

FILED  
Court of Appeals  
Division II  
State of Washington  
8/3/2022 3:03 PM

No. 56802-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

In re the Marriage of:

**GULLBANO KHAN,**

Respondent,

v.

**ARIF JAMAL,**

Appellant.

---

On Appeal from the Pierce County Superior Court

Cause No. 21-3-00597-2

The Honorable Gretchen Leanderson, Judge

---

OPENING BRIEF OF APPELLANT

---

Robert B. Taub  
Attorney for Appellant  
WSBA #900

4002 Tacoma Mall Blvd., #203  
Tacoma, WA 98409-7702  
Phone (253) 475-3000

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iii
I. INTRODUCTION .....	1
II. ASSIGNMENTS OF ERROR .....	1
1. The trial court erred in section 13 of the decree of dissolution entered on March 3, 2022, awarding spousal maintenance to be paid by Arif to Gullbano in the amount of \$1,250.00 per month for the first year and \$750.00 per month for the second year.	
2. The trial court erred in entering a child support order on March 3, 2022, which in section 10 orders support payments to be paid to Gullbano in the amount of \$1,285.94 per month for the first year, \$1,397.95 per month for the second year, and \$1,565.96 thereafter.	
3. The trial court abused its discretion in section 14 of the decree of dissolution entered on March 3, 2022, requiring Arif to pay for Gullbano's attorney's fees in the amount of \$10,000.00.	
III. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR .....	2
A. Did the trial court err by awarding Gullbano spousal maintenance set at \$1,250.00 a month for the first year, which with the child support ordered for Arif to pay Gullbano, provides Gullbano with \$695.40 a month more income than Arif? (Assignment of Error 1).	

- B. Did the trial court err by awarding Gullbano spousal maintenance set at \$750.00 a month for the second year, which with the child support ordered for Arif to pay Gullbano, provides Arif with only \$80.58 a month more income than Gullbano? (Assignment of Error 1).
- C. Did the trial court err by not doing a deviation from the standard child support calculation, setting Jamal's monthly obligation at \$1,285.94, making Gullbano better off financially than Arif? (Assignment of Error 2).
- D. Should the trial court have stated its reasons for not deviating from the presumptive amount of child support to be paid by Arif? (Assignment of Error 2).
- E. Did the trial court err by awarding Gullbano child support when Arif has more residential time with the children than Gullbano, which means he should get child support. (Assignment of Error 2).
- F. Did the trial court abuse its discretion by awarding Gullbano attorney's fees in the amount of \$10,000.00 when Gullbano had over \$50,000 in savings, Arif had to borrow to pay his own attorney, had agreed to pay all community credit cards, and paid an additional \$2,000 to Gullbano as part of the division of property? (Assignment of Error 3).

IV. STATEMENT OF THE CASE ..... 2

    A. PROCEDURAL HISTORY ..... 2

    B. SUBSTANTIVE FACTS ..... 3

V. ARGUMENT & AUTHORITIES ..... 4  
VI. REQUEST FOR ATTORNEY FEES - RAP 18.1 ..... 14  
VII. CONCLUSION ..... 15

**REFERENCE FOR REPORT OF PROCEEDINGS**

<b>Title</b>	<b>Cite Used in Brief</b>
Verbatim Report of Proceedings (03/03/2022) (Non-Jury Trial - Volume I)	1RP

