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STATE OF WASHINGTON  
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89861-8  
No. 70048-4-I

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

---

LALIDA SCHNURMAN, Respondent

v.

SETH SCHNURMAN, Appellant

---

REPLY TO ANSWER FOR PETITION FOR REVIEW TO  
THE WASHINGTON STATE SUPREME COURT

---

H. Michael Finesilver (f/k/a  
Fields)  
Attorney for Appellant

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W.S.B.A. #5495

 ORIGINAL

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## Appendix

Appendix I: Child support worksheet.

Appendix II: Hypothetical child support worksheet.

### **I. A Full Record Is Not Necessary; This Appeal Is Not Moot**

Respondent argued below that a full record was necessary. Petitioner's reply brief pointed out at page 16 that a report of proceedings would not reveal any pertinent evidence. "The response brief points to none." There are no factual disputes on this appeal.

The analysis below demonstrates that this appeal is not moot.

### **II. The Decision Below Is In Conflict With *In re Marriage of Holmes*, 128 Wn. App 727, 117 P.3d 370 (2005)**

If, as Respondent argues and the decision below implies, the methodology to determine a support transfer payment is the same whether the children live primarily with one parent or equally with both, then the argument of Respondent and the reasoning of the decision below that *Holmes*, supra is inapposite are specious. Whether or not the parents share residential time equally is a distinction without a difference.

### **III. Issues of Substantial Public Interest Are Involved**

#### **A. The Potential For Conflict Between The Decision Below and The Case Pending In Division III**

The Petition does not argue that the potential conflict of the divisions of the Courts of Appeal satisfies RAP 13.4(2). The Petition instead relates the potential for a conflict as pertaining to "Issues of Substantial Public Interest (RAP 13.4 (4))" at pages 3, and 7-9. It is hoped

that given the high number of families involved, which the Respondent does not deny, this court will view the averting of a potential conflict between the Divisions as being of substantial public interest.

**B. This Is A Case Presenting Issues of First Impression**

The Respondent's Answer makes the following observations with which the Petitioner agrees:

1. That RCW 26.19 requires quantification of "the basic support obligation" and of the "standard calculations" of each parent in all cases. (Respondent's Answer pages 5-6).

2. That where children reside equally with both parents the methodology for establishing a support obligation is the same even if their incomes are equal. (Respondent's Answer page 14). One issue of disagreement is whether any statute defines how to determine to which parent a transfer payment is owed. Petitioner's position is that there is none. Another disagreement is whether the standard calculation/deviation methodology applies or whether a different exception needs to be adopted by this court.

RCW 26.19.050 requires worksheets with all child support orders. Worksheets reflect the statutory directives for the calculation of child support. **Appendix I** is the worksheet in this case. Line 5 is "the basic

support obligation.” It represents how much of the combined net monthly incomes of both parents is presumed to be attributable to the costs of raising children in one household. That household is the one in which the children reside a majority of the time, not equally in both parents homes.

This is confirmed by an observation in *In re Marriage of Holmes* supra at 738 (2005): “The child support worksheets provide for calculation of a basic child support obligation and a presumptive transfer payment for each parent...but do not provide for the calculation of the net transfer payment...” It then quotes the legislative history: “However, the legislature did not change the historical presumption in practice that the parent with whom the child resides a majority of the time would satisfy the support obligation by providing for the child while in his or her home and the other parent would make a support transfer payment.” *In re Marriage of Holmes* supra at 739 (2007).

Thus, the worksheet is silent as to which parent’s household shoulders that economic burden known as the basic support obligation which is quantified at line item 5. Line item 17 reflects the standard calculation attributable to each parent. The worksheet is also silent as to which parent pays the other. This is because no statute informs as to which household, if any, bears the burden of the basic support obligation.

It is therefore silent as to whom, if any parent, is owed the standard calculation. Although RCW 26.19.001(1) mandates the court to order either or both parents to pay child support, it too is silent as to how to determine who, if anyone, shoulders the entire basic support obligation, and therefore, who is owed and who owes. A review of the legislative history was necessary to answer that question.

