

No. 74940-4-I

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

In re the Marriage of
VIRGINIA BERRY,

Appellant,

v.

DAVID BERRY,

Respondent.

BRIEF OF APPELLANT VIRGINIA BERRY

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A. INTRODUCTION

Virginia Berry is appealing the termination of post-secondary support for her daughter, Rachel Berry. Rachel suffers from Grave's Disease, a thyroid condition that caused her to have severe double vision. In Spring 2015, Rachel was forced to drop a class at Cascadia Community College due to her double vision and fell below the post-secondary support award's "full-time" enrollment requirement. She immediately sought medical treatment and resumed classes full-time in the Fall.

Upon learning that Rachel completed ten credits rather than the required twelve, her father, David Berry, moved for termination of her post-secondary support. The trial court held that Rachel's support terminated because there was no "medical" exception to full-time enrollment in the child support order. This was an erroneous interpretation of the post-secondary support award because it is contrary to Rachel's best interests and the legislative intent of the post-secondary support statute. Therefore, the trial court abused its discretion and unfairly relieved David of his obligation to support Rachel in her post-secondary education.

On appeal, Virginia asks this Court to hold that the child support order does include an exception to the full-time enrollment requirement where Rachel temporarily fell below full-time enrollment due to medical issues that were beyond her control.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred when it terminated Rachel Berry's post-secondary support in its Order on Revision and Judgment, entered February 2, 2016, and Corrected Order on Revision and Judgment, entered February 25, 2016.
2. The trial court erred when it ordered Virginia Berry to reimburse David Berry for money he paid for tuition in its Order on Revision and Judgment, entered February 2, 2016, and Corrected Order on Revision and Judgment, entered February 25, 2016.
3. The trial court erred when it ordered Virginia Berry to pay David Berry \$1,000 in attorney fees in its Order on Revision and Judgment, entered February 2, 2016, and Corrected Order on Revision and Judgment, entered February 25, 2016.
4. Virginia Berry moves for an award of attorney fees on appeal.

(2) Issues Related to Assignment of Error

1. Where a child receiving post-secondary support suffers a medical issue and attends school part-time for one quarter, does the trial court err by interpreting the child support order as having no medical exception to its full-time enrollment requirement, terminating support, ordering the mother to reimburse the father for the tuition he previously paid, and ordering the mother to pay the father's attorney fees? (Assignments of Error 1, 2, 3)
2. Where Virginia Berry earns significantly less money than David Berry, should she receive her fees on appeal? (Assignment of Error 4)

C. STATEMENT OF THE CASE

Virginia Berry and David Berry were married in June 1994.¹ CP at 534. They have two daughters: Rachel, born in 1995, and Katherine, born in 1998. *Id.* at 533. Virginia stayed home with the children while David worked. *Id.* at 477.

By his own admission, David physically and emotionally abused Virginia and the children during the marriage. *Id.* at 491-92; *see also id.* at 469-77, 483-89. This abuse included throwing the children into their car seats with “force” and lifting Katherine “high above” the bed and throwing her down “hard” when she ignored his request to come to him so that he could change her diaper. *Id.* at 491. One of the most egregious incidents occurred in 2001, when Rachel was five years old and David took her to a park to play. *Id.* at 471. Rachel did not want to leave when it was time to go. *Id.* This upset David and he pulled her arm so hard that he dislocated her elbow. *Id.* at 471, 491. Rachel required medical treatment to put it back into place. *Id.* at 471, 479, 491.

Virginia and the children endured his abusive behavior until 2002, when David and Virginia got into an argument and he grabbed her arm so hard he left bruises. *Id.* at 472, 491. After this incident, Virginia contacted

¹ Because all parties have the same last name, this brief refers to each party by his or her first name to avoid confusion.

Dr. Erik Bohlin, a mental health counselor, to get help. *Id.* at 472. Dr. Bohlin interviewed Virginia, David, Rachel, and Katherine. *Id.* at 483. He also reported the abusive incidents, including Rachel's dislocated elbow, to Child Protective Services. *Id.* Shortly thereafter, Virginia and David signed a contract with the Department of Social and Health Services that offered services to the family and allowed the children to stay in Virginia's custody. *Id.* at 481. The contract required Virginia to get a restraining order against David. *Id.*

The Snohomish County Prosecutor charged David with Assault of a Child in the Third Degree (DV) based on his dislocation of Rachel's elbow. *Id.* at 449. David entered the Diversion program, which required that he attend one year of domestic violence treatment and attend counseling sessions. *Id.* at 448, 496. Based on his domestic violence history, as cataloged in the Domestic Violence Inventory, his counselor assessed his risk to re-offend at maximum. *Id.* at 496-99.

Over the course of the next year, David did not live with Virginia and the kids because of the restraining order. *Id.* at 473. During that time, he completed the required domestic violence and anger management classes. *Id.* at 446-47. He saw the children during weekly visitations and at church and talked to them on the phone. *Id.* at 473.

In June 2003, David moved back in with Virginia and the children because they hoped to reconcile their marriage. *Id.* But several months later, Virginia saw David push Rachel over in anger and, as a result of that incident, she asked him to move out of the home permanently. *Id.* at 473-74. Over the course of the next two years, David continued to visit the children, but could not control his anger or abusive behavior. *Id.* at 474.

In February 2006, Virginia filed to dissolve the marriage. *Id.* at 533. Rachel and Katherine were age 10 and 7, respectively. *Id.* In June 2007, the trial court entered a Decree of Dissolution, Findings of Fact and Conclusions of Law, a Final Agreed Parenting Plan, and an Order of Child Support. *Id.* at 349-79. The parenting plan gave residential custody to Virginia but allowed David to have supervised visits with the children with the possibility of future unsupervised visitation if recommended by the family's therapist. *Id.* at 363-64.

The parenting plan was amended by agreement of the parties in June 2011, when Rachel was fifteen years old. *Id.* at 315. Under the amended parenting plan, David was not given any residential time or contact. *Id.* at 317. Rather, contact between David and his daughters was only to occur when initiated by the children and, when initiated, on dates and times agreed to between David, Virginia, and the children. *Id.* Since then, Rachel has

had little to no contact with her father. *See id.* at 179 (explaining that David does not even send Rachel birthday cards).

As Rachel neared high school graduation in June 2014, Virginia petitioned the court to modify the child support order to provide for Rachel's post-secondary educational expenses. *Id.* at 263-65. The matter went to arbitration and the arbitrator granted post-secondary educational support. *Id.* at 257-59. Around this same time, David relocated to South Carolina. *Id.* at 52. In September 2014, the trial court entered the Order of Child Support Final Order ("Order of Child Support"), adopting the arbitrator's post-secondary support award. *Id.* at 238-54 (attached as an appendix). The order includes an award of post-secondary education and support for Rachel in the amount of \$8,902 per year. *Id.* at 242. Under the award, Virginia is responsible for 20% of these costs and David is responsible for the remaining 80%.² *Id.* The Order of Child Support sets out the following conditions of support:

The parents' obligations to pay for postsecondary educational support are strictly conditioned on the requirements of RCW 26.19.090 including that Rachel shall enroll in and attend school full-time, and must be in good academic standing, as defined by the institution. Rachel shall timely, not less than every six months, make available all academic records and grades to both parents as a

² This percentage split was based upon the great disparity in income levels between Virginia and David: \$1,988.20 and \$7,983.00 per month, respectively. CP at 239-40.

condition of receiving postsecondary educational support as set forth herein. Failure to comply with any of these conditions shall result in automatic suspension of the parents' obligations.

The parents' obligations for payment of any and all postsecondary educational expenses, including living expenses of Rachel Berry, their adult child shall automatically terminate without further court order upon written verification that Rachel Berry is not enrolled in or not attending full-time or not maintaining good academic standing in an accredited institution of higher learning.

Id. at 242-43.

Rachel enrolled at Western Washington University in Fall 2014. *Id.* at 168-69. Shortly after classes began, Rachel's grandmother (Virginia's mother) passed away. *Id.* at 165. Rachel became depressed and requested a hardship withdrawal on November 6, 2014. *Id.* at 168-69, 179. In the application for withdrawal, Rachel explained that she needed to withdraw because "I cannot continue my studies at his time. I need to be with my family." *Id.* at 168. The hardship withdrawal was granted on November 20, 2014, and Rachel returned home to her mother and sister to mourn the loss of her grandmother. *Id.* at 169, 179. Rachel did not stay out of school long. *Id.* at 179. She immediately enrolled at Cascadia Community College ("Cascadia") for fifteen credits in the upcoming Winter quarter 2015. *Id.* at 177. She continued her studies at Cascadia in Spring 2015 and registered for another fifteen credits. *Id.* at 108.