## TABLE OF AUTHORITIES

### Washington State Cases

<i>Davies v. Holy Family Hosp.</i> , 144 Wn. App. 483, 497, 183 P.3d 283 (2008) .....	23
<i>Gander v. Yeager</i> , 167 Wn. App. 638, 647, 282 P.3d 1100 (2012) .....	22
<i>Harmon v. DSHS</i> , 951 P.2d 770, 134 Wn.2d 523 (1998) .....	21
<i>Hartman v. Smith</i> , 100 Wn.2d 766, 674 P.2d 176 (1984) .....	24
<i>In re Marriage of Bobbitt</i> , 135 Wn. App. 8, 30, 144 P.3d 306 (2006) .....	18
<i>In re Marriage of Condie</i> , 15 Wn. App. 2d 449, 475 P.3d 993 (2020).....	15
<i>In re Marriage of Estes</i> , 84 Wn. App. 586, 593, 929 P.2d 500 (1997) .....	9, 10
<i>In re Marriage of Greenlee</i> , 65 Wn. App. 703, 707, 829 P.2d 1120 (1992) .....	23
<i>In re Marriage of Griffin</i> , 114 Wn.2d 772, 791 P.2d 519 (1990) .....	15
<i>In re Marriage of Luckey</i> , 73 Wn. App. 201, 209, 868 P.2d 189 (1994) .....	7, 9
<i>In re Marriage of Mathews</i> , 70 Wn. App. 116, 123, 853 P. 2d 462 (1993) .....	7

<i>In re Marriage of Moody</i> , 137 Wn.2d 979, 994, 976 P.2d 1240 (1999) .....	24
<i>In re Marriage of Robertson</i> , 113 Wn. App. 711, 716, 54 P.3d 708 (2002) .....	27
<i>In re Marriage of Scanlon</i> , 109 Wn. App. 167, 181, 34 P.3d 877 (2001) .....	24
<i>In re Marriage of Schnurman</i> , 178 Wn. App. 634, 316 P.3d 514 (2013), <i>review denied</i> , 180 Wn.2d 1010, 325 P.3d 914 (2014) .....	16, 17, 19
<i>In re Marriage of Spreen</i> , 107 Wn. App. 341, 348, 28 P.3d 769 (2001) .....	8, 9
<i>In re Marriage of Urbana</i> , 147 Wn. App. 1, 16, 195 P.3d 959 (2008) .....	24
<i>In re Marriage of Van Camp</i> , 82 Wn. App. 339, 342, 918 P.2d 509 (1996) .....	24, 27
<i>In re Marriage of Washburn</i> , 101 Wn.2d 168, 179, 677 P.2d 152 (1984) .....	7, 8
<i>In re Thompson's Custody</i> , 34 Wn. App. 643, 648, 663 P.2d 164 (1983) .....	27
<i>Leslie v. Verhey</i> , 90 Wn. App. 796, 954 P.2d 330 (1998) .....	27
<i>Mahler v. Szucs</i> , 135 Wn.2d 398, 957 P.2d 632 (1998) .....	26
<i>State ex rel. M.M.G. v. Graham</i> , 159 Wn.2d 623, 152 P.3d 1005 (2007) .....	18

**Washington State Statues**

RCW 26.09.090 ..... 7

RCW 26.09.090(1) ..... 8

RCW 26.09.090(1)(a) ..... 8, 11

RCW 26.09.090(1)(b) ..... 8

RCW 26.09.090(1)(c) ..... 8, 9

RCW 26.09.090(1)(d) ..... 8, 9

RCW 26.09.090(1)(e) ..... 8

RCW 26.09.090(1)(f) ..... 8, 12

RCW 26.09.140 ..... 22, 23, 24, 27

RCW 26.19.001 ..... 13, 21

RCW 26.19.020 ..... 14

RCW 26.19.035 ..... 17

RCW 26.19.035(2) ..... 13, 17

RCW 26.19.075 ..... 17

RCW 26.19.075(1)(d) ..... 13, 19

RCW 26.19.075(3) ..... 18

**Washington State Court Rules**

RAP 14.2 ..... 28

RAP 18.1 ..... 26, 27

RAP 18.1(c) ..... 28

**Other Authorities**

Kenneth W. Weber, *Washington Practice, Family and  
Community Property Law, Volume 20, § 34.9(3) (1997)* ..... 12

*Laws of 1987, Ch. 440 § 2(2)(e), p. 1798* ..... 21



## I. INTRODUCTION

This appeal concerns the final orders, entered on March 3, 2022, that ended the marriage between Arif Jamal (Arif), appellant, and Gullbano Khan (Gullbano), respondent. The parties had a contested divorce that lasted 14 months from the initial filing to the trial by affidavit held before Judge Leanderson, when final orders were entered. Arif works at home for Kaiser Permanente and nets \$7,017.31 a month. Clerk's Papers (CP) 222. Gullbano works full time at Moneytree and nets \$2,640.83 a month. CP 222. The parties have two young children together. CP 229. At the trial, the court awarded spousal maintenance, child support, and attorney's fees to Gullbano. This Court should reverse this decision and award reasonable attorney's fees on appeal to the appellant.