The decision below observes that RCW 26.19 requires that the process is the same to determine who owes whom, where residential time with the children is equal. In doing so, it conflates the process required by statute of quantifying the basic support obligation and the standard calculations attributable to each parent, into the mistaken notion that the statute informs as to how to determine which parent bears the economic burden of the line 5 calculation, whether that burden can even be attributed to one household, and therefore which parent, if any, is to pay the amounts derived under line 17.

The decision below concludes: “Instead, the *Graham* court held that the standard calculation and statutory deviations for transfer payments apply when parents share residential time equally. *Id* at 636.” Slip opinion, page 8. That is not what *State ex rel. M.M.G. v. Graham*, 159 Wn. 2d. 623, 152 P.3d 1005 (2007) held. The decision below, and the Respondent,

mistakenly confuse the holding in *Graham*, supra with its rationale. In fact the *Graham* court held: “We... hold the *Arvey* split residential formula does not apply in shared residential situations.” *Graham* supra at 636 (2007). Thus, the holding is as to what does not apply; not as to what does. How to make those determinations is not answered by *State ex rel. M.M.G. v. Graham*, supra.

The Respondent’s Answer argues at page 13 that the methodology to determine which parent is entitled to the standard calculation transfer payment is the standard calculation/deviation method (consistent with the holding of the decision below) even where the incomes of both parents are equal. However, Respondent’s argument as to implementation of that premise, reveals even more clearly its fallacy and that of the decision below.

The Answer argues at page 14 the inevitable application of that premise: “...the trial court will use its discretion to determine the obligor parent...” That is, which parent will pay the other the standard calculation. But how, where incomes are equal? Based upon what, given that there is no majority residential parent entitled to the presumption that he or she provides 100% of the children’s needs quantified as the basic support obligation? The *Graham* court reasoned that in shared residential

situations both parents are responsible for the same children and the same needs. *Graham*, supra at 636 (2007). This is why it rejected the *Arvey* formula and it illustrates why the standard calculation/deviation method cannot serve as the method to determine a transfer payment in these circumstances. Since neither parent is assumed to shoulder the entire burden of the basic support obligation, where incomes are equal, neither parent would be entitled to payment of the standard calculation.

*Graham* supra at 636 also observed but did not hold that any inequity is correctible by deviation under RCW 26.19.075 (1) (d) as to significant residential time. That observation was part of its rationale but was not its holding. None of the parties argued that any provision of the deviation statute applied. The applicability of the deviation statute was not before the *Graham* court as it is here. Thus its reference to RCW 26.19.075 as being all comprehensive is pure dicta.

The *Graham* court's observation that both parents share the same expenses of the children is why the child care expenses paid for directly in each parent's household such as housing costs, food, transportation etc. must be considered. However, the focus of (1)(d) places a higher priority on the household of the parent entitled to receive a standard calculation transfer payment because it assumes that there is only one parent who

shoulders the entire burden of the basic support obligation (line item 5 of the worksheet); the parent with whom the children reside a majority of the time. This is why reliance on the availability of (1)(d) to correct inequities for a so-called downward deviation, as Respondent's Answer argues, is inadequate and does not apply where parents share children equal amounts of residential time and earn equal monthly incomes.

Petitioner confronted the Respondent and the Court with the argument that the deviation statute does not apply at all because it neither permits consideration of the transportation costs absorbed by Seth which are significantly greater than those of Lalida, nor whether the standard calculation leaves him with insufficient funds to meet the needs of the children in his household. Respondent now argues at page 14, footnote 31, that RCW 26.19.075 (1) (a) and (c) would govern as to large disparities as to household debts, car insurance or other expenses absorbed by a transfer payment to afford a "downward" deviation even where incomes are equal. **Appendix II** is a worksheet that assumes equal incomes. It illustrates why Respondent's argument is inaccurate.

