *Order of Child Support*, filed Feb. 27, 2008, at CP 33.

¹⁵ See *Order of Child Support*, filed Feb. 27, 2008, at CP 34.

Mere filing of an action, without concomitant service of process within 90 days, will not toll the statute of limitations and the right is lost.

At this point, RCW 4.16.170 decries that under these circumstances, “*the action shall be deemed to have not been commenced for purposes of tolling the statute of limitations.*” A similar provision may be found in CR 3(a). The requirement for service of the pleadings within 90 days applies to any statute of limitations, whether the limit is set by statute or contract¹⁶ and such notice is really a fundamental concept under procedural due process.

“By failing to serve Farmers with the complaint within the required limitation time period set by the contract of insurance, Wothers failed to “bring suit” within one year of the date of loss as required by the policy. Although filed in superior court, the complaint was not served on Farmers within the requisite 90 days. Thus, the “action” was incomplete. Washington courts have repeatedly held that the mere filing of a complaint alone does not constitute the commencement of an action for the purposes of tolling any applicable statute of limitation, whether statutory or by contract. A person bringing suit must also serve the defendant within 90 days of the date of filing in order for the commencement to be complete.” *Wothers V. Farmers Ins. Co. of Washington*, 101 Wash.App. 75, 79 (2000).

In one case, wherein the Decree of Dissolution was “silent” and contained no provisions for post-majority support, our Court has carved out a limited exception to this rule to allow continuing jurisdiction to

¹⁶ See *Wothers V. Farmers Ins. Co. of Washington*, 101 Wash.App. 75, (2000).

address this issue.¹⁷ But those are not the facts herein; the Order of Child Support is specific as to the final date upon which such an action must be commenced.

But absent a finding of exceptional circumstances, if the Father does not properly commence an action by filing before the termination of support and serve the same within 90 days, he should be foreclosed from seeking post-secondary support. To allow otherwise will create a cloud of uncertainty and ambiguity for every obligor parent. An obligor, after paying child support through the minority of the child, should be entitled to certainty as to when that obligation shall terminate.

On this point, see *Rains v. State*, 98.Wash.App. 127, 137-138

(1999) the court stating therein as follows:

“RCW 26.09.170(3) provides that “[u]nless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child [.]” Emancipation occurs when the child reaches the age of majority or is emancipated in fact, whichever occurs first. *In re Marriage of Gimlett* 95 Wash.2d 699, 704, 629 P.2d 450 (1981); *In re Marriage of Nielsen*, 52 Wash.App. 56, 59, 757 P.2d 537 (1988).

“Even if the original decree terminated child support at emancipation, the *Gimlett* court concluded a court could modify the decree to grant post-emancipation support at the request of a party meeting the requirements of RCW 26.09.170. *Gimlett*, 95 Wash.2d at 704, 629 P.2d 450. *Gimlett* has been interpreted to authorize such modification where the movant has filed a motion to modify before the termination of support at emancipation or

¹⁷ *Gimlett v. Gimlett*, 95 Wash.2d 699, 704, 629 P.2d 450 (1981).

under the decree provisions. *Balch v. Balch*, 75 Wash.App. 776, 779, 880 P.2d 78 (1994). In explaining the legislative requirement that post-majority support must be expressly provided in the decree, the *Gimlett* court noted that "[t]he support-paying parent is given advance notice of the termination date or event, rather than being forced to wait for some elusive or fortuitous date of the dependency cessation." *Gimlett*, 95 Wash.2d at 703, 629 P.2d 450. The *Balch* court too looked to see whether the language in the decree was "sufficient to put the payor parent on notice that the child support obligation may continue after majority. *Balch*, 75 Wash.App. at 780, 880 P.2d 78."

As noted, this is not the case wherein the Mother is not contributing financially as she is able to her daughter. She was making voluntary contributions directly to her daughter within her means. But enter a new order obligating her to a specific amount for the next 4 years was not contemplated nor should it be allowed.