## II. ASSIGNMENTS OF ERROR

- 1. The trial court erred in section 13 of the decree of dissolution entered on March 3, 2022, awarding spousal maintenance to be paid by Arif**

to Gullbano in the amount of \$1,250.00 per month for the first year and \$750.00 per month for the second year.

2. The trial court erred in entering a child support order on March 3, 2022, which in section 10 orders support payments to be paid to Gullbano in the amount of \$1,285.94 per month for the first year, \$1,397.95 per month for the second year, and \$1,565.96 thereafter.
3. The trial court abused its discretion in section 14 of the decree of dissolution entered on March 3, 2022, requiring Arif to pay for Gullbano's attorney's fees in the amount of \$10,000.00.

### III. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

- A. Did the trial court err by awarding Gullbano spousal maintenance set at \$1,250.00 a month for the first year, which with the child support ordered for Arif to pay Gullbano, provides Gullbano with \$695.40 a month more income than Arif? (Assignment of Error 1).
- B. Did the trial court err by awarding Gullbano spousal maintenance set at \$750.00 a month for the second year, which, with the child support ordered for Arif to pay Gullbano, provides Arif with only \$80.58 a month more income than Gullbano? (Assignment of Error 1).

- C. Did the trial court err by not doing a deviation from the standard child support calculation, setting Jamal's monthly obligation at \$1,285.94, making Gullbano better off financially than Arif? (Assignment of Error 2).**
- D. Should the trial court have stated its reasons for not deviating from the presumptive amount of child support to be paid by Arif? (Assignment of Error 2).**
- E. Did the trial court err by awarding Gullbano child support when Arif has more residential time with the children than Gullbano, which means he should get child support. (Assignment of Error 2).**
- F. Did the trial court abuse its discretion by awarding Gullbano attorney's fees in the amount of \$10,000.00 when Gullbano had over \$50,000 in savings, Arif had to borrow to pay his own attorney, had agreed to pay all community credit cards, and paid an additional \$2,000 to Gullbano as part of the division of property? (Assignment of Error 3).**

## **VI. STATEMENT OF THE CASE**

Arif Jamal and Gullbano Khan were married in 2012 and separated in February 2021. CP 227. They have two children, Tigrun, age 7, and Athena, age 5. CP 229. Arif has an M.B.A. from the University of Washington. CP 122. He works at home

for Kaiser Permanente and has been employed there more than five years. CP 122. In September 2021, Gullbano started working full time for Moneytree as a vault teller. Her schedule changes from week to week. CP 122.

#### **A. PROCEDURAL HISTORY**

On February 24, 2021, Gullbano filed to dissolve the parties' marriage. Over the course of the proceedings, both parties conducted discovery. On February 1, 2022, the parties entered into a CR2A agreement (CP 1) that resolved the issues of the parenting plan and the division of property and debts. The court adopted the parties' agreement. The parties could not come to an agreement regarding the financial issues of spousal maintenance, child support, and attorney's fees. They agreed to have these issues decided in a trial by affidavit. CP 158. On March 3, 2022, a trial by affidavit was held before Pierce County Superior Court Judge Leanderson, who decided the issues of spousal maintenance, child support, and attorneys' fees.

## **B. SUBSTANTIVE FACTS**

The parties' income is set forth on the child support worksheets and is not disputed. Arif's gross monthly income is \$9,353.37 and his net monthly income before maintenance and child support is \$7,017.31. CP 222. Gullbano's gross monthly income is \$3,120.00, and her net before maintenance and child support is \$2,640.83. CP 222. For the first year following the divorce, Arif is to pay Gullbano \$1,250.00 per month for spousal maintenance and \$750.00 per month for the second year. CP 234. Child support for the first year was set at \$1,285.94 a month (CP 218), \$1,397.95 a month the second year (CP 214), and \$1,565.96 thereafter (CP 223).