On May 14, 2015, without any sympathy for his daughter's overwhelming grief, David filed a motion to terminate or suspend Rachel's post-secondary support due to her withdrawal from Western Washington University. *Id.* at 180. He argued that, under the plain language of the Order of Child Support, post-secondary support should terminate because she was not enrolled in or attending college full-time during Fall 2014. *Id.* at 182-83. Additionally, he argued that she was not enrolled in or attending college full-time during Winter 2015 because one of the classes she took at Cascadia that quarter, Math 075, was a pre-college class that did not count toward her degree.³ *Id.*

The Commissioner denied his motion. *Id.* at 154-55. In her oral ruling, she explained that, although the Order of Child Support says that support "shall terminate" upon failure to enroll or maintain good academic standing, such a remedy was not called for in this case. RP at 10-11. Rather, because Rachel withdrew due to the passing of her grandmother, but then "immediately got herself back into school and has been going to school[,]" neither termination nor suspension of support was warranted. *Id.* at 11. David filed a motion for revision, which was denied. CP at 148-52.

³ Upon enrollment at Cascadia, Rachel placed into Math 075, a "pre-college" level math class. CP at 80. While she did not receive credit toward her degree for this class, she was required to take both Math 075 and Math 085 in preparation for the college level math classes that are required for her Associate degree. *Id.*

In May 2015, while David was attempting to terminate her post-secondary support, Rachel was forced to reduce her course load from fifteen credits to ten credits due to double vision she was suffering as a result of her Grave's Disease. *Id.* at 60-61, 74, 108. She simply could not keep up with the strenuous reading required for her Philosophy class. *Id.* at 60-61. Soon after the end of the quarter, in July, she underwent surgery that corrected her double vision problems. *Id.* at 74. She then enrolled in and completed Fall quarter 2015 at Cascadia. *Id.* at 72. The surgery resulted in a drastic jump in her GPA: where she had a GPA of 2.50 in Spring 2015, her Fall 2015 GPA increased to 3.77. *Id.*

Upon learning that Rachel completed only ten credits in Spring 2015, David again moved to suspend or terminate her post-secondary support.⁴ *Id.* at 92-98. Similar to his first motion to terminate, it argued that she only completed five credits because Math 085 is a pre-college class. *Id.* at 93. He also claimed that Rachel intentionally submitted a falsified transcript to him showing that she completed fifteen credits during Spring 2015. *Id.* at 93-94. Additionally, as part of the same motion, he sought reimbursement for counseling expenses he paid for Katherine, his other daughter, which he claimed Virginia falsified. *Id.* at 94-96, 98.

⁴ Cascadia defines a "full time student" as one taking at least twelve credits a quarter. CP at 111.

Acting pro se, Virginia filed a response and declaration in which she offered to reimburse David for some of the disputed invoices. *Id.* at 63. But she opposed termination or suspension of Rachel’s post-secondary support. *Id.* at 63-65. Virginia explained that the discrepancy in the unofficial transcript was due to a software implementation problem at Cascadia and, as soon as the error was brought to her attention by David’s attorney, Rachel provided immediate permission for David to access her grade reports online. *Id.* at 63. She also explained that Rachel’s Grave’s Disease caused severe double vision that made it impossible for her to complete the extensive reading assignments in her philosophy class, but that she took fifteen credits in Fall 2015 and was currently enrolled in fifteen credits for Winter 2016. *Id.* at 64. Finally, Virginia notified the court that she would not be attending the Commissioner’s hearing because she did not have an attorney to represent her and she was “terrified” of David.⁵ *Id.* at 65.

The Commissioner granted David’s motion to terminate Rachel’s post-secondary support and ordered that Virginia reimburse David for all of the counseling invoices David claimed were falsified. *Id.* at 47-48. In its oral ruling, the Commissioner appeared to base its decision to terminate

⁵ Virginia’s terror is not unfounded given David’s domestic violence history: a Snohomish County trial court judge granted her a three-year Order for Protection against David that runs from September 2013 to December 2016. CP at 87-91.

Rachel's post-secondary support upon the plain language of the Order of Child Support, stating that "under the terms of the parenting plan, it does say that if the child fails to attend full time, that post-secondary obligation is terminated." RP at 14.

Virginia filed a pro se motion for revision. CP at 43-44. She argued that Rachel's post-secondary support should have been suspended under the terms of the Order of Child Support, rather than terminated. *Id.* She explained that Rachel's failure to attend school full-time was due to medical reasons and was not permanent or willful. *Id.* at 43. Virginia also told the trial court that Rachel successfully completed fifteen credits in Fall 2015 and was currently taking fifteen credits for Winter 2016. *Id.* She did not seek revision of the Commissioner's judgment on Katherine's counseling invoices. *Id.* at 43-44.

The trial court denied the motion for revision. *Id.* at 40-41 (attached as an appendix). Furthermore, it entered an additional judgment against Virginia for the amount of tuition David paid to Cascadia for Fall 2015 and \$1,000 in attorney fees, neither of which were requested in David's original motion or his response to Virginia's motion for revision.⁶ *Id.* at 40-41. The

⁶ At the Commissioner's hearing, David's attorney admitted that David was "not asking for reimbursement or anything. He's just asking for the order that requires [post-secondary support] be terminated at that time." RP at 13.

hearing on the motion for revision was not automatically recorded and no court reporter was present. *Id.* at 42. But the minute entry from the hearing states the reason for the trial court's decision:

The court finds the support order was clear and that there was no provision in that order for any medical or other reason for reducing work load to that of less than a full-time student. The court confirms the commissioner's ruling terminating post-secondary support. This court modifies the judgment against the petitioner to \$7,086.00.

Id. at 42 (attached as an appendix). Later, the trial court entered a Corrected Order on Revision and Judgment on February 25, 2016, that corrected a clerical error in the judgment total and increased it to \$8,086.00. *Id.* at 31-33 (attached as an appendix).

Virginia filed a pro se Motion for Reconsideration, which the trial court denied. *Id.* at 11-12, 19-23.

Virginia now appeals. *Id.* at 1. She challenges the termination of Rachel's post-secondary support, the judgment against her for reimbursement of tuition David paid directly to Cascadia, and the attorney fee award.⁷

D. ARGUMENT

(1) Standard of Review

⁷ Virginia does not appeal the trial court's judgment regarding Katherine's counseling invoices.

This Court reviews a trial court's decision on child support for a manifest abuse of discretion. *Mattson v. Mattson*, 95 Wn. App. 592, 599, 976 P.2d 157 (1999). A trial court abuses its discretion if its decision is manifestly unreasonable, based on untenable grounds, or based on untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997) (citing *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); *In re Marriage of Wicklund*, 84 Wn. App. 763, 770 n.1, 932 P.2d 652 (1996)). A "decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *Id.* at 47 (citing *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)).

Interpretation of a child support order is a question of law that this Court reviews de novo. *Sagner v. Sagner*, 159 Wn. App. 741, 749, 247 P.3d 444 (2011). Unless the parties state otherwise, the courts will presume the language used in the child support order incorporates existing relevant statutory provisions. *Id.* (citing *In re Marriage of Briscoe*, 134 Wn.2d 344, 348, 949 P.2d 1388, *as modified by* 971 P.2d 500 (1998)). Where a trial court applies an erroneous view of the legal effect of a child support order,

it bases its decision on an untenable ground. *In re Marriage of Jess*, 136 Wn. App. 922, 927-28, 151 P.3d 240 (2007) (citing *In re Marriage of Fiorito*, 112 Wn. App. 657, 663-64, 50 P.3d 298 (2002)). Appellate courts have the authority to clarify and refine the outer bounds of the trial court's available range of choices, and in particular to identify appropriate legal standards. *State v. Sisouvanh*, 175 Wn.2d 607, 623, 290 P.3d 942 (2012).