This is also a case in which the Father knew 9 months before Keira graduated from high school that she had committed to an expensive out-of-state college, the University of Chicago. After he and Keira took the "early acceptance" option, he could have instituted this action at any time.¹⁸

G. ATTORNEY'S FEES

The Mother is requesting an award of attorney's fees and costs in this matter based on the substantial financial disparity of incomes of the parties. The Order of Child Support that ultimately entered in this matter documented the Mother's "net income" is \$3,043.51 per month while the

¹⁸ CP 56-58.

Father's is more than twice that amount, \$6,195.69 net after taxes per.¹⁹

The Mother has filed an *Affidavit of Financial Need* in support of this request. The Court of Appeals is entitled to award attorney's fees in cases involving dissolutions²⁰ or child support.²¹

H. CONCLUSION

The trial court, by adopting a two-year statute of limitations unrelated to child support in any way, erred. There is significant confusion in the state of the law with respect to applications for post-secondary support, educational or otherwise that needs to be clarified. The language of the Order of Child Support in effect at the time a child attains his or her majority must control. If an action is not appropriately commenced by a timely filing and service of process within 90 days, the request must be dismissed and foreclosed, absent a showing of exceptional circumstances. The ruling of the trial court on Summary Judgment should be reversed and the case dismissed.

RESPECTFULLY SUBMITTED this 16th day of November, 2009.

ANDERSON HUNTER LAW FIRM P.S.

By 
G. Geoffrey Gibbs, WSBA No. 6146
Attorneys for Appellant

¹⁹ CP 29-30

²⁰ RCW 26.09.140.

²¹ See *In Re Marriage of Hunter*, 52 Wn.App. 265, review denied, 112 Wn.2nd 1006 (1989).

APPENDIX

- A. Copy of first pages of *Summons & Petition for Modification of Child Support* showing filing date of June 3, 2008.
- B. Copy of *Proof of Service* documenting mailing of the *Summons & Petition for Modification of Child Support* to Respondent (Appellant herein) on October 8, 2008.
- C. Copy of *Order of Child Support* of Feb. 7, 2003.
- D. Copy of *Order Denying Summary Judgment* dated Jan. 27, 2009.

FILED

JUN 03 2008

SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

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7 **Superior Court of Washington**
8 **County of Snohomish**

9 In re:

10 KARL E. SAGNER,

Petitioner,

11 and

12 RORY B. SAGNER,

13 Respondent.

No. 01-3-01624-7

**Summons for Modification
of Child Support**

(SM)

14 **To:**

- 15 1. An action has been started against you in the above court requesting that the court
16 modify the child support provisions of your support order. The requests are stated in
17 the petition, a copy of which is served upon you with this summons.
- 18 2. You must respond to this summons and petition by filing a written response with the
19 clerk of the court and by serving a copy of your response on the person signing this
20 summons. You must also complete the Washington Child Support Schedule
Worksheet and a Financial Declaration (Form WPF DRPSCU 01.1550) served with
21 this summons. The completed worksheet and financial declaration must be filed and
22 served with your written response.
- 23 3. Your written response to the summons and petition must be on form WPF DR
06.0300, Response to Petition for Modification of Child Support (RSP). This form
may be obtained by contacting the clerk of the court at the address below, by
contacting the Administrative Office of the Courts at (360) 705-5328, or from the
Internet at the Washington State Courts homepage:

24 <http://www.courts.wa.gov/forms>

- 25 4. If you do not file and serve your written response within 20 days (60 days if you are
26 served outside of the state of Washington) after the date this summons was served on

Summons for Mod of Child Suppt (SM) - Page 1 of 2
WPF DR 06.0200 (6/2006) - CR 4.1; RCW 26.09.175 (2),(3)

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ATTORNEY AT LAW
3014 Hoyt Avenue
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Everett, WA 98206-1269
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FILED

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SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

**Superior Court of Washington
County of Snohomish**

In re:

KARL E. SAGNER,

Petitioner,

and

RORY B. SAGNER,

Respondent.