These amounts are the presumptive amounts to be paid by the non-primary parent applying the support schedule. They are based on the presumption the parent paying support has less residential time than the other parent. The parenting plan provides that for every 14 days, Arif has the children for 7 days and Gullbano has the children for 7 days. CP 275 and 276.

However, Arif takes care of the children while Gullbano works. CP 275. When considering Gullbano's drivetime and work schedule, Arif is spending more time with the children than Gullbano does. If Gullbano manages to take all 4 of her days off work out of every 14 days during her residential time, she still has 3 days where Arif will be minding the children while she works. Without considering her travel time to work, this will be a total of 24 hours, the equivalent of 1 day. If she is working all 7 days of her residential time every 2 weeks, Arif will be caring for the children the equivalent of 2.33 days. Over a 31-day month, Arif will have the children the equivalent of at least 16 days and possibly as many as 21.66 days.

Gullbano's gross monthly income before child support and maintenance is \$3,120.00 and her net monthly income is \$2,640.83. CP 217. With the child support and maintenance, her income the first year is \$5,176.77 per month. Arif is left with \$4,481.37 per month, \$695.40 less than Gullbano. Even during the second year, when maintenance is reduced to

\$750.00 per month, Arif's net income is only \$80.58 higher than Gullbano's net income. CP 212 and 213.

## V. ARGUMENT & AUTHORITIES

**A. The trial court erred when it required Arif to pay Gullbano spousal maintenance in the amount of \$1,250.00 a month for the first year after divorce and \$750.00 a month for the second year which, in the first year, puts her in a better financial position than Arif. Decree of Dissolution ("Decree"), p. 4 (CP 234).**

In determining an award of maintenance, the trial court shall consider all relevant factors including, but not limited to, those enumerated in RCW 26.09.090. The standard of review for the appeal of a maintenance award is abuse of discretion. *In re Marriage of Mathews*, 70 Wn. App. 116, 123, 853 P. 2d 462 (1993). The trial court may grant a maintenance order in an amount and for a period of time the court deems just. RCW 26.09.090(1); *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). Trial courts have broad discretion to award spousal maintenance in accordance with RCW 26.09.090. *In re Marriage of Washburn*, 101 Wn.2d 168, 179,

677 P.2d 152 (1984). The only limitation on a maintenance award is that “the amount and duration, in light of all the relevant factors, be just.” *In re Marriage of Spreen*, 107 Wn. App. 341, 347-48, 28 P.3d 769 (2001) (citing *In re Marriage of Washburn*, 101 Wn.2d 168, 178, 677 P.2d 152 (1984)). The court must consider each of the factors listed in RCW 26.09.090(1), including:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage or domestic partnership;
- (d) The duration of the marriage or domestic partnership;
- (e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and
- (f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.



Maintenance needs to be just and, among other things, needs to be based on each parties' standard of living and duration of the marriage. RCW 26.09.090(1)(c), (d). Similarly, whether to award spousal maintenance and the amount and duration of the award are matters of broad discretion—the only statutory limitation on the trial court's discretion is that the award must be just. *Luckey*, supra, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). “The trial court may properly consider the property division when determining maintenance and may consider maintenance in making an equitable division of the property.” *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997).

"Of primary importance in the maintenance award are the parties' economic circumstances." *Spreen*, supra, 107 Wn. App. 341, 348, 28 P.3d 769 (2001). "[T]he standard of living of the parties during the marriage and the parties' post dissolution economic condition are paramount concerns when considering

maintenance and property awards in dissolution actions." *Estes*, supra, 84 Wn. App. at 593.