“Where the superior court has made a decision on a motion for revision, the appeal is from the superior court's decision, not from the commissioner's decision.” *Boeing Employees' Credit Union v. Burns*, 167 Wn. App. 265, 270, 272 P.3d 908 (2012) (citing *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004)).

- (2) The trial court abused its discretion when it terminated Rachel's post-secondary support because its decision was based on an erroneous interpretation of the child support order that did not take Rachel's best interests into account.

The trial court terminated Rachel's post-secondary support based on an erroneous interpretation of the Order of Child Support. Specifically, it held that post-secondary support must terminate because there is no exception for her failure to attend school full-time due to medical issues. CP at 42. Analysis of the Order of Child Support does not support this interpretation. Automatic termination of support where a child attends school part-time for one quarter due to a medical issue fails to take into

account the child's best interests, as required by statute and is, therefore, disallowed.

Interpretation of a child support order presents a question of law that is reviewed de novo. *Sagner*, 159 Wn. App. at 749. If an order is unambiguous, there is nothing for the court to interpret. *In re Marriage of Bocanegra*, 58 Wn. App. 271, 275, 792 P.2d 1263 (1990). If the order is ambiguous, the reviewing court applies the general rules of construction applicable to statutes, contracts, and other writings to ascertain the intent of the court that entered the order. *In re Marriage of Gimlett*, 95 Wn.2d 699, 704-05, 629 P.2d 450 (1981). A writing is ambiguous if it is susceptible to two different, reasonable interpretations. *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 733, 837 P.2d 1000 (1992). Evidence of the circumstances surrounding the creation of an instrument may be admitted to ascertain the intent of the parties. *See Berg v. Hudesman*, 115 Wn.2d 657, 669, 801 P.2d 222 (1990).

Here, the Order of Child Support states that:

The parents' obligations to pay for postsecondary educational support are strictly conditioned on the requirements of RCW 26.19.090 including that Rachel shall enroll in and attend school full-time, and must be in good academic standing, as defined by the institution. Rachel shall timely, not less than every six months, make available all academic records and grades to both parents as a condition of receiving postsecondary educational support as set forth herein. ***Failure to comply with any of these***

conditions shall result in automatic suspension of the parents' obligations.

The parents' obligations for payment of any and all post-secondary educational expenses, including living expenses of Rachel Berry, their adult child ***shall automatically terminate*** without further court order upon written verification that Rachel Berry is not enrolled in or not attending full-time or not maintaining good academic standing in an accredited institution of higher learning.

CP at 242-43 (emphasis added). The trial court read the Order of Child Support as unambiguously providing only one option if Rachel did not meet the "full-time" student requirement: termination. *Id.* at 42. It noted that termination was proper because there was no exception for failure to attend full-time due to medical issues. *Id.*

But, the Order of Child Support is ambiguous because it is susceptible to two different, reasonable interpretations. Under the order, it is not clear that Rachel's failure to attend full-time must result in termination. The first paragraph above states that support "shall" be suspended upon the failure to attend full-time. Then, the paragraph immediately following states that support "shall" be terminated upon the failure to attend full-time. Nothing in the order explains when termination is appropriate rather than suspension. The fact that both outcomes (termination and suspension) are mandated, without explanation when one applies versus the other, results in the order being confusing and ambiguous.

Because the order is ambiguous, this Court must determine the intent of the court that entered the Order of Child Support.

In dissolution proceedings between parents, “the best interests of the child shall be the standard by which the court determines and allocates the parties’ parental responsibilities.” RCW 26.09.002 (attached as an appendix). “Child support is designed with the primary goal of preventing a harmful reduction in a child’s standard of living, in the best interests of children whose parents are divorced.” *Mattson*, 95 Wn. App. at 599-600 (citing *In re Marriage of Oakes*, 71 Wn. App. 646, 649-50, 861 P.2d 1065 (1993)).

Post-secondary support is a type of child support that allows a child to receive support from her parents while she is enrolled in an academic institution after she has reached the age of majority but before she is emancipated. See RCW 26.19.090 (attached as an appendix). The purpose of providing for support beyond age eighteen is to encourage and aid children in pursuing higher education and to decrease any financial disadvantage they might suffer in this regard as a result of their parents’ divorce. *Kruger v. Kruger*, 37 Wn. App. 329, 331-32, 679 P.2d 961 (1984) (citing *Childers v. Childers*, 89 Wn.2d 592, 598, 575 P.2d 201 (1978)).

The post-secondary support statute indicates the Legislature's preference that support not be terminated when a child fails to attend full-time. RCW 26.19.090(3) states:

The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically *suspended* during the period or periods the child fails to comply with these conditions.

(Emphasis added.) Thus, under the statute, a parent's obligation to support a child who falls out of good academic standing at college, and out of compliance with the statutory requirements, would not terminate entirely but would instead resume once the child regains such standing. This flexibility is meant to allow for reinstatement of support where it is in the best interest of the child. The statute does not indicate the circumstances in which reinstatement may be proper, but certainly a short period of non-compliance due to medical issues would be included.

The Order of Child Support here contains language that is based on RCW 26.19.090, but includes several additional requirements. First, the order includes a "full-time" requirement not in the statute. Also, the second paragraph of the order allows for termination of support if the attendance conditions are not met, a provision that is not included in the statute. These provisions are reasonable and provide greater protection for Rachel's

parents if she intentionally abandons her education, but they do not eliminate the statutory best interest of the child requirement. Failure to explicitly state that a certain provision of a relevant statute was intended to be excluded results in automatic inclusion. *Sagner*, 159 Wn. App. at 749 (citing *Briscoe*, 134 Wn.2d at 348).

Additionally, while the Order of Child Support does not include a literal “medical” exception to full-time enrollment, lack of such a provision is not fatal. Given that the best interest of the child is the primary consideration in child support matters, the court who entered the order likely did not intend to terminate Rachel’s support if, due to medical issues that were not within her control, she was only able attend school part-time during one quarter. Termination under such circumstances clearly works against the purpose of the statutory scheme governing child support and post-secondary support, which are automatically incorporated into the Order of Child Support.

Washington case law recognizes that child support orders must incorporate the best interests of the children involved. For example, in *Kruger v. Kruger*, 37 Wn. App. 329, 679 P.2d 961 (1984), a divorce decree provided that support for each of a couple’s two children “shall continue until age 21 years so long as such child . . . is engaged in a full time program of higher education, absent normal intervals for holidays or summer

vacation.” *Id.* at 331. One of the children had a back injury that required him to miss several months of school and sometimes attend only part-time. *Id.* The other child missed some school due to a lack of funding. *Id.* The father failed to pay child support during this time and the mother filed a motion asking the court to determine the child support arrearage and compel the father to pay. *Id.* The trial court concluded that the father owed child support while the children were enrolled in school full-time, despite the fact that there were lapses in full-time attendance. *Id.*

On appeal, the father argued that he was not required to pay support after the children’s full-time enrollment lapsed because the language “so long as” was limiting and meant “until such time,” not “during such time.” *Id.* at 331. On appeal, this Court disagreed and affirmed the trial court. *Id.* at 332. It concluded the decree’s purpose was “clearly was to encourage and aid the children in pursuing higher education” *Id.* It held that “[t]he more restrictive reading of the clause urged by the husband would not further this purpose” and the trial court did not err in including the periods of full-time enrollment in the child support arrearage. *Id.*

Similarly, in order to be consistent with the statutory purpose it serves, the Order of Child Support here should be interpreted to allow Rachel’s post-secondary support to continue even though there is no explicit medical exception to the full-time enrollment requirement. The trial court’s

more restrictive reading of the order does not further the purpose of encouraging and aiding Rachel in pursuing higher education and decreasing any financial disadvantage she might suffer as a result of her parents' divorce. Quite the contrary. It unfairly relieves David of his obligation to support Rachel in her post-secondary education and shifts the financial burden of that education to Rachel for reasons that are not her fault and completely out of her control.

Furthermore, under the trial court's interpretation of the Order of Child Support, Rachel's support would also properly be terminated in much more severe circumstances. Luckily, Rachel was able to manage her double vision and only had to drop one five credit class during Spring 2015. But, what if she had to temporarily withdraw from school because she was hospitalized after a severe car accident, was in a coma, or was diagnosed with cancer and had to undergo medical treatments that interfered with her ability to attend school? Under the trial court's interpretation of the Order of Child Support, termination of post-secondary support would have been the only option. Such an absurd interpretation of the order cannot be the intent of the court who entered it.

