**FILED**

**April 12, 2012**

**In the Office of the Clerk of Court**
**WA State Court of Appeals, Division III**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| **In re the Marriage of:** | ) | **No. 29651-2-III** |
| **MARGARET ANN CHLARSON, NKA GRIGG,** | ) | |
| **Respondent,** | ) | **Division Three** |
| **and** | ) | |
| **TRAVIS QUINN CHLARSON,** | ) | |
| **Appellant.** | ) | **UNPUBLISHED OPINION** |

Siddoway, J. — Travis Chlarson appeals orders establishing the dollar amount of postsecondary educational support he is to pay for the benefit of his son, raising four challenges to their form and to the procedure followed by the trial court. While the orders could have more comprehensively addressed both parents' obligations for college costs, Mr. Chlarson did not propose alternative orders and we find no error that requires reversal. While we remand for clarification of how payment is to be made, we otherwise affirm.

FACTS AND PROCEDURAL BACKGROUND

Margaret Grigg and Travis Chlarson were formerly married. At the time of the motion for postsecondary educational support for their son, DC, that is the subject of this appeal, the operative order requiring payment of child support by Mr. Chlarson had been in place since February 2006. That order was entered when DC was 13 years old. It anticipated continuing educational support after DC graduated from high school, providing, "[m]other and father agree to each be responsible for 1/3 (one-third) of post secondary educational support for the child." Clerk's Papers (CP) at 108.

By June 2010, DC had graduated from high school and hoped to attend college. Ms. Grigg served and filed a request to set a dollar amount for Mr. Chlarson's one-third educational support obligation. Her request was styled as a petition for modification of child support. In a declaration in support of her request, she explained:

> The Division of Child Support has collected and enforced child support since 2002. I would like them to continue to collect and enforce it, however, they cannot collect post secondary support unless it is a sum certain. They cannot use the figure of 1/3 as it currently is written.

CP at 7. She originally requested an annual contribution by Mr. Chlarson of $8,663, which she calculated to be one-third of the cost of fees, nonresident tuition, books, room/board, transportation, and personal costs for DC to attend Boise State University. She modified the request after DC decided to attend Utah Valley University instead, requesting an annual contribution of $8,104. She supported both dollar amounts with

expense estimates obtained from college websites.

Mr. Chlarson responded to the petition by asking that the court terminate his postsecondary support obligation because his "income has changed and he lacks any ability to contribute to any post-secondary support for DC." CP at 37. In a declaration filed with his response, he also challenged the estimates provided by Ms. Grigg, pointing out that her estimate for the cost of attending Boise State treated the entire amount of a scholarship awarded to DC as reducing only DC's one-third share of his expenses rather than giving his parents an equal share of credit for the scholarship. Mr. Chlarson also objected to contributing toward transportation and personal expenses. In early September 2010 he filed income tax records, pay stubs, and an analysis of his commission earnings with the court.

The record indicates that the petition and response were submitted for a contested hearing on affidavits only. In September 2010 the trial court issued a memorandum opinion. It recited that Mr. Chlarson and Ms. Grigg "agree that [the court] should set post secondary educational support for their son . . . at this time utilizing the factors found in RCW 26.19.090(2)." CP at 83. The court made required findings that DC is "dependent and relying on his parents for necessities[, he is] eighteen years old and has recently graduated from Ephrata High School with a very respectable grade point average[, his] academic performance has been sufficient for him to gain admission to a fine university[,

and he] is motivated to succeed in college." *Id.* Further, because DC is "unable to fund his post secondary education himself," and because both DC and his parents expected DC to attend college as reflected in the most recent order of child support, it found that postsecondary educational support payments should be awarded. CP at 83-84. It did not require Mr. Chlarson to pay the full amount requested by Ms. Grigg, but a lesser amount of $6,000 per year.

Presentment of findings was set for early December 2010. At that time, and for the first time, the trial court learned that the findings, conclusions, and orders prepared at the court's direction by Ms. Grigg's lawyer were not agreeable to Mr. Chlarson. Mr. Chlarson first objected to the court's fixing any educational support amount without requiring income statements and tax returns from Ms. Grigg, arguing that "what is envisioned by the statute is first the Court has to arrive at income figures for both of the parties," and "[t]he child support is determined by the worksheets, then becomes something of a guidance for the Court. You're free to deviate from it, but the starting point is to first determine what the incomes of the various parties are." Report of Proceedings (RP) at 5.