The trial court's ordering of maintenance goes beyond providing Gullbano with support commensurate with Arif's income. Considering Arif's current monthly net income of \$5,767.31 and Gullbano's monthly income of \$3,890.83 after maintenance of \$1,250.00 is paid, and then Arif, for the first year, having to pay Gullbano \$1,285.94 a month for child support, that leaves him with \$4,481.37 as his monthly income. On the other hand, Gullbano's monthly net income is \$5,176.77. This is a difference of \$695.40 in Gullbano's favor. Prior to the entry of the final orders, Gullbano lived six months before getting a job on \$1,607.78 per month child support and \$1,400.00 per month maintenance for a total of \$3,007.78 per month. 1RP 19, CP 94 and 99. Gullban's current net income with child support and maintenance is about \$2,000.00 more than Gullbano's temporary child support and maintenance (CP 94 and 99), even though she is now working and netting

\$2,640.83 a month in addition to child support and maintenance. 1RP 18. This shows she does not need that much money to live the lifestyle that she is used to. The end result is not an equitable division because Gullbano now has a higher standard of living than Arif.

RCW 26.09.090(1)(a) also requires the court to consider "[t]he financial resources of the party seeking maintenance, including separate or community property apportioned to [her], and [her] ability to meet [her] needs independently . . .". Apart from the parties' income, Gullbano, in September 2021, had a balance of \$51,370.50 in her Wells Fargo checking account. CP 59. Contrast this with Arif's debt payments consisting of a \$660.00 per month car payment and \$912.00 for credit card/loan payments. CP 116. She was also awarded \$2,000.00 in the division of property. CP 235. This shows that she had financial resources available to her before the spousal maintenance award was added. Therefore, this court should find

that this is not a fair consideration of the statutory factors and constitutes an abuse of discretion.

The trial court erred by not considering RCW 26.09.090(1)(f), which requires the needs of the obligor spouse, including the ability to meet his/her financial obligations, to be judged by the same standards that apply to the spouse who seeks maintenance. "Certainly, the spouse being asked to pay maintenance should not be required to endure a standard of living that is worse than the spouse who is to be receiving maintenance." Kenneth W. Weber, Washington Practice, Family and Community Property Law, Volume 20, § 34.9(3) (1997). Arif's net income for the first year following their divorce is \$695.40 a month less than Gullbano's net income.

**B. The trial court erred in entering a child support order on March 3, 2022, by ordering Arif to make payments to Gullbano, even though Arif has more residential time and Gullbano is better off financially than Arif. Also, the order does not provide for any findings or reason why the court would not deviate from the standard calculation, although a deviation was requested.**

RCW 26.19.001 Legislative intent and finding:

The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

RCW 26.19.035(2) Written findings of fact supported by the evidence:

An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

RCW 26.19.075(1)(d) Residential schedule:

The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families.

When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

The court erred by setting Arif's child support obligation in the final child support order at the standard amount based on the economic income table set forth in RCW 26.19.020, rather than doing a deviation to reduce Arif's obligation. There should have been a deviation because Arif has more residential time because he is providing daycare while Gullbano works (1RP 20-21) and as discussed above, the court put Gullbano at a better financial position than Arif. There are important factors that the trial court should have taken into consideration of why a deviation should have been ordered. Reasons that may support a deviation from the standard calculation include: possession of wealth, shared living arrangements, extraordinary debts that have not been voluntarily incurred, extraordinarily

high income of a child, a significant disparity of the living costs of the parents due to conditions beyond their control, and special needs of disabled children. *In re Marriage of Griffin*, 114 Wn.2d 772, 791 P.2d 519 (1990).

The court has said that not only is child support to be based on the parent's combined income but also all other financial resources that are available to the parents. *In re Marriage of Condie*, 15 Wn. App. 2d 449, 472, 475 P.3d 993 (2020)., the court said, “the child support statutes are expressly intended to divide the child support obligation between parents in proportion to their income. As noted, the child support statute directs the trial court to consider ‘[a]ll income and resources’ of the parents when determining child support. And maintenance is a "recurrent benefit. Consistent with the broad directive of the statute and the dictionary definition of income, we conclude contemporaneously ordered maintenance is income to the recipient and an expense to the payor for purposes of the child support statute.” In this case, it is included

in the worksheets for calculating child support. CP 212 and 217.