No Washington cases have specifically considered whether post-secondary support may be terminated where a child's medical issues prevent full-time enrollment simply because the child support order does

not contain a specific “medical” exception to the full-time requirement. But Missouri courts have addressed a similar issue. In Missouri, children have a statutory right to post-secondary support until they are twenty-one years old if they are continuously enrolled in a higher education program. MO. REV. STAT. § 452.340.5 (2011) (attached as an appendix). The “continuous enrollment” requirement may be waived where “(1) interruption from enrollment is temporary, (2) an intention to re-enroll is evident, and (3) manifest circumstances prevented continuous enrollment.” *Daily v. Daily*, 912 S.W.2d 110, 112 (Mo. Ct. App. 1995). Similar to Washington law, the liberal interpretation of this statute is “consistent with the public policy interest of encouraging children to pursue higher education.” *Perry v. Perry*, 114 S.W.3d 865, 868 (Mo. Ct. App. 2003) (citing *Draper v. Draper*, 982 S.W.2d 289, 294 (Mo. Ct. App. 1998)).

In several cases, the Missouri courts have held that termination of post-secondary support is not appropriate where a child intends to complete her education and takes the necessary steps to do so but is unable to complete some classes due to a learning disability or medical condition. *See Schubert v. Schubert*, 366 S.W.3d 55 (Mo. Ct. App. 2012) (holding that failure to take twelve credits due to a medical condition was not grounds for terminating support); *Sullins v. Knierim*, 308 S.W.3d 241 (Mo. Ct. App. 2010) (termination of post-secondary support not proper where the evidence

demonstrates that the child intends and has taken the necessary steps to complete his education but is unable to complete twelve credits a semester due to a learning disability).

For example, in *Braun v. Lied*, 851 S.W.2d 93 (Mo. Ct. App. 1993), the Missouri Court of Appeals held that waiver of the continuous enrollment requirement was appropriate where a child's temporary inability to attend classes was due to illness or physical disability, the interruption was temporary, and the child intended to continue her education. *Id.* at 96. In that case, the parties' daughter, Wendy, attended college during Fall semester 1991. *Id.* at 93. In November, Wendy received the results of medical tests she had undergone that indicated she required some type of medical treatment and possible hospitalization. *Id.* at 93-94. Although Wendy was already enrolled for the 1992 Spring semester starting in January, her mother did not pay the tuition fees and Wendy did not attend school because, according to her mother,

“we already had the test results back and knew [Wendy] was going to be going in for further testing and the biopsy,” and “we didn't know what all it was going to entail either financially or as far as her being able to attend class until she had the biopsy in February.”

Id. at 94. Wendy received medical treatment for the condition detected by the tests and was accepted for readmission for the 1992 Summer and Fall semesters. *Id.* Wendy's mother filed a motion to modify the original

dissolution decree as to child support and to determine the amount of child support arrearage owed by Wendy's father. *Id.* at 93. The trial court modified the dissolution decree to provide support for Wendy and the father appealed, arguing that Wendy was emancipated under Missouri Statute section 452.340.5 because she failed to be continuously enrolled in college. *Id.* The Missouri Court of Appeals disagreed, noting that the statute gave the courts discretion in applying section 452.340.5 and that if the legislature had intended to limit discretion, it would have included a requirement that the child must "attend consecutive semesters without interruption for any cause." *Id.* at 95. It held that, consistent with the statute's legislative intent and public policy, support under this statute "should not be terminated as a result of the child's temporary inability to attend classes due to illness or physical disability when substantial evidence supports the finding that the interruption is temporary and that the child intends to continue his education." *Id.* at 96.

The *Braun* court's reasoning is persuasive. Similar to Missouri, Washington's post-secondary support statute is intended to encourage and aid children in pursuing higher education and to decrease any financial disadvantage they might suffer due to their parents' divorce. *Kruger*, 37 Wn. App. at 331-32 (citing *Childers*, 89 Wn.2d at 598). Given the statute's intent, the intent of the Order of Child Support cannot be that Rachel's

support should terminate simply because she suffered from an illness that temporarily forced her attend school “part-time” rather than “full-time.”

Also persuasive here is out of state case law considering whether a minor child who misses school is legally emancipated. Generally, a “court will not find in favor of emancipation if there are extenuating circumstances that is [sic] preventing the child from attending school, such as a medical illness or other similar reason.” 108 AM. JUR. 3D *Proof of Facts* 177, § 7, at 197 (2009) (citing *Cossette v. Cossette*, 76 P.3d 795 (Wyo. 2003)). In *Cossette v. Cossette*, 76 P.3d 795 (Wyo. 2003), the father filed a petition to terminate child support, alleging that the divorce decree’s plain language required that support terminate when his daughter was dismissed from high school after her eighteenth birthday. *Id.* at 796. Specifically, the decree, which was based on a statute, required the child to be “attending high school or an equivalent program as a full-time student” *Id.* at 796-97. The Supreme Court of Wyoming affirmed the trial court’s decision not to terminate support. *Id.* at 799. In doing so, it noted that the reason for the daughter’s dismissal from high school was not her failure to attend entirely, but her excessive absences due to thyroid and other medical conditions. *Id.* at 798-99. Furthermore, upon dismissal, the daughter immediately enrolled in an alternative high school program and intended to earn her degree within the year. *Id.* at 799. Most importantly, the court held that

[d]epriving a child of support because she was unable to attend school on a regular basis because of a temporary medical condition is not consistent with the legislative intent behind the statute. This is especially true where, as here, the child clearly exhibits intent to complete her education by taking steps to ensure her continued enrollment in school.

Id.

Similarly, terminating Rachel's support because she completed ten rather than twelve credits during one quarter due to a medical issue that was beyond her control is not consistent with the legislative intent of child support or post-secondary support. The trial court erred in interpreting the Order of Child Support to require such a harsh result. This Court should interpret the order to include an exception to the full-time enrollment requirement where, as here, Rachel's temporary part-time attendance was due to a medical issue out of her control and she immediately resumed her studies full-time. As such, remand is necessary so that the trial court can properly consider whether termination or suspension of Rachel's post-secondary support is warranted under this interpretation of the Order of Child Support.

Finally, the Commissioner's order terminated support and awarded David a judgment for the reimbursement of the counseling invoices he paid. CP at 47-48. Virginia sought revision only on the issue of termination of child support and that was the only issue before the trial court on revision.

Id. at 43-44. In addition to affirming the termination of post-secondary support, the trial court modified the Commissioner's judgment to include both reimbursement for the amount David paid to Cascadia for the Fall 2015 tuition and \$1,000 in attorney fees. *Id.* at 40-41. To the extent that the trial court erred in interpreting the Order for Child Support to mandate termination of post-secondary support, it also erred in ordering reimbursement and attorney fees related to this issue. Virginia respectfully requests that the trial court's orders on revision be reversed and the related judgments for reimbursement and attorney fees be vacated.

(3) Motion for Attorney Fees

Virginia seeks attorney fees under RAP 18.1 and RCW 26.09.140 based on her need relative to David's ability to pay. RCW 26.09.140 provides that:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

This statute gives this Court discretion to award attorney fees to either party based on the parties' financial resources, balancing the financial need of the requesting party against the other party's ability to pay. *In re Marriage of Pennamen*, 135 Wn. App. 790, 807-08, 146 P.3d 466 (2006). Its purpose is "to make certain that a person is not deprived of his or her day in court by reason of financial disadvantage." 20 SCOTT J. HORENSTEIN, WASH. PRAC., FAMILY AND COMMUNITY PROPERTY LAW § 40:2 (2015).

Here, Virginia earns substantially less David does and defending the improper termination of Rachel's post-secondary support is a financial burden to her. She is precisely the kind of parent who this statute is intended to assist. As such, she requests her fees.