Line item 17 of the standard calculation is the same for both parents. If the deviation statute applied, any deviation would be upward from a \$0.00 standard calculation transfer payment, not downward.

However, the deviation statute would not be triggered at all since there would be no standard calculation transfer payment from which to deviate (see RCW 26.19.011(4) and RCW 26.19.075(1). What then would be the authority permitting the court to consider grossly disparate household expenses absorbed by line 5, “the basic support obligation”? This question was posed in oral argument. The respondent had no answer; nor does the decision below.

Finally, even if the deviation statute applied, (1)(a) has no bearing on debt whatsoever. Section (c)(ii) only allows a court to consider a significant disparity in the living costs of the parents that are “...due to conditions beyond their control” and section (c)(i) only allows consideration of “extraordinary debt not voluntarily incurred...” This would preclude consideration of large disparities in each household due to disparate mortgage or rent obligations, or car payments or insurance premium costs to cover teenage drivers; expenses that go to the heart of the costs absorbed by a transfer payment. None of these are extraordinary or involuntarily incurred.

#### **IV. Conclusion**

The Respondent’s Answer quotes the *Holmes* court as observing that entitlement to the presumption of the standard calculation is not

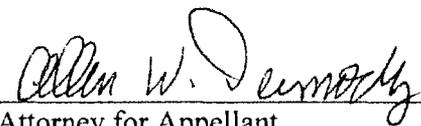
without exceptions. One exception is where one parent has the children a majority of the time, and combined net monthly incomes exceed the maximum advisory level on the economic table. This court created that exception where the basic support obligation may inadequately reflect the needs of the children in the household of the parent who bears that burden. What this Court created was a new methodology, requiring consideration of the total incomes and financial resources of both parents as well as the reasonable and necessary child expenses of the household of the parent with whom the children reside a majority of the time. (see *In re Marriage of McCausland*, 159 Wn. 2d 607, 152 P.3d 1013 (2007)).

Petitioner maintains that this court needs to define another exception where children spend equal residential time in both households, since the basic expenses of the children encompassed by the basic child support obligation are not shouldered by one household but by both; a methodology that would apply, consistently, whether each parent's income is equal or disparate. The Petitioner has urged that the *McCausland* method be expanded to include consideration of the children's expenses in both households since they share the same expenses as emphasized in *Graham supra*.

These issues were not before the court in *State ex rel. M.M.G. v. Graham*, supra. They are here. Since the Respondent's Answer does not deny that a significant number of families statewide have equal sharing of residential time arrangements, there is a substantial public interest in this Court rendering a well-reasoned, comprehensive answer to these questions.

DATED this 14<sup>th</sup> day of March, 2014.

Respectfully submitted,

 #28208  
for Attorney for Appellant  
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## Washington State Child Support Schedule Worksheets

Proposed by Mother

Mother Lalida Schnurman  
County KING

Father Seth Schnurman  
Case No. 11-3-05343-5 SEA

Child(ren) and Age(s): Nathan Schnurman, 7; Joseph Schnurman, 5		
Part I: Income (see Instructions, page 6)		
	Father	Mother
<b>1. Gross Monthly Income</b>		
a. Wages and Salaries	\$9,416.67	\$2,000.00
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	\$2,000.00
e. Other Income	-	-
f. Imputed Income	-	-
g. Total Gross Monthly Income (add lines 1a through 1f)	\$9,416.67	\$4,000.00
<b>2. Monthly Deductions from Gross Income</b>		
a. Income Taxes (Federal and State) Tax Year: Manual	\$408.33	\$466.67
b. FICA (Soc. Sec. + Medicare)/Self-Employment Taxes	\$670.65	\$153.00
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	-	-
e. Mandatory Pension Plan Payments	-	-
f. Voluntary Retirement Contributions	-	-
g. Maintenance Paid	\$2,000.00	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	\$3,078.98	\$619.67
<b>3. Monthly Net Income (line 1g minus 2i)</b>	\$6,337.69	\$3,380.33
<b>4. Combined Monthly Net Income</b> (line 3 amounts combined)	\$9,718.02	
<b>5. Basic Child Support Obligation (Combined amounts →)</b>		
Nathan Schnurman      \$997.00		
Joseph Schnurman     \$997.00		
-		
-		
-	\$1,994.00	
<b>6. Proportional Share of Income</b> (each parent's net income from line 3 divided by line 4)	.652	.348