No. 01-3-01624-7

**Petition for Modification
of Child Support
(PTMD)**

I. Basis

Karl E. Sagner represents to the court that:

1.1 Place of Residence

The petitioner resides in Snohomish County, Washington.
The child(ren) reside(s) in Snohomish County, Washington.
The respondent resides in Thurston County, Washington.

1.2 Jurisdiction Over Parents

This court has jurisdiction over the parents for the reasons that follow.

There is a Washington Order of Child Support.

1.3 Most Recent Support Order

The most recent support order was entered in Snohomish County Superior Court on February 27, 2003.

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ATTORNEY AT LAW
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Everett, WA 98206-1269
(425) 258-4242
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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



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**Superior Court of Washington
County of Snohomish**

In re:

KARL E. SAGNER,

Petitioner,

and

RORY B. SAGNER,

Respondent.

No. 01-3-01624-7

PROOF OF SERVICE

On the 8th day of October, 2008, the following documents were deposited in the United States Mail, at Everett, Washington, to the Respondent RORY B. SAGNER by certified mail, and received by Respondent on October 9, 2008. Copy of the Certified Mail Receipt attached.

1. Summons for Modification of Child Support;
2. Petition for Modification of Child Support;
3. Financial Declaration of Karl Sagner;
4. Financial Source Documents;
5. Child Support Worksheets; and
6. Tuition Account Statement for Keira Sagner.

DATED this 14 day of October, 2008.

STEVEN B. SHEA, WSBA No. 10718
Attorney for Petitioner

Steven B. Shea
ATTORNEY AT LAW
3014 Hoyt Avenue
P.O. Box 1869
Everett, WA 98206-1869
(425) 258-4248
Fax: (425) 252-8964

PROOF OF SERVICE - 1

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U.S. Postal ServiceSM
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.comSM

OFFICIAL USE

POSTER NO: 98376

Postage	\$ 11.85
Certified Fee	\$ 2.70
Return Receipt Fee (Endorsement Required)	\$ 2.20
Restricted Delivery Fee (Endorsement Required)	\$ 4.30
Total Postage & Fees	\$ 21.05

0272 MAIN OFFICE
 SEVRETT WA 98201
 10/08/2008

Sent To: Rory Sagner
 Street, Apt. No., or PO Box No. P.O. Box 1263
 City, State, ZIP+4[®] Rainier, WA 98576

PS Form 3811, February 2004 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p><u>Rory Sagner</u></p> <p>B. Received by (Printed Name) <u>Rory Sagner</u> C. Date of Delivery <u>10-9-08</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p><u>RORY SAGNER</u> <u>P.O. BOX 1263</u> <u>RAINIER, WA 98576</u></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p> <p><u>7005 3110 0003 0719 4309</u></p>	<p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>

Original order
of child support
2003

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SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

In Re the Marriage of:)	NO. 01-3-01624-7
)	
KARL E. SAGNER,)	
)	
Petitioner,)	ORDER OF CHILD SUPPORT
)	(ORS)
and)	
)	
RORY B. SAGNER,)	
)	
Respondent.)	<u>Clerk's Action Required</u>

I. JUDGMENT SUMMARY

Does not apply because back child support has been ordered as off-set against other sums awarded to Obligee.

II. BASIS

2.1 TYPE OF PROCEEDING.

This order is entered pursuant to a decree of dissolution.

ORDER OF CHILD SUPPORT (ORS)
WPF DR 01.0500 (6/2002)
RCW 26.09.175; 26.26.132(5)
Page 1

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ORIGINAL

1 2.2 CHILD SUPPORT WORKSHEET.

2 The child support worksheet which has been approved by
3 the court is attached to this order and is incorporated
4 by reference or has been initialed and filed separately
5 and is incorporated by reference.

6 2.3 OTHER.

7 Does not apply.
8
9

10 III. FINDINGS AND ORDER

11
12 IT IS ORDERED that:

13
14 3.1 CHILDREN FOR WHOM SUPPORT IS REQUIRED.