The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child. *In re Marriage of Schnurman*, 178 Wn. App. 634, 316 P.3d 514 (2013), *review denied*, 180 Wash.2d 1010, 325 P.3d 914 (2014). The trial court should have granted a deviation because Gullbano's income with maintenance, child support, and her other financial resources exceeded Arif's. The court set the child support amount in the final child support order for the first year at \$1,285.94 a month. CP 205. Since Arif has more time with the children, he should have gotten a deviation on his child support obligation, or as stated earlier, perhaps Gullbano should pay child support to Arif. Currently, on top of Gullbano's employment pay, she is receiving \$1,250.00 a month spousal maintenance. Combined with her monthly income, spousal support, and child support, she is now receiving \$695.40 a



month more income than Arif. She also has over \$51,000.00 in her bank account that is available for her to provide for the children. She has adequate resources to meet the children's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. A deviation that reduced Arif's monthly obligation would not have resulted in insufficient funds for Gullbano.

The court erred by not entering findings as to why the deviation was denied. Washington statute RCW 26.19.035(2) provides that the trial court's written findings shall include reasons . . . for . . . denial of [a party's] request for deviation . . . [from the] standard calculation. *In re Marriage of Schnurman*, 178 Wash.App. 634, 316 P.3d 514 (2013), *review denied*, 180 Wash.2d 1010, 325 P.3d 914 (2014). However, contrary to RCW 26.19.035, the findings, the decree, or the child support order do not state why the trial court would not deviate based on the residential time issue. There are reasons for deviation listed under RCW 26.19.075 that Arif requested the trial court

to consider. When ordering child support, the trial court should have considered that Arif is caring for the children more than Gullbano is. These requests should have been documented by the trial court in the findings, the decree, or the child support order. Although during trial Arif had requested a deviation from the standard deduction, it was denied. Since it was denied, the trial court should have stated on the record why it denied the request for a deviation. The trial court must enter written findings of fact supporting the reasons for any deviation or denial of a party's request for deviation. RCW 26.19.075(3); *State ex rel. M.M.G. v. Graham*, 152 P.3d 1005, 159 Wash.2d 623, 626, 632 (2007). The findings do not state any reason why the deviation was denied or why the standard calculation of father's support was adopted.

**C. The trial court erred in entering a child support order on March 3, 2022, that orders support payments to be paid to Gullbano. Because Arif has more residential time with the children than Gullbano, he should get child support.**

The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. *In re Marriage of Schnurman*, 178 Wash.App. 634, 316 P.3d 514 (2014), *review denied*, 180 Wash.2d 1010, 325 P.3d 914 (2013). The established rule is that any inequities arising in shared residential situations can be adequately addressed by deviations from the standard schedules. Under RCW 26.19.075 the trial court has discretion to deviate from the standard calculation based on such factors as the parents' income and expenses, obligations to children from other relationships, and the children's residential schedule. RCW 26.19.075(1)(d) permits deviation from the presumptive transfer payment based on the children's residential schedule. Although there is a parenting plan in place with equally shared residential time (CP 273), Gullbano's work schedule has the children spending more time with Arif than with Gullbano. 1RP 21. Arif works at home and provides daycare for his children. CP 119. According to the

parenting plan (which is not at issue) that was entered on March 3, 2022, the parties are to equally share residential time with both children by alternating residential time every other week. CP 275. Arif has the children every Monday and Tuesday, Gullbano every Wednesday and Thursday, and they alternate weekends. Every 14 days Arif has the children for 7 days and Gullbano has the children for 7 days. However, when considering Gullbano's drivetime and work schedule, Arif is spending more time with the children than Gullbano does. If Gullbano manages to take her 4 days off work out of every 14 days during her residential time, she still has 3 days where Arif will be minding the children while she works. Without considering her travel time to work, this will be a total of 24 hours, the equivalent of 1 day. If she is working all 7 days of her residential time every 2 weeks, Arif will be caring for the children the equivalent of 2.33 days. Over a 31-day month, Arif will have the children the equivalent of at least 16 days and a

possibly as many as 21.66 days. For this reason, Arif did request a deviation, but was denied.