He next argued that Ms. Grigg's proposed orders determined only a support amount to be paid by Mr. Chlarson, rather than dividing the responsibility for support between the two parties. His third objection was that as proposed by Ms. Grigg, the

support obligation did not have a termination date; Mr. Chlarson argued that by statute "the absolute drop dead cutoff date on post-secondary support orders" is age 23. RP at 8. Finally, he objected to the orders' directing Mr. Chlarson's payments to be paid either to the university or to the Child Support Division of the Washington Department of Social and Health Services (DSHS), which he argued was inconsistent with the court's opinion contemplating payment to the higher education institution.

After hearing his objections, the trial court asked, "Do you have an order?" to which Mr. Chlarson's lawyer answered he did not. RP at 9. Instead, counsel repeatedly stated that he would present Mr. Chlarson's objections in a motion for reconsideration. When asked by the court, "[W]hat would you like me to do today?" Mr. Chlarson's lawyer responded, "We're on for presentment of an order. It's still appropriate that I can file the motion for reconsideration, but I have to wait until the order is entered because that starts the clock running, as I understand the rule." RP at 10. The court entered the findings and orders proposed by Ms. Grigg, stating, "I'll go ahead and sign these documents, understanding that we'll be rehashing this in a motion for reconsideration at a later time." RP at 13-14.

On January 10, 2011, Mr. Chlarson filed a notice of appeal without having requested reconsideration.

## ANALYSIS

Mr. Chlarson's assignments of error on appeal are the same four issues he raised at the time of presentment. The transcript of the presentment hearing suggests the court might have incorporated some of the changes requested by Mr. Chlarson into revised orders had a motion for reconsideration been made. But no motion was made. The court's findings, conclusions, and orders could have been more precise and more comprehensive. But at issue on appeal is whether they are erroneous or an abuse of discretion and therefore require reversal.

Ms. Grigg makes a threshold argument that Mr. Chlarson has failed to comply with the civil rules by failing to identify the particular provisions of the documents entered by the court that he alleges are in error. In particular, she argues that by failing to separately assign error to the trial court's findings of fact, which included findings as to all of the factors identified in RCW 26.19.090(2), they are verities on appeal. RAP 10.3(g). If the findings are all verities, she submits that Mr. Chlarson has no basis for arguing error.

By reviewing the briefing and corresponding record, the gist of Mr. Chlarson's assignments of error is apparent. As a result, the procedural shortcoming does not necessarily bar his substantive argument. RAP 1.2(a) ("These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits."). We will review Mr. Chlarson's assignments of error, and do so in turn.

I

In arguing that the trial court erred in fixing the dollar amount of his postsecondary educational support obligation without requiring income statements from both parties, Mr. Chlarson relies on RCW 26.09.175 and RCW 26.19.035 and .071. Collectively, they provide that "[a] proceeding for the modification of an order of child support shall commence with the filing of a petition and worksheets," RCW 26.09.175(1); that "[t]he child support schedule shall be applied . . . [i]n all proceedings in which child support is determined or modified," RCW 26.19.035(1)(c); and that "[a]ll income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent," with tax returns and paystubs provided to verify income, RCW 26.19.071(1), (2).

Ms. Grigg responds that while she styled her application to the court as a petition for modification, what she sought in substance was not to impose an additional obligation upon Mr. Chlarson, but only to quantify his existing obligation to provide one-third of DC's postsecondary educational support. All of her submissions were consistent in asking that the court fix a dollar amount toward which she, Mr. Chlarson, and DC would each contribute one-third. Washington cases recognize a distinction between a clarification, which "is merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary," and a modification, which

occurs where "rights given to one of the parties is either extended beyond the scope originally intended or where those rights are reduced, giving the party less rights than those he originally received." *Rivard v. Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677 (1969). We agree that an obligation on the part of Ms. Grigg and Mr. Chlarson to contribute to DC's postsecondary educational costs was established by the February 2006 child support order. Ms. Grigg was seeking only to fix the dollar amount; it was Mr. Chlarson who, by response, arguably wanted a modification.[1]

RCW 26.19.035(3) provides that worksheets shall be completed under penalty of perjury and filed in every proceeding "in which child support is determined." Our primary goal in construing the statute is to ascertain the legislature's intent. *State v. Sullivan*, 143 Wn.2d 162, 174-75, 19 P.3d 1012 (2001). We construe a statute to avoid unlikely, absurd, or strained consequences. *Id.* at 175. The statutory requirement to complete worksheets can reasonably be read not to apply to a motion like Ms. Grigg's that only seeks to fix the dollar amount of an expense, the parents' relative responsibility for which is already determined. Indeed, it would be an absurd consequence to require parties to submit updated worksheets in connection with such a motion, because the