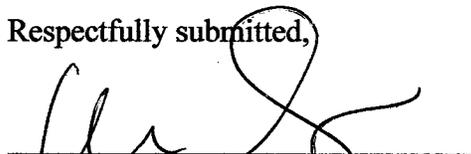
E. CONCLUSION

For the above reasons, Virginia respectfully asks that this Court reverse the Order on Revision and Judgment, entered February 2, 2016, and the Corrected Order on Revision and Judgment, entered February 25, 2016. She also requests that this court vacate the related judgments for attorney fees and reimbursement for the Fall 2015 tuition payment. On remand, she asks that this Court instruct the trial court to consider whether Rachel's post-secondary support should be terminated or suspended under a correct interpretation of the Order of Child Support, which should be interpreted to

allow an exception to the full-time enrollment requirement due to Rachel's temporary medical issues.

DATED this 28th day of July, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Amanda Stephen', written over a horizontal line.

Amanda Stephen, WSBA #43420
Stephen Law PLLC
16904 Juanita Drive NE
Box 177
Kenmore, WA 98028
(425) 298-5509

Attorney for Appellant
Virginia Berry

APPENDIX

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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL17042855

**Superior Court of Washington
County of SNOHOMISH**

In re the Marriage of:

VIRGINIA BERRY,

Petitioner,

No. 06-3-00597-1

and

**Order of Child Support
Final Order (ORS)**

DAVID BERRY,

Respondent.

Clerk's Action Required

I. Judgment Summary

1.1 Judgment Summary for Non-Medical Expenses

Does not apply.

1.2. Judgment Summary for Medical Support

Does not apply.

II. Basis

2.1 Type of Proceeding

This order is entered under a petition for dissolution of marriage:

order for modification of child support.

Order of Child Support (TMORS, ORS) - Page 1 of 11
WPF DR 01.0500 Mandatory (6/2010) - RCW 26.09.175; 26.26.132

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Ex parte

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2.2 Child Support Worksheet

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

2.3 Other

Does not apply.

III. Findings and Order

It Is Ordered:

3.1 Child(ren) for Whom Support is Required

Name:	Age:
Rachel Berry	18 (post-secondary only and limited to the obligations set forth in section 3.14)
Katie Berry	16

3.2 Person Paying Support (Obligor)

Name:	David Berry
Birth date:	9/12/1961
Service Address:	NEED NEW ADDRESS

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 Support Debt Remains due Under This Order.

For purposes of this Order of Child Support, the support obligation is based upon the following income:

A. Actual Monthly Net Income: \$ 7,983.

3.3 Person Receiving Support (Obligee)

Name:	Virginia Berry
Birth date:	06/12/1959

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Service Address:

~~1332 - 192nd Street S.E., #80~~ 10116 NE 187th St
~~Bethell, WA 98012~~ Bethell 98011 #B

MP

The Obligee 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 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.

For purposes of this Order of Child Support, the support obligation is based upon the following income:

C. The net income of the obligee is imputed at \$1,988.20 because:

the obligee is voluntarily underemployed.

The amount of imputed income is based on the following information in order of priority. The court has used the first option for which there is information:

current rate of pay.

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 the following amounts per month for the following children:

Name:	Amount:
Katie Berry	\$1,300.00
Total Monthly Transfer Amount	\$1,300.00

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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

\$1,300.00 per month. (See Worksheet line 17.)

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

A deviation was not requested.

3.9 Starting Date and Day to Be Paid

Starting Date: July 1, 2014

Day(s) of the month support is due: Payable as: \$600 on each of Father's pay period dates every two weeks.

3.10 Incremental Payments

Does not apply.

3.11 Making Support Payments

Direct Payment: Support payments shall be made directly to:

Virginia Berry

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

Any time the Division of Child Support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the receiving parent might be required

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to submit an accounting of how the support, including any cash medical support, is being spent to benefit the children.

3.12 Wage Withholding Action

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order unless an alternative provision is made below:

[If the court orders immediate wage withholding in a case where Division of Child Support does not provide support enforcement services, a mandatory wage assignment under Chapter 26.18 RCW must be entered and support payments must be made to the Support Registry.]

3.13 Termination of Support

Support shall be paid:

until the children reach the age of 18, or as long as the children remain enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.

3.14 Post Secondary Educational Support

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

The parents shall be obligated for the post-secondary education and support for Rachel Berry on the following terms and conditions:

The parents shall contribute a yearly amount toward education and related expenses in the amount of \$8,902 (the amount of student loans which would otherwise be required).

Each parent shall be obligated to timely pay a proportional share of the \$8,902 in the same percentage as set forth on the worksheets – Father 80%; Mother 20%. Payments shall be made by the parents directly to the institution or other appropriate third-party. For any non-institutional expenses, each parent may elect to make all or a portion of any payment directly to Rachel Berry.

Father shall maintain Rachel Berry as a beneficiary until the age of 23 on his health plan available to him through his employment. Father shall not be liable for any out-of-pocket health expenses not covered by his health plan. For so long as there is no charge to father in maintaining Rachel Berry on his health plan after age 23, he shall maintain her as a beneficiary until she reaches the age of 26.

The parents' obligations to pay for postsecondary educational support are strictly conditioned on the requirements of RCW 26.19.090 including that Rachel shall enroll in and attend school full-time, and must be in good academic standing, as defined by the institution. Rachel shall timely, not less than every six months, make available all

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academic records and grades to both parents as a condition of receiving postsecondary educational support as set forth herein. Failure to comply with any of these conditions shall result in automatic suspension of the parents' obligations.

The parents' obligations for payment of any and all post-secondary educational expenses, including living expenses of Rachel Berry, their adult child shall automatically terminate without further court order upon written verification that Rachel Berry is not enrolled in or not attending full-time or not maintaining good academic standing in an accredited institution of higher learning.

In any event, the parties' obligations for post-secondary educational expenses of Rachel Berry shall terminate on her twenty-third birthday.

3.15 Payment for Expenses not Included in the Transfer Payment

The petitioner shall pay 20% and the respondent 80% (each parent's proportional share of income from the Child Support Schedule Worksheet, line 6) of the expenses set forth in the Order Clarifying Section 3.15 entered on January 13, 2014.

Payments shall be made to: Virginia Berry

3.16 Periodic Adjustment

Child support may be adjusted per statute.

3.17 Income Tax Exemptions

Tax exemptions for the children shall be allocated as follows:

Beginning with tax year, 2013, the exemptions for both children are awarded to the Father. When only one child remains as an exemption, the Father shall claim the exemption.

The parents shall sign the federal income tax dependency exemption waiver.

3.18 Medical Support - Health Insurance

Each parent shall provide health insurance coverage for the children listed in paragraph 3.1, as follows:

3.18.1 Health Insurance (either check box A(1) or check box A(2) and complete sections B and C. Section D applies in all cases.)

A. Evidence

(2) There is sufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Fill in B and C below.

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B. Findings about insurance:

The court makes the following findings:

David Berry (Parent's Name)	Virginia Berry (Parent's Name)	Check at least one of the following findings for each parent.
[X]		Insurance coverage for the children is available <u>and</u> accessible to this parent at \$ 0 cost (children's portion of the premium, only).
	[]	Insurance coverage for the children is available <u>and</u> accessible to this parent at \$ cost (children's portion of the premium, only).
[]		Insurance coverage for the children is available <u>but not</u> accessible to this parent at \$ cost (children's portion of the premium, only).
	[]	Insurance coverage for the children is available <u>but not</u> accessible to this parent at \$ cost (children's portion of the premium, only).
[]		Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
	[]	Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
[]	[]	(Check only one parent) Both parties have available and accessible coverage for the children. The court finds that this parent has better coverage considering the needs of the children, the cost and extent of each parent's coverage, and the accessibility of the coverage.
[]	[]	Other.

C. Parties' obligations:

The court makes the following orders:

David Berry (Parent's Name)	Virginia Berry (Parent's Name)	Check at least one of the following options for each parent.

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<input checked="" type="checkbox"/>	<input type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through employment or is union-related as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through employment or is union-related even though the cost of such coverage <u>exceeds</u> 25% of this parent's basic support obligation. It is in the best interests of the children to provide such coverage despite the cost <i>because</i> :
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide private health insurance coverage for the children as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide private health insurance coverage for the children even though the cost of such coverage <u>exceeds</u> 25% of this parent's basic support obligation. It is in the best interests of the child(ren) to provide such coverage despite the cost <i>because</i> :
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall pay \$ towards the health insurance premium being paid by the other parent. This amount is this parent's proportionate share of the premium or 25% of this parent's basic support obligation, whichever is less. This payment is only required if this parent is not providing insurance as described above.
<input type="checkbox"/>	<input type="checkbox"/>	This parent's contribution to the health insurance premium is calculated in the Worksheet and included in the transfer payment.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	This parent shall be excused from the responsibility to provide health insurance coverage and from the responsibility to provide monthly payment towards the premium <i>because</i> : The Father provides the coverage. (Only one parent may be excused.)