15	<u>Name (first/last)</u>	<u>Age</u>
16	KEIRA ROSE SAGNER	13

17
18
19 3.2 PERSON PAYING SUPPORT (OBLIGOR).

20	Name (first/last):	RORY B. SAGNER
21	Birth date:	07/24/54
22	Service Address:	14507 Berry Valley Road Yelm, WA 98597

23
24 ORDER OF CHILD SUPPORT (ORS)
25 WPF DR 01.0500 (6/2002)
RCW 26.09.175; 26.26.132(5)
26 Page 2

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THE OBLIGOR PARENT MUST IMMEDIATELY FILE WITH THE COURT AND THE WASHINGTON STATE CHILD SUPPORT REGISTRY, AND UPDATE AS NECESSARY, THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW 26.23.050.

THE OBLIGOR PARENT SHALL UPDATE THE INFORMATION REQUIRED BY PARAGRAPH 3.2 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION. THE DUTY TO UPDATE THE INFORMATION CONTINUES AS LONG AS ANY MONTHLY SUPPORT REMAINS DUE OR ANY UNPAID SUPPORT DEBT REMAINS DUE UNDER THIS ORDER.

Monthly Net Income: \$1,561.02

3.3 PERSON RECEIVING SUPPORT (OBLIGEE):

Name (first/last): **KARL E. SAGNER**
Birth date: 03/21/55
Service Address: 7230 - 139th Avenue N. E.
Lake Stevens, WA 98258

THE OBLIGEE PARENT MUST IMMEDIATELY FILE WITH THE COURT AND THE WASHINGTON STATE CHILD SUPPORT REGISTRY, AND UPDATE AS NECESSARY, THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW 26.23.050.

THE OBLIGEE PARENT SHALL UPDATE THE INFORMATION REQUIRED BY PARAGRAPH 3.3 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION. THE DUTY TO UPDATE THE INFORMATION CONTINUES AS LONG AS ANY MONTHLY SUPPORT REMAINS DUE OR ANY UNPAID SUPPORT DEBT REMAINS DUE UNDER THIS ORDER.

Monthly Net Income: ~~\$4,234.91~~ 4678.03

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The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

3.4 SERVICE OF PROCESS.

SERVICE OF PROCESS ON THE OBLIGOR AT THE ADDRESS REQUIRED BY PARAGRAPH 3.2 OR ANY UPDATED ADDRESS, OR ON THE OBLIGEE AT THE ADDRESS REQUIRED BY PARAGRAPH 3.3 OR ANY UPDATED ADDRESS, MAY BE ALLOWED OR ACCEPTED AS ADEQUATE IN ANY PROCEEDING TO ESTABLISH, ENFORCE OR MODIFY A CHILD SUPPORT ORDER BETWEEN THE PARTIES BY DELIVERY OF WRITTEN NOTICE TO THE OBLIGOR OR OBLIGEE AT THE LAST ADDRESS PROVIDED.

3.5 TRANSFER PAYMENT.

The obligor parent shall pay ^{270.71}~~\$278.41~~ per month.

THE OBLIGOR PARENT'S PRIVILEGES TO OBTAIN OR MAINTAIN A LICENSE, CERTIFICATE, REGISTRATION, PERMIT, APPROVAL, OR OTHER SIMILAR DOCUMENT ISSUED BY A LICENSING ENTITY EVIDENCING ADMISSION TO OR GRANTING AUTHORITY TO ENGAGE IN A PROFESSION, OCCUPATION, BUSINESS, INDUSTRY, RECREATIONAL PURSUIT, OR THE OPERATION OF A MOTOR VEHICLE MAY BE DENIED OR MAY BE SUSPENDED IF THE OBLIGOR PARENT IS NOT IN COMPLIANCE WITH THIS SUPPORT ORDER AS PROVIDED IN CHAPTER 74.20A REVISED CODE OF WASHINGTON.