Since Arif spends more time caring for the children than Gullbano (1RP 17, 21), Arif should not be paying Gullbano child support (1RP 19), perhaps Gullbano should be paying Arif child support. In *Harmon*, the court said that one of the overriding policies and a standard of the statewide child support schedule is that the obligation to support a child should be equitably apportioned between the parents of the child. See, e.g., RCW 26.19.001; *Laws of 1987*, Ch. 440, § 2(2)(e), p. 1798 (the support amount shall be based on the child's age, the parent's combined income, and the family size. Family size shall mean all children for whom the support is to be established). *Harmon v. DSHS*, 951 P.2d 770, 134 Wn.2d 523 (1998). RCW 26.19.001 provides that it is the legislative intent that the child support obligation should be equitably apportioned between the parents.

**D. The trial court abused its discretion in entering an order on March 3, 2022, requiring Arif to pay for Gullbano's attorneys' fees in the amount of \$10,000.00 because the fees awarded were excessive and unreasonable.**

The court is to apply a two-part standard when reviewing an award or denial of attorneys' fees: "(1) we review de novo whether there is a legal basis for awarding attorneys' fees by statute . . . , and (2) we review a discretionary decision to award or deny attorneys' fees and the reasonableness of any attorneys' fees award for an abuse of discretion." *Gander v. Yeager*, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012). RCW 26.09.140 provides for legal fees in domestic relations cases. It gives guidance to courts for parties seeking reimbursement for litigation costs that includes payment of costs, attorneys' fees, etc. According to the statute, 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 RCW 26.09 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.

A court abuses its discretion if its decision is “manifestly unreasonable or rests upon untenable grounds or reasons.” *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 497, 183 P.3d 283 (2008). After considering the financial resources of both parties, a court may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending a proceeding for marital dissolution and for reasonable attorneys’ fees. RCW 26.09.140. An award of attorneys’ fees rests within the sound discretion of the trial court, which must balance the needs of the spouse requesting the fees with the ability of the other spouse to pay. *In re Marriage of Greenlee*, 65 Wn. App. 703, 707, 829 P.2d 1120, review denied, 120 Wn.2d 1002 (1992).

The appellate courts have provided guidance for the award of costs and attorneys' fees. The decision to award fees pursuant to RCW 26.09.140 is discretionary. *In re Marriage of Urbana*, 147 Wn. App. 1, 16, 195 P.3d 959 (2008). In determining whether to award fees, the court must "balance the needs of the spouse seeking fees against the ability of the other spouse to pay." *Id.* (quoting *In re Marriage of Moody*, 137 Wn.2d 979, 994, 976 P.2d 1240 (1999)). "A lack of findings as to either need or ability to pay requires reversal." *In re Marriage of Scanlon*, 109 Wn. App. 167, 181, 34 P.3d 877 (2001). It is the requesting party's need and the opposing side's ability to pay that are the primary considerations for the award of attorneys' fees in a dissolution action. *In re Marriage of Van Camp*, 82 Wn. App. 339, 342, 918 P.2d 509 (1996).

In *Hartman v. Smith*, 100 Wn.2d 766, 674 P.2d 176 (1984), the court said that because the appellant had failed to demonstrate an inability to pay his attorney, his request for fees should have been denied. Arif has demonstrated that Gullbano



had the ability to pay her attorneys' fees. Gullbano had been paying her fees from her Wells Fargo checking account, which had over \$80,000.00 (CP 35) at separation. Arif had to borrow money to pay his fees. 1RP 23. On September 8, 2021, Gullbano's Wells Fargo checking account had a balance of \$51,371.50 and she was also working full-time at Moneytree earning \$18.00 an hour. CP 122. She was also awarded spousal maintenance in the amount of \$1,250.00 a month. She received \$2,000.00 as part of the division of property. CP 235. As discussed above, Arif has \$4,481.37 a month to cover his living expenses, child costs, and student loans. His student loans alone exceed \$147,000.00 (1RP 31) and his actual debt is over \$230,000 (1RP 27). Gullbano's net income is \$5,176.77 per month, \$695.40 more than Arif. Arif was required to pay an additional \$10,000.00, which required him to borrow funds. CP 120. This placed a heavy financial burden upon Arif.