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D. Both parties' obligation:

If the children are receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

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

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

A parent who is required under this order to provide 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 other parent or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

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

3.18.2 Change of Circumstances and Enforcement

A parent required to provide health insurance coverage must notify both the Division of Child Support and the other parent when coverage terminates.

If the parents' circumstances change, or if the court has not specified how medical support shall be provided, the parents' medical support obligations will be enforced as provided in RCW 26.18.170. If a parent does not provide proof of accessible coverage for the child(ren) through private insurance, a parent may be required to satisfy his or her medical support obligation by doing one of the following, listed in order of priority:

1. Providing or maintaining health insurance coverage through the parent's employment or union at a cost not to exceed 25% of that parent's basic support obligation;
2. Contributing the parent's proportionate share of a monthly premium being paid by the other parent for health insurance coverage for the child(ren) listed in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic support obligation; or
3. Contributing the parent's proportionate share of a monthly premium paid by the state if the child(ren) receives state-financed medical coverage through DSHS under RCW 74.09 for which there is an assignment.

A parent seeking to enforce the obligation to provide health insurance coverage may apply

Order of Child Support (TMORS, ORS) - Page 9 of 11
WPF DR 01.0500 Mandatory (6/2010) - RCW 26.09.175; 26.26.132

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for support enforcement services from the Division of Child Support; file a motion for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to Show Cause re Contempt); or file a petition.

3.19 Uninsured Medical Expenses

Both parents have an obligation to pay their share of uninsured medical expenses.

The petitioner shall pay 20% of uninsured medical expenses (unless stated otherwise, the petitioner's proportional share of income from the Worksheet, line 6) and the respondent shall pay 80% of uninsured medical and health care expenses (unless stated otherwise, the respondent's proportional share of income from the Worksheet, line 6).

Health care costs are not included in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic child support obligation. Health care costs shall include, but not be limited to, medical, dental, orthodontia, vision, chiropractic, mental health treatment, prescription medication, and other similar costs for care and treatment.

3.20 Back Child Support

Back support from July 1, 2014 shall be paid representing the difference of \$67.94 between the amount of the \$600 transfer payment set forth in this order and the \$532.06 paid since that date. Through August 27, 2014 there have been five pay periods so \$339.70 is owed for that period. That amount shall be paid within five days following entry of this order.

3.21 Past Due Unpaid Medical Support

Unpaid medical support that may be owed is not affected by this order.

3.22 Other Unpaid Obligations

Other obligations that may be owed are not affected by this order.

3.23 Other

Father shall reimburse Mother for any out-of-pocket medical expenses within 10 days of receipt of such expenses.

Dated: _____

SEP 16 2014

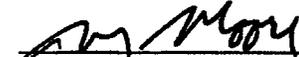


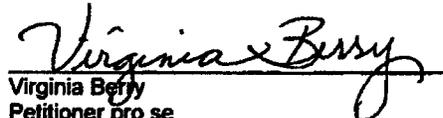
Judge/Commissioner

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Presented by:

Approved for entry:
Notice of presentation waived:


Richard J. Moore
Attorney for Respondent / WSBA No. 8515


Virginia Berry
Petitioner pro se

Washington State Child Support Schedule Worksheets

[X] Proposed by [X] David Berry [] State of WA [] Other (CSWP)
 Or, [] Signed by the Judicial/Reviewing Officer. (CSW)

Mother Virginia Berry
 County SNOHOMISH

Father David Berry
 Case No. 08-3-00597-1

Child(ren) and Age(s): Katie Berry, 16		
Part I: Income (see Instructions, page 6)		
1. Gross Monthly Income	Father	Mother
a. Wages and Salaries (Imputed for Mother)	\$11630.00	-
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	-
e. Other Income	-	-
f. Imputed Income	-	\$2,200.00
g. Total Gross Monthly Income (add lines 1a through 1f)	\$11630.00	\$2,200.00
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State) Tax Year: Manual	\$2,461.33	\$87.50
b. FICA (Soc. Sec. + Medicare)/Self-Employment Taxes	\$756.09	\$124.30
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	\$12.46	-
e. Mandatory Pension Plan Payments	-	-
f. Voluntary Retirement Contributions	\$416.67	-
g. Maintenance Paid	-	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	\$3,646.55	\$211.80
3. Monthly Net Income (line 1g minus 2i)	\$7,983.45	\$1,988.20
4. Combined Monthly Net Income (line 3 amounts combined)	\$9,971.65	-
5. Basic Child Support Obligation (Combined amounts -->) <div style="margin-left: 20px;">Katie Berry \$1619.00</div> <div style="margin-left: 20px;">.</div> <div style="margin-left: 20px;">.</div> <div style="margin-left: 20px;">.</div>	\$1,619.00	-
6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)	.801	.199

Part II: Basic Child Support Obligation (see Instructions, page 7)		
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)	\$1,296.82	\$322.18
8. Calculating low income limitations: Fill in only those that apply. Self-Support Reserve: (125% of the Federal Poverty Guideline.)	\$1,216.00	
a. Is combined Net Income Less Than \$1,000? If yes, for each parent enter the presumptive \$50 per child.		
b. Is Monthly Net Income Less Than Self-Support Reserve? If yes, for that parent enter the presumptive \$50 per child.		
c. Is Monthly Net Income equal to or more than Self-Support Reserve? If yes, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, enter that amount or the presumptive \$50 per child, whichever is greater.		
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive \$50 per child.	\$1,296.82	\$322.18
Part III: Health Care, Day Care, and Special Child Rearing Expenses (see Instructions, page 8)		
10. Health Care Expenses	Father	Mother
a. Monthly Health Insurance Paid for Child(ren)		
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)		
c. Total Monthly Health Care Expenses (line 10a plus line 10b)		
d. Combined Monthly Health Care Expenses (line 10c amounts combined)		
11. Day Care and Special 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 11a through 11d)		
12. Combined Monthly Total Day Care and Special Expenses (line 11e amounts Combined)		
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)		
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)		
Part IV: Gross Child Support Obligation		
15. Gross Child Support Obligation (line 9 plus line 14)	\$1,296.82	\$322.18
Part V: Child Support Credits (see Instructions, page 9)		
16. Child Support Credits		
a. Monthly Health Care Expenses Credit		
b. Day Care and Special Expenses Credit		

c. Other Ordinary Expenses Credit (describe)	-	-
	-	-
	-	-
d. Total Support Credits (add lines 16a through 16c)	-	-
Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	\$1,296.82	\$322.18
Part VII: Additional Informational Calculations		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	\$3,592.55	\$894.69
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	\$324.21	\$80.55
Part VIII: Additional Factors for Consideration (see Instructions, page 9)		
20. Household Assets (List the estimated value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate	-	-
b. Investments	-	-
c. Vehicles and Boats	-	-
d. Bank Accounts and Cash	-	-
e. Retirement Accounts	-	-
f. Other: (describe)	-	-
	-	-
	-	-
21. Household Debt (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
22. Other Household Income		
a. Income Of Current Spouse or Domestic Partner (if not the other parent of this action)		
Name Carrie-Ann Berry	\$9,167.00	-
Name	-	-
b. Income Of Other Adults in Household		
Name	-	-
Name	-	-
c. Gross income from overtime or from second jobs the party is asking the court to exclude per Instructions, page 8	-	-
d. Income Of Child(ren) (if considered extraordinary)		
Name	-	-
Name	-	-

e. Income From Child Support			
Name		-	-
Name		-	-
f. Income From Assistance Programs			
Program		-	-
Program		-	-
g. Other Income (describe)			
		-	-
		-	-
23. Non-Recurring Income (describe)			
		-	-
		-	-
24. Child Support Owed, Monthly, for Biological or Legal Child(ren)		Father's Household	Mother's Household
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
Name/age:	Paid <input type="checkbox"/> Yes <input type="checkbox"/> No	-	-
25. Other Child(ren) Living In Each Household (First name(s) and age(s))			
26. Other Factors For Consideration			

Other Factors For Consideration (continued) (attach additional pages as necessary)

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.