3.6 STANDARD CALCULATION.

^{270.71}~~\$278.41~~ per month. (See Worksheet line 15.)

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3.7 REASONS FOR DEVIATION FROM STANDARD CALCULATION.

The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation.

3.8 REASONS WHY REQUEST FOR DEVIATION WAS DENIED.

The deviation sought by the obligor was denied because no good reason exists to justify deviation.

3.9 STARTING DATE AND DAY TO BE PAID.

Starting Date: **JANUARY 1, 2003**
Day(s) of the month support is due: **7TH OF EACH MONTH**

3.10 INCREMENTAL PAYMENTS.

Does not apply.

3.11 HOW SUPPORT PAYMENTS SHALL BE MADE.

Enforcement and collection: The Division of Child Support provides support enforcement services for this case (this includes public assistance cases, cases in which a parent has requested services from DCS, and cases in which a parent signs the application for services from DCS on the bottom of the support order). Support payments shall be made to:

1 Washington State Support Registry
2 P. O. Box 45868
3 Olympia, WA 98504
4 Phone: 1-800-922-4306 or
5 1-800-442-5437

6 A party required to make payments to the Washington
7 State Support Registry will not receive credit for a
8 payment made to any other party or entity. The obligor
9 parent shall keep the registry informed whether he or
10 she has access to health insurance coverage at
11 reasonable cost and, if so, to provide the health
12 insurance policy information.

13 3.12 WAGE WITHHOLDING ACTION.

14 Withholding action may be taken against wages,
15 earnings, assets, or benefits, and liens enforced
16 against real and personal property under the child
17 support statutes of this or any other state, without
18 further notice to the obligor parent at any time after
19 entry of this order.

20 3.13 TERMINATION OF SUPPORT.

21 Support shall be paid until the child reaches the age
22 of 18 or as long as the child remains enrolled in high
23 school, whichever occurs last, except as otherwise
24 provided below in Paragraph 3.14.

25 ORDER OF CHILD SUPPORT (ORS)
26 WPF DR 01.0500 (6/2002)
RCW 26.09.175; 26.26.132(5)
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3.14 POST SECONDARY EDUCATIONAL SUPPORT.

The right to petition for post secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13.

3.15 PAYMENT FOR EXPENSES NOT INCLUDED IN THE TRANSFER PAYMENT.

Does not apply because all payments, except medical, are included in the transfer payment.

3.16 PERIODIC ADJUSTMENT.

Child support shall be adjusted periodically as follows:

Every two years. The parties shall exchange income tax returns and year-to-date income information in April, 2005. The first adjustment of support shall be effective May 1, 2005 and every two years thereafter.

3.17 INCOME TAX EXEMPTIONS.

Tax exemptions for the children shall be allocated as follows: To the Father *even years + to the mother in odd years*
The parents shall sign the federal income tax dependency exemption waiver.

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1 3.18 MEDICAL INSURANCE FOR THE CHILDREN LISTED IN PARAGRAPH
2 3.1.

3 Unless one or more of the boxes below are checked, each
4 parent shall maintain or provide health insurance
5 coverage if:

- 6 (a) Coverage that can be extended to cover the child
7 is or becomes available to each parent through
8 employment or is union-related; and
9 (b) The cost of such coverage for the mother does not
10 exceed \$69.60 (25 percent of mother's basic child
11 support obligation on Worksheet Line 7), and the
12 cost of such coverage for the father does not
13 exceed \$189.15 (25 percent of father's basic
14 child support obligation on Worksheet Line 7).

15 The parent(s) shall maintain health insurance coverage,
16 if available for the children listed in paragraph 3.1,
17 until further order of the court or until health
18 insurance is no longer available through the parents'
19 employer or union and no conversion privileges exist to
20 continue coverage following termination of employment.

21 A parent who is required under this order to provide
22 health insurance coverage is liable for any covered
23 health care costs for which that parent receives direct
24 payment from an insurer.