[1] We recognize that the court did not address Mr. Chlarson's response as if it were a petition for modification; understandably so, because it was very brief, addressed only Ms. Grigg's allegations, and did not clearly seek different and affirmative relief. We do not regard the court's decision on Ms. Grigg's motion as preventing Mr. Chlarson from filing his own petition for modification under RCW 26.09.170.

information provided would be irrelevant to the issue the court is being asked to decide. Preparation of the worksheets would be an unwarranted inconvenience.

"A trial court has broad discretion to order a divorced parent to pay postsecondary education expenses." *In re Marriage of Newell*, 117 Wn. App. 711, 718, 72 P.3d 1130 (2003). Given the preexisting order of child support setting the one-third obligation of each parent and the evidence provided by the parents as to the expected expense of DC's education, we find no abuse of discretion by the court in fixing the dollar amount of the parents' contribution as requested by Ms. Grigg.

II

Mr. Chlarson next objects that the court's orders identify him as the only one required to contribute to DC's postsecondary educational support. He does not acknowledge paragraph 3.14 of the 2006 order of child support, providing that both "[m]other and father agree to each be responsible for 1/3 (one-third) of post secondary educational support for the child," CP at 108, or Ms. Grigg's admission in declarations supporting her petition that she continues to bear responsibility for one-third of the cost. *See* CP at 23 ("The Order of Child Support entered February 15, 2006 requires the Respondent Father, Mr. Chlarson, to pay for 1/3 of the post secondary educational expenses. *I am required to pay a 1/3 as well* and DC will be responsible for the remaining 1/3." (emphasis added)).

The trial court's orders setting a dollar amount for Mr. Chlarson's obligation did nothing to extinguish Ms. Grigg's responsibility for one-third of DC's postsecondary educational support established by the February 2006 order. An order that particularizes or modifies only one parent's obligation under a preexisting child support order imposing *mutual* obligations cannot be read in isolation. *See In re Marriage of Waters*, 116 Wn. App. 211, 218, 63 P.3d 137 (2002) (order entered to recognize extinguishment of child support for one child and referencing only father's prospective obligation did not terminate wife's preexisting obligation). Ms. Grigg and Mr. Chlarson continue to share responsibility for contributing equal one-third shares of the support as fixed by the court.

An order that explicitly addressed the future contributions required of both Mr. Chlarson and Ms. Grigg in dollar amounts would have been appropriate. It might have been preferable. But the trial court's findings, conclusions, and orders, when read in conjunction with the 2006 order, do not reflect any error or unlawful procedure. Reversal is not required.

III

Mr. Chlarson's third challenge is that the court set a postsecondary educational support payment that does not terminate. RCW 26.19.090(5) provides, "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." Ms. Grigg did not contend, nor did the court find, that there were any exceptional circumstances that would support payment of postsecondary educational support beyond DC's twenty-third birthday.[2] Nonetheless, the order of child support entered by the court provides, as to "Termination of Support": "When DC completes his post secondary education." CP at 95. Mr. Chlarson argues that the trial court ignored RCW 26.19.090(5) by not explicitly setting DC's twenty-third birthday as a termination date for support.

"Interpretation of a child support order is a question of law that [the court] review[s] de novo." *In re Marriage of Sagner*, 159 Wn. App. 741, 749, 247 P.3d 444 (citing *Stokes v. Polley*, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001)), *review denied*, 171 Wn.2d 1026 (2011).

> "As a general rule parties to a marriage settlement [or child support order] are presumed to contract with reference to existing statutes, and statutes which directly bear upon the subject matter . . . are incorporated into and become part of the [order]. The parties . . . may exclude such relevant statutes from their agreement but to do so they must expressly declare their mutual intention to so exclude."

*Id.* (citation omitted) (quoting *In re Marriage of Briscoe*, 134 Wn.2d 344, 348, 949 P.2d 1388, 971 P.2d 500 (1998)). Failure to "'directly and distinctly state[ ]'" that a certain

[2] At presentment, Ms. Grigg's counsel mentioned DC's possible interest in serving a mission for his church before completing college, but the trial court was not asked to nor did it consider that prospect, which was only speculation at the time of the hearing. RP at 3.

provision of a relevant statute was intended to be excluded "results in automatic inclusion." *Id.* (internal quotation marks omitted) (quoting *Briscoe*, 134 Wn.2d at 348).