Virginia M. Berry
Mother's Signature

David K. Berry
Father's Signature

9-11-14 *Bothell WA*
Date City

7-30-2014 *ISSAQUAH, WA*
Date City

Judicial/Reviewing Officer

Date

Worksheet certified by the State of Washington Administrative Office of the Courts.
Photocopying of the worksheet is permitted.

WORKSHEET SYNOPSIS

	FATHER	MOTHER	COMBINED
1. Monthly Net Income Tax Year: Manual	\$7,983.45	\$1,988.20	\$9,971.65
2. Proportional Share of Income	.801	.199	
3. Basic Support:			
Katie Berry \$1619.00			
-			
-			
-			
4. TOTAL	\$1,619.00		
5. Basic Support Obligation with Income Limitations	\$1,296.82	\$322.18	
6. Obligation for Health Care, Day Care, and Special Exp.	-	-	
7. TOTAL OBLIGATION	\$1,296.82	\$322.18	
8. CREDIT for Medical	-	-	
9. CREDIT for Day Care and Special Exp.	-	-	
10. CREDIT for Ordinary Expenses	-	-	
11. TOTAL CREDITS	-	-	
12. Father Pays Mother	\$1296.82	-	

Calculated Using Self Support Reserve: 2014

File Name: Berry-David[12].scp 2014 Arbitration
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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



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SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

In re the Marriage of:

VIRGINIA BERRY,

and

DAVID BERRY,

Petitioner,

Respondent.

No. 06-3-00597-1

ORDER ON REVISION

*And Judgment
Court action required*

THIS MATTER, having come on for hearing on the motion of Virginia Berry for partial revision of the January 12, 2016 Order of a Court Commissioner and the court having reviewed the motion papers and heard the argument of the parties, now, therefore, it is hereby

ORDERED: *Judgment Summary*

- A. *Judgment Creditor*
- B. *Judgment Debtor*
- C. *Principal Amount of Judgment*
- D. *Attorney for Judgment Debtor*
- E. *Attorney's Fees*
- F. *Amount of Judgment for Counseling*

David Berry
Virginia Berry
\$ 2,374.00
Richard J. Moore
+ 1,000.00
+ 4,712.00
\$ 7,086.00

ORDER ON REVISION
Page 1 of 2

Law Offices of
Richard J. Moore, LLC
18222 - 104th Avenue N.E., Suite 102
Bothell, WA 98011
(425) 482-0700

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Except as revised above, the judgment and order entered on January 12, 2016
in the amount of \$4,712.00
for recovery of counseling reimbursements claimed by Virginia Berry based on falsified
invoices remains in force and effect.

ENTERED THIS 2nd *February* day of January, 2016.

Gregory N. Fowler
Court Commissioner

Presented by:

Richard J. Moore
Richard J. Moore, WSNB: 8515
Attorney for Respondent

Copy received:

Virginia Berry
Virginia Berry, pro se

* The motion to revise termination of
post-secondary education and support for Rachel
Berry is DENIED.

David Berry is awarded ^{additional} judgment against
Virginia Berry in the amount of \$2,374.00 for payment
made by David Berry for Fall, 2015 Quarter and
\$1,000 for attorney fees on this motion.
Total Judgment is \$7,000.⁰⁰

ORDER ON REVISION
Page 2 of 2

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2016 FEB -2 AM 11: 33

**SUPERIOR COURT OF
WASHINGTON
FOR SNOHOMISH COUNTY**

**SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH**

VIRGINIA M. BERRY
(PETITIONER)
AND
DAVID N. BERRY
(RESPONDENT)

CAUSE NO.: 06-3-00597-1
JUDGE: GEORGE N. BOWDEN
REPORTER: NOT REPORTED
CLERK: RACHAEL VANISKI
DATE: 2-2-16 @ 9:30 AM

THIS MATTER CAME ON FOR: MOTION FOR REVISION

CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:

HEARING DATE SET/TIME/CALENDAR CODE:

ACTION:

HEARING STRICKEN/CODE:

PETITIONER APPEARED: YES

COUNSEL: PRO SE

RESPONDENT APPEARED: NO

COUNSEL: RICHARD MOORE

GUARDIAN AD LITEM APPEARED:

DOCUMENTS FILED:

ORDERS ENTERED: ORDER ON REVISION AND JUDGMENT, TO BE FILED BY COUNSEL MOORE.

PROCEEDINGS/COURT'S FINDINGS:

PETITIONER'S MOTION FOR REVISION OF COMMISSIONER LESTER H. STEWART'S ORDER ON MOTION TO TERMINATE OR SUSPEND POST-SECONDARY SUPPORT OBLIGATION ENTERED ON JANUARY 12, 2016: DENIED. THE COURT FINDS THE SUPPORT ORDER WAS CLEAR AND THAT THERE WAS NO PROVISION IN THAT ORDER FOR ANY MEDICAL OR OTHER REASON FOR REDUCING WORK LOAD TO THAT OF LESS THAN A FULL-TIME STUDENT. THE COURT CONFIRMS THE COMMISSIONER'S RULING TERMINATING POST-SECONDARY SUPPORT. THIS COURT MODIFIES THE JUDGMENT AGAINST THE PETITIONER TO \$7,086.00.

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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL17516024

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH**

In re the Marriage of:

VIRGINIA BERRY,

Petitioner,

No. 06-3-00597-1

and

DAVID BERRY,

Respondent.

**CORRECTED ORDER ON REVISION
AND JUDGMENT**

Clerk's action required

JUDGMENT SUMMARY

Judgment Summary is set forth below.

A. Judgment Creditor	David Berry
B. Judgment Debtor	Virginia Berry
C. Principal judgment amount	\$7,086.00
D. Attorney's fees	\$1,000.00
E. Principal judgment shall bear interest at 12% per annum	
F. Attorney fee judgment shall bear interest at 12% per annum	

CORRECTED ORDER ON REVISION AND JUDGMENT
Page 1 of 3

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(425) 482-0700

ORIGINAL

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1	G. Attorney for Judgment Creditor	Richard J. Moore
2	H. Attorney for Judgment Debtor	N/A
3		

4
5 **ORDER**

6 THIS MATTER, having come on for hearing on February 2, 2016 on the motion
7 of Virginia Berry for revision of the January 12, 2016 Order of a Court Commissioner
8 and the Court having reviewed the motion papers and heard the argument of the
9 parties, now, therefore, it is hereby

10 **ORDERED:** the motion to revise the order terminating post-secondary education
11 and support for Rachel Berry is DENIED. The post-secondary education and support
12 obligation for Rachel Berry terminated the Spring Quarter, 2015, and it is further

13 **ORDERED:** David Berry is awarded judgment against Virginia Berry in the
14 principal amount of \$2,374 representing payment made by David Berry for fall, 2015
15 quarter post-secondary education and support payments, and it is further

16 **ORDERED:** David Berry is awarded judgment against Virginia Berry in the
17 amount of \$4,712 representing amounts he paid to her for counseling reimbursements
18 Virginia Berry claimed with false invoices. To avoid duplication of this amount, the
19 January 12, 2016 Order and Judgment is revised and the \$4,712 judgment set forth
20 therein is deleted as a judgment of record, and it is further

21 **ORDERED:** The judgments for principal and attorney fees shall bear interest at
22 the rate of 12% per annum.
23
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CORRECTED ORDER ON REVISION AND JUDGMENT
Page 2 of 3

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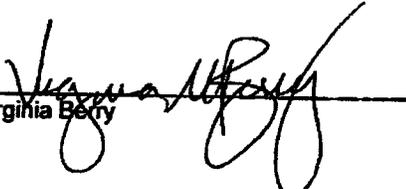
ENTERED THIS 24th day of February, 2016.


Judge George N. Bowden

Presented by:


Richard J. Moore, WSBN: 8515
Attorney for Respondent David Berry

Approved for entry;
Notice of presentation waived:


Virginia Berry

CORRECTED ORDER ON REVISION AND JUDGMENT
Page 3 of 3

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Bothell, WA 98011
(425) 482-0700

West's Revised Code of Washington Annotated
Title 26. Domestic Relations (Refs & Annos)
Chapter 26.09. Dissolution Proceedings--Legal Separation (Refs & Annos)

West's RCWA 26.09.002

26.09.002. Policy

Effective: July 22, 2007

Currentness

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

Credits

[2007 c 496 § 101, eff. July 22, 2007; 1987 c 460 § 2.]