25 A parent who is required under this order to provide
26 health insurance coverage shall provide proof that such
coverage is available or not available within 20 days
of the entry of this order to the physical custodian or
the Washington State Support Registry if the parent has
been notified or ordered to make payments to the
Washington State Support Registry.

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If proof that health insurance coverage is available or not available is not provided within 20 days, the obligee or the Department of Social and Health Services may seek direct enforcement of the coverage through the obligor's employer or union without further notice to the obligor as provided under Chapter 26.18 RCW.

3.19 EXTRAORDINARY HEALTH CARE EXPENSES.

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The OBLIGOR shall pay ^{24.7%}~~26.9%~~ of extraordinary health care expenses (the obligor's proportional share of income from the Child Support Schedule Worksheet, line 6), if monthly medical expenses exceed \$~~31.80~~ (5% of the basic support obligation from Worksheet line 5).

(54.80)

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3.20 BACK CHILD SUPPORT.

Other:

The court hereby awards child support arrears to Father to be paid by Mother for the period June 26, 2001 (date of filing) through December 31, 2002.

The arrears for the period June 26, 2001 through December 31, 2001 is based upon Mother's 2001 income of \$20,399.80 divided by 12 months, or \$1,699.98 gross income per month. The amount of arrears is calculated on a 365 day year with 189 days unpaid. This totals \$1,534.64.

Child support arrears for 2002 is calculated for a full calendar year at \$270.41 per month, or ~~\$3,340.92~~
3248.52

Therefore, the total amount of arrears is ~~\$4,875.56~~

~~\$4,875.56~~
\$ 4783.16

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No judgment is awarded for the arrears to the Obligee as this sum is used as an off-set against the award of property. Please see Decree of Dissolution.

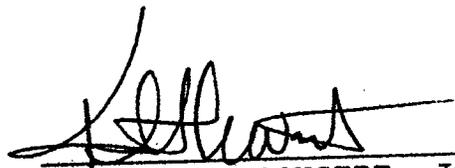
3.21 BACK INTEREST.

No back interest is owed at this time.

3.22 OTHER.

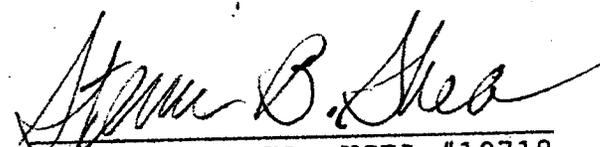
Does not apply.

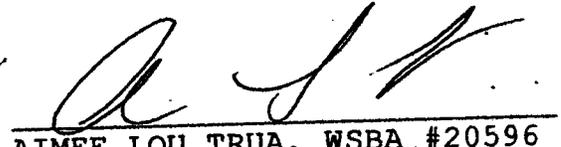
Dated: Feb 27, 2003


KENNETH L. COWSERT, Judge

Presented by:

Approved for entry; Notice of presentation waived:


STEVEN B. SHEA, WSBA #10718
Attorney for Petitioner


AIMEE LOU TRUA, WSBA #20596
Attorney for Respondent

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KARL E. SAGNER
Petitioner


RORY E. SAGNER
Respondent

ORDER OF CHILD SUPPORT (ORS)
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RCW 26.09.175; 26.26.132(5)
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I apply for full support enforcement services from the DSHS
Division of Child Support.

KARL E. SAGNER

ORDER OF CHILD SUPPORT (ORS)
WPF DR 01.0500 (6/2002)
RCW 26.09.175; 26.26.132(5)
Page 12

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**Washington State Child Support Schedule
Worksheets (CSW)**