The findings, conclusions, and orders entered by the trial court provide for a potentially earlier termination date for postsecondary education—"[w]hen DC completes his post secondary education"—but do not directly or distinctly state that the parties intended to exclude the statutory limitation ending support at age 23. Ms. Grigg acknowledges in her briefing on appeal that the order of child support "does not require payment of such expenses beyond age 23" and that "the prohibition of RCW 26.19.090(5), against payment of postsecondary educational expenses beyond the child's twenty-third birthday . . . is presumed to be [a] part" of the order. Br. of Resp't at 12.

Here again, while the court's orders could have been more precise, the limitation is implicitly included and the orders are not in error.

IV

Finally, Mr. Chlarson argues that the trial court erred in providing that support be paid to the child support registry maintained by the Child Support Division of DSHS. The trial court's memorandum decision had stated that "the payments I now order shall be paid directly to [DC]'s school," CP at 83, citing RCW 26.19.090(6), which provides that "[t]he court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible," and that

"[i]f direct payments are not feasible, then the court . . . may order . . . payments be made directly to the child if the child does not reside with either parent," or, if the child resides with a parent then "to the child or to the parent who has been receiving the support transfer payments."

Nonetheless, in preparing findings, conclusions, and orders at the court's direction, Ms. Grigg variously provided, "Payments should be made to the Division of Child Support Utah Valley University," CP at 87 (Finding of Fact 2.6, Payment Plan); "Payments are made to: Utah Valley University (UVU) into the account of student DC," CP at 89 (Order on Modification of Child Support, ¶ 5); and "The father shall pay $6,000 to DC[ ] or Utah State University [sic] . . . until the full sum . . . has been paid to DC[ ] or UVU for the account of student DC." CP at 95 (Order of Child Support, ¶ 3.14 Post Secondary Educational Support).[3] At the time of presentment, Ms. Grigg admitted that she persisted in providing alternative payment to the Child Support Division despite the court's orders, explaining there was some uncertainty as to which institution DC would attend. In originally requesting that the amount be fixed, she had also acknowledged that

[3] Elsewhere, the order of child support provides generally that support payments should be made to the Washington State Support Registry. CP at 94 (Order of Child Support, ¶ 3.11 Making Support Payments). Construing the order as a whole, however, the specific would prevail over the general. *Cf. In re Estate of Kerr*, 134 Wn.2d 328, 337, 949 P.2d 810 (1998) (where legislative directives are in apparent conflict, the more specific is given preference).

she wanted the Child Support Division to continue to collect payments from Mr. Chlarson.

Reasonably read, the several provisions for payment of Mr. Chlarson's contribution preserve the right, at his option, to make payment directly to Utah Valley University and are harmless, even if erroneous. In light of the scrivener's error providing for payment to "Utah State University," however, and the fact that the explicit statutory alternative in case of feasibility concerns is payment to the child or residential parent, not the Child Support Division,[4] we find that remand for entry of corrected orders is appropriate.

V

Ms. Grigg's brief includes a request for fees. RAP 18.1 authorizes attorney fees on appeal if provided for by applicable law. Ms. Grigg relies on RCW 26.09.140, which authorizes an award of attorney fees and costs on appeal in our discretion, based on the parties' financial resources or the arguable merit of the issues. *In re Marriage of C.M.C.*, 87 Wn. App. 84, 89, 940 P.2d 669 (1997), *aff'd*, 136 Wn.2d 800, 966 P.2d 1247 (1998). To have their resources considered, the parties must file financial declarations no later

[4] The DSHS website provides that its Child Support Division will provide collection and enforcement services for children with court orders for postsecondary educational support but "only if payable to the parent or to the child." http://www.dshs.wa.gov/dcs/Services/default.asp (last visited April 3, 2012).

than 10 days prior to the date set for argument or consideration. RAP 18.1(c). No financial declaration was filed in this case.

We decline to award fees based on the arguable merits. The fact that Ms. Grigg styled her request as a motion for modification, thereby inviting Mr. Chlarson's filing of financial information, contributed to issues on appeal. His objections to the form of the findings, conclusions, and orders, while not rising to reversible error, were not without basis.

We remand for clarification of the provisions for payment of Mr. Chlarson's contribution to DC's postsecondary educational support and otherwise affirm.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Siddoway, J.

WE CONCUR:

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Korsmo, C.J.

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Kulik, J.