West's RCWA 26.09.002, WA ST 26.09.002

Current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature that take effect on or before July 1, 2016

West's Revised Code of Washington Annotated
Title 26. Domestic Relations (Refs & Annos)
Chapter 26.19. Child Support Schedule (Refs & Annos)

West's RCWA 26.19.090

26.19.090. Standards for postsecondary educational support awards

Currentness

- (1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.
- (2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.
- (3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.
- (4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW 26.09.225.
- (5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.
- (6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

Credits

[1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]

West's RCWA 26.19.090, WA ST 26.19.090

26.19.090. Standards for postsecondary educational support awards, WA ST 26.19.090

Current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature that take effect on or before July 1, 2016

End of Document

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Vernon's Annotated Missouri Statutes

Title XXX. Domestic Relations

Chapter 452. Dissolution of Marriage, Divorce, Alimony and Separate Maintenance (Refs & Annos)

Dissolution of Marriage (Refs & Annos)

V.A.M.S. 452.340

452.340. Child support--relevant factors--abatement and termination--change of custody--college expenses--guidelines and use thereof--retroactive support

Effective: August 28, 2011

Currentness

1. In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

(1) The financial needs and resources of the child;

(2) The financial resources and needs of the parents;

(3) The standard of living the child would have enjoyed had the marriage not been dissolved;

(4) The physical and emotional condition of the child, and the child's educational needs;

(5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and

(6) The reasonable work-related child care expenses of each parent.

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support, notwithstanding any periods of visitation or temporary physical and legal or physical or legal custody pursuant to a judgment of dissolution or legal separation or any modification thereof. In a IV-D case, the family support division may determine the amount of the abatement pursuant to this subsection for any child support order and shall record the amount of abatement in the automated child support system record established pursuant to chapter 454. If the case is not a IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the automated child support system record established in chapter 454.

3. Unless the circumstances of the child manifestly dictate otherwise and the court specifically so provides, the obligation of a parent to make child support payments shall terminate when the child:

- (1) Dies;
 - (2) Marries;
 - (3) Enters active duty in the military;
 - (4) Becomes self-supporting, provided that the custodial parent has relinquished the child from parental control by express or implied consent;
 - (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply; or
 - (6) Reaches age twenty-one, unless the provisions of the child support order specifically extend the parental support order past the child's twenty-first birthday for reasons provided by subsection 4 of this section.
4. If the child is physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child's eighteenth birthday.
5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-one, whichever first occurs. To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course. When enrolled in at least twelve credit hours, if the child receives failing grades in half or more of his or her courseload in any one semester, payment of child support may be terminated and shall not be eligible for reinstatement. Upon request for notification of the child's grades by the noncustodial parent, the child shall produce the required documents to the noncustodial parent within thirty days of receipt of grades from the education institution. If the child fails to produce the required documents, payment of child support may terminate without the accrual of any child support arrearage and shall not be eligible for reinstatement. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. If the child is enrolled in such an institution, the child or parent obligated to pay support may petition the court to amend the order to direct the obligated parent to make the payments directly to the child. As used in this section, an **"institution of vocational education"** means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly. **"Higher education"** means any community college, college, or university at which the child attends classes regularly. A child who has been diagnosed with a developmental disability, as defined in section 630.005, or whose physical disability or diagnosed health problem limits the child's ability to carry the number of credit hours

prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending an institution of vocational or higher education, and the child continues to meet the other requirements of this subsection. A child who is employed at least fifteen hours per week during the semester may take as few as nine credit hours per semester and remain eligible for child support so long as all other requirements of this subsection are complied with.

6. The court shall consider ordering a parent to waive the right to claim the tax dependency exemption for a child enrolled in an institution of vocational or higher education in favor of the other parent if the application of state and federal tax laws and eligibility for financial aid will make an award of the exemption to the other parent appropriate.

7. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child except for cases where the court specifically finds that such contact is not in the best interest of the child. In order to effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and child support orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or future obligation of support and may transfer the physical and legal or physical or legal custody of one or more children if it finds that a parent has, without good cause, failed to provide visitation or physical and legal or physical or legal custody to the other parent pursuant to the terms of a judgment of dissolution, legal separation or modifications thereof. The court shall also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court costs incurred by the prevailing party.

8. The Missouri supreme court shall have in effect a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which will result in a computation of the support obligation. The guidelines shall address how the amount of child support shall be calculated when an award of joint physical custody results in the child or children spending equal or substantially equal time with both parents and the directions and comments and any tabular representations of the directions and comments for completion of the child support guidelines and a subsequent form developed to reflect the guidelines shall reflect the ability to obtain up to a fifty percent adjustment or credit below the basic child support amount for joint physical custody or visitation as described in subsection 11 of this section. The Missouri supreme court shall publish child support guidelines and specifically list and explain the relevant factors and assumptions that were used to calculate the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less than once every four years to ensure that its application results in the determination of appropriate child support award amounts.

9. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established pursuant to subsection 8 of this section is the correct amount of child support to be awarded. A written finding or specific finding on the record in a judicial or administrative proceeding that the application of the guidelines would be unjust or inappropriate in a particular case, after considering all relevant factors, including the factors set out in subsection 1 of this section, is required if requested by a party and shall be sufficient to rebut the presumption in the case. The written finding or specific finding on the record shall detail the specific relevant factors that required a deviation from the application of the guidelines.

10. Pursuant to this or any other chapter, when a court determines the amount owed by a parent for support provided to a child by another person, other than a parent, prior to the date of filing of a petition requesting support, or when the director of the family support division establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section 454.465, the court or director shall use the guidelines established pursuant to subsection 8 of this section. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior

452.340. Child support--relevant factors--abatement and..., MO ST 452.340

13. The court may enter a judgment terminating child support pursuant to subdivisions (1) to (3) of subsection 12 of this section without necessity of a court appearance by either party. The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant to subsection 12 of this section on both the obligor and obligee parents. The supreme court may promulgate uniform forms for sworn statements and affidavits to terminate orders of child support obligations for use pursuant to subsection 12 of this section and subsection 4 of section 452.370.

Credits

(L.1973, p. 470, H.B. No. 315, § 9, eff. Jan. 1, 1974. Amended by L.1988, H.B. Nos. 1272, 1273 & 1274, § A; L.1989, 1st Ex. Sess., H.B. No. 2, § A, eff. July 27, 1989; L.1990, S.B. No. 834, § A; L.1993, S.B. No. 253, § A; L.1994, H.B. Nos. 1491 & 1134, § A, eff. July 1, 1994; L.1995, S.B. No. 174, § A; L.1997, S.B. No. 361, § A, eff. July 1, 1997; L.1998, S.B. No. 910, § A; L.1999, S.B. No. 291, § A, eff. July 1, 1999; L.1999, S.B. Nos. 1, 92, 111, 129 & 222, § A; L.2005, S.B. Nos. 420 & 344, § A; L.2007, S.B. No. 25, § A; L.2010, H.B. Nos. 1692, 1209, 1405, 1499, 1535, & 1811, § A; L.2011, H.B. No. 111, § A.)

V. A. M. S. 452.340, MO ST 452.340

Statutes are current with emergency legislation approved through July 5, 2016, of the 2016 Second Regular Session of the 98th General Assembly. Constitution is current through the November 4, 2014 General Election.

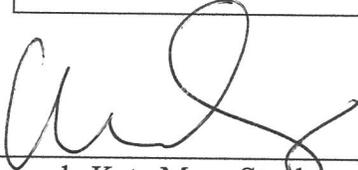
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CERTIFICATE OF SERVICE

I, Amanda Stephen, certify that on the 28th day of July, 2016, I caused a true and correct copy of this *Brief of Appellant Virginia Berry* to be served on the following in the manner indicated below:

<u>Party Contact Information</u>	<u>Delivery Method</u>
Richard J. Moore 18222 104 th Avenue NE, Suite 102 Bothell, WA 98011	U.S. Mail



Amanda Kate Maus Stephen

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