Mother: RORY SAGNER
County: SNOHOMISH

Father: KARL SAGNER
Superior Court Case Number: 01-3-01624-7

CHILDREN AND AGES: KIERA, 13		
PART I: BASIC SUPPORT OBLIGATION		
1. GROSS MONTHLY INCOME	FATHER	MOTHER
a. Wages and Salaries	\$6,833.33	\$1,894.99
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Spousal Maintenance Received	-	-
e. Other Income	-	-
f. TOTAL GROSS MONTHLY INCOME (add Lines 1a through 1e)	\$6,833.33	\$1,894.99
2. MONTHLY DEDUCTIONS FROM GROSS INCOME		
a. Income Taxes (Federal and State)	\$1,356.82	\$214.85
b. FICA/(Soc Sec + Medicare)/Self-Emp Taxes	\$514.48	\$144.97
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	\$117.00	-
e. Pension Plan Payments	\$167.00	-
f. Spousal Maintenance Paid	-	-
g. Normal Business Expenses	-	-
h. TOTAL DEDUCTIONS FROM GROSS INCOME (add Lines 2a through 2g)	\$2,155.30	\$359.82
3. MONTHLY NET INCOME (Line 1f minus Line 2h)	\$4,678.03	\$1,535.17
4. COMBINED MONTHLY NET INCOME (Line 3 amounts combined) (If Line 4 is less than \$600, skip to Line 7.)		\$6,213.20
5. BASIC CHILD SUPPORT OBLIGATION: Combined --> KIERA \$1,096.00		\$1,096.00

6. PROPORTIONAL SHARE OF INCOME (Each number on Line 3 divided by Line 4)	FATHER .753	MOTHER .247
7. EACH PARENT'S BASIC CHILD SUPPORT OBLIGATION (Each number on Line 6 times Line 5) (If Line 4 is less than \$800, enter each parent's support obligation of \$25 per child. Number of children: 1. (Skip to Line 15a and enter this amount.)	\$825.29	\$270.71
PART II: HEALTH CARE, DAY CARE, AND SPECIAL CHILD REARING EXPENSES		
8. HEALTH CARE EXPENSES		
a. Children's Monthly Health Insurance	-	-
b. Children's Uninsured Monthly Health Care	-	-
c. Total Monthly Health Care Expenses (Line 8a plus Line 8b)	-	-
d. Combined Monthly Health Care Expenses (Add father's and mother's totals from line 8c)		\$.00
e. Maximum Ordinary Monthly Health Care (Line 5 times .05)		\$54.80
f. Extraordinary Monthly Health Care (Line 8d minus Line 8e)		\$.00
9. DAY CARE AND SPECIAL CHILD REARING EXPENSES		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)	-	-
	-	-
	-	-
e. TOTAL DAY CARE AND SPECIAL EXPENSES (Add Lines 9a through 9d)	-	-
10. COMBINED MONTHLY TOTAL DAY CARE & SPECIAL EXPENSES (Combine amounts on Line 9e)		-
11. TOTAL EXTRAORDINARY HEALTH CARE, DAY CARE, & SPECIAL EXPENSES (Line 8f plus Line 10)		-
12. EACH PARENT'S OBLIGATION FOR EXTRAORDINARY HEALTH CARE, DAY CARE, AND SPECIAL EXPENSES (Multiply each number on Line 6 by Line 11)	-	-
PART III: GROSS CHILD SUPPORT OBLIGATION		
13. Gross Child Support Obligation (Line 7 plus Line 12)	\$825.29	\$270.71
PART IV: CHILD SUPPORT CREDITS		
14. CHILD SUPPORT CREDITS		
a. Monthly Health Care Expenses Credit	-	-
b. Day Care and Special Expenses Credit	-	-
c. Other Ordinary Expense Credit (Describe)	-	-
	-	-
	-	-
d. TOTAL SUPPORT CREDITS (Add Lines 14a through 14c)	-	-