<b>Part II: Basic Child Support Obligation</b> (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.)	\$1,300.09	\$693.91	
8. Calculating low income limitations: Fill in only those that apply.			
Self-Support Reserve: (125% of the Federal Poverty Guideline.)	\$1,164.00		
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 Greater 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, then 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.	\$1,300.09	\$693.91	
<b>Part III: Health Care, Day Care, and Special Child Rearing Expenses</b> (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 Expense (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 Expense (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)	-	-	
<b>Part IV: Gross Child Support Obligation</b>			
15. Gross Child Support Obligation (line 9 plus line 14)	\$1,300.09	\$693.91	
<b>Part V: Child Support Credits</b> (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)	-	-
<b>Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)</b>		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	\$1,300.09	\$693.91
<b>Part VII: Additional Informational Calculations</b>		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	\$2,851.96	\$1,521.15
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	\$325.02	\$173.48
<b>Part VIII: Additional Factors for Consideration (see Instructions, page 9)</b>		
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 act on)		
Name	-	-
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.

\_\_\_\_\_  
Mother's Signature

\_\_\_\_\_  
Father's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

\_\_\_\_\_  
Judicial/Reviewing Officer

\_\_\_\_\_  
Date

**Worksheet certified by the State of Washington Administrative Office of the Courts.**

**Photocopying of the worksheet is permitted.**

*WSCSS-Worksheets - Mandatory (CSW/CSWP) 07/2011 Page 5 of 5*

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<b>Part II: Basic Child Support Obligation</b> (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.)	\$974.00	\$974.00
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.	\$974.00	\$974.00
<b>Part III: Health Care, Day Care, and Special Child Rearing Expenses</b> (see Instructions, page 8)		
10. Health Care Expenses	<b>Father</b>	<b>Mother</b>
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)	-	-
<b>Part IV: Gross Child Support Obligation</b>		
15. Gross Child Support Obligation (line 9 plus line 14)	\$974.00	\$974.00
<b>Part V: Child Support Credits</b> (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)	-	-
<b>Part VI: Standard Calculation/Presumptive Transfer Payment</b> (see Instructions, page 9)		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	\$974.00	\$974.00
<b>Part VII: Additional Informational Calculations</b>		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	\$2,105.99	\$2,105.99
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	\$243.50	\$243.50
<b>Part VIII: Additional Factors for Consideration</b> (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	-	-
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	-	-





## OFFICE RECEPTIONIST, CLERK

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**From:** Les Feistel <les@a-f-m-law.com>  
**Sent:** Friday, March 14, 2014 3:13 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Dennis McGlothlin (dennis@olympiclaw.com); My Nguyen; Lindsey M. Matter (lindsey@olympiclaw.com); robert@westwalaw.com; Amy Rebeiro  
**Subject:** Schnurman Appeal/COA Div. I# 70048-4-I  
**Attachments:** Reply to Answer for Petition for Review 3-14-14.pdf; Declaration of Service 3-14-14.pdf

Dear Clerk of the Court:

Attached please find the following pleadings for filing, submitted by H. Michael Finesilver (WSBA# 5495) on behalf of Appellant in the matter of *Schnurman v. Schnurman* (70048-4-I):

1. Reply to Answer for Petition for Review to the Washington State Supreme Court; and,
2. Declaration of Service.

Truly yours,

---

**Lester Feistel, IV**  
Paralegal  
Anderson, Fields, Dermody, Pressnall & McIlwain, Inc., P.S.  
207 East Edgar Street  
Seattle, Washington 98102

206.322.2060

Email: [les@a-f-m-law.com](mailto:les@a-f-m-law.com)

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