PART V: STANDARD CALCULATION/Presumptive Transfer Payment		
15. Standard Calculation	FATHER	MOTHER
a. Amount from line 7 if line 4 is below \$600. Skip to Part VI.	-	-
b. Line 13 minus line 14d, if line 4 is above \$600 (see below if appl.)	\$825.29	\$270.71
Limitation Standards Adjustments		
c. Amount on Line 15b adjusted for 45% net income limitation	-	-
d. Amount on Line 15b adjusted to meet need standard limitation	-	-
e. Enter lowest amount of lines 15b, 15c, 15d	\$825.29	\$270.71
PART VI: ADDITIONAL FACTORS FOR CONSIDERATION		
16. Household Assets	FATHER'S	MOTHER'S
(Present estimated value of all major assets)	HOUSEHOLD	HOUSEHOLD
e. Real Estate	-	-
b. Stocks & Bonds	-	-
c. Vehicles	-	-
d. Boats	-	-
e. Pensions/ IRAs/ Bank Accounts	-	-
f. Cash	-	-
g. Insurance Plans	-	-
h. Other	-	-
	-	-
	-	-
	-	-
17. Household Debt		
(List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
18. Other Household Income		
a. Income Of Current Spouse		
(If not the other parent of this action)		
Name	-	-
Name	-	-
b. Income Of Other Adults in Household		
Name	-	-
Name	-	-
c. Income Of Children		
(If considered extraordinary)		
Name	-	-
Name	-	-
d. Income From Child Support		
Name	-	-
Name	-	-

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Signature and Dates

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these worksheets is complete, true, and correct.

[Handwritten Signature]
Mother's Signature

[Handwritten Signature]
Father's Signature

Date City

Date City

[Handwritten Signature]
Judge/Reviewing Officer

Feb 27, 03
Date

Worksheet certified by the State of Washington Administrator for the Courts.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

Karl E. Sagner

~~PLAINTIFF~~/PETITIONER

Rory B. and Sagner
DEFENDANT/RESPONDENT

NO. 01-3-01624-7

ORDER DENYING

SUMMARY JUDGMENT

IT IS HEREBY ORDERED: The court finds that RCW
4.16.130 controls and provides a parent
a period of 2 yrs. to file and serve
a Petition for Modification seeking
to establish post-secondary support.
That period would begin on the date
the child reaches their majority (age 18)
or graduates from high school (June 6
DONE IN OPEN COURT this date: January 27, 2009

Presented By:

[Signature]

[Signature]
JUDGE/COURT COMMISSIONER

Copy Received:

Page 1

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Case Name Sagner Case No. 01-3-01624-7

2008 in this case) if the last order of Child Support so provides. The Court declines to rule that a parent is limited to the age of majority or graduation as the limiting date. Having so ruled, the issue of whether or not service occurred within 90 days would not affect the ruling in this case.

In so ruling the court considered the Summons and Petition for Modification filed on June 3, 2008; the Financial Declarations⁽²⁾ of the Petitioner and supporting documents under seal the Tuition Account Statement, Father's proposed worksheets, Proof of Service, the Respondent's Motion for Summary Judgment, Declarations of Rory Sagner and Karl Sagner, Petitioner's Memorandum of Authorities and Respondent's Reply Declaration. Therefore, the Motion is denied.

DONE IN OPEN COURT this date: 1/27/2009

Presented By:

George Gibbs
6146

Steve J. [Signature]
JUDGE / COURT COMMISSIONER

Copy Received:

[Signature]
#10718. Atty for Pet.

COURT OF APPEALS
STATE OF WASHINGTON
2009 NOV 18 PM 3:40

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION I

Rory B. Sagner,)	
)	
Appellant,)	No. 64074-7-I
)	(Superior Court Cause No.
v.)	01-3-01624-7)
)	DECLARATION OF
Karl E. Sagner,)	SERVICE
)	
Respondent.)	

I, Deborah L. Arnold, hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am a paralegal for the Anderson Hunter Law Firm, attorneys for the above-named Appellant.

2. On the 17th day of November 2009, I caused to be delivered via ABC Legal Services, one copy of the *Brief of Appellant* filed in the above-entitled matter, to the following person at the address indicated below:

DECLARATION OF SERVICE - 1

ORIGINAL

Steven Shea, Esq.
3014 Hoyt Avenue
Everett, WA 98201

DATED this 17th day of November 2009.

ANDERSON HUNTER LAW FIRM P.S.


Deborah L. Arnold

DECLARATION OF SERVICE - 2