Trial courts must provide sufficient findings of fact and conclusions of law to develop an adequate record for appellate

review of an attorneys' fee award. *In re Marriage of Bobbitt*, 135 Wn. App. 8, 30, 144 P.3d 306 (2006). A fee award must be supported by findings of fact and conclusions of law sufficient to establish a basis for review. *Mahler v. Szucs*, 135 Wn.2d 398, 433-35, 957 P.2d 632 (1998). Here, the trial court awarded Gullbano a total of \$10,000.00 in attorneys' fees, ordering Arif to pay this amount out of his own resources. CP 120. The court did not orally articulate a basis for this fee award or indicate any way in which Gullbano caused these fees to be incurred, nor did it enter any written findings explaining the basis for the fee award.

Given that the attorneys' fees that were awarded to Gullbano are not supported by any findings or conclusions, and no remarks that could be construed as findings or conclusions, the Court must reverse this award.

#### **VI. REQUEST FOR ATTORNEY FEES - RAP 18.1**

Arif respectfully requests an award of reasonable attorneys' fees for this appeal under RAP 18.1 and RCW

26.09.140. Pursuant to RAP 18.1, a party may recover attorneys' fees and costs at trial and on appeal when granted by applicable law. RCW 26.09.140 provides that "the appellate court may order a party to pay for the cost of the other party of maintaining the appeal and reasonable attorneys' fees in addition to statutory costs." The relevant considerations include "the financial resources of both parties," RCW 26.09.140; "the general equity of the fee given the disposition of the marital property," *In re Marriage of Van Camp*, 82 Wn. App. 339, 342, 918 P.2d 509, review denied, 130 Wn.2d 1019 (1996); and "the arguable merit of the issues raised on appeal," *Leslie v. Verhey*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), review denied, 137 Wn.2d 1003 (1999). An award of appellate attorney fees is a discretionary decision. *In re Thompson's Custody*, 34 Wn. App. 643, 648, 663 P.2d 164 (1983). "[T]he needs of the requesting party should be balanced against the other party's ability to pay." *In re Marriage of Robertson*, 113 Wn. App. 711, 716, 54 P.3d 708 (2002).

The trial court's failure to follow the statutes and case law as set forth cost Arif attorneys' fees on appeal. Arif will file an affidavit of need as required by RAP 18.1(c) ten days before oral argument. Under RAP 14.2, this Court should award these costs and fees if Arif is the substantially prevailing party in this action.

## **VII. CONCLUSION**

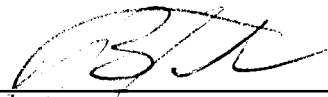
This court should remand this case for the trial court to enter an order reducing or eliminating the spousal maintenance to be paid by Arif. This court should direct the trial court to set a new child support amount to be paid to Arif or at least apply a deviation according to the correct legal standards discussed in this brief. The trial court abused its discretion when it ordered Arif to pay \$10,000.00 of Gullbano's post-separation attorneys' fees and legal costs without articulating any basis, either oral or written, for that order. For these reasons, this Court should reverse the trial court's order requiring Arif pay for Gullbano's attorneys' fees.

Finally, reasonable attorney fees should be awarded in Arif's favor.

This document contains 5,130 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 2nd day of August, 2022.

Respectfully submitted,



---

Robert B. Taub, WSBA #900  
Attorney for Appellant  
4002 Tacoma Mall Blvd., #203  
Tacoma, WA 98409-7702  
Phone (253) 475-3000



---

David R. Shelvey, WSBA #53834  
Attorney for Appellant  
4002 Tacoma Mall Blvd., #203  
Tacoma, WA 98409-7702  
Phone (253) 475-3000

**ROBERT TAUB & ASSOCIATES**

**August 03, 2022 - 3:03 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 56802-1  
**Appellate Court Case Title:** Gullbano Khan, Respondent v Arif Jamal, Appellant  
**Superior Court Case Number:** 21-3-00597-2

**The following documents have been uploaded:**

- 568021\_Briefs\_20220803150323D2393039\_9948.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Brief of appellant.pdf*

**A copy of the uploaded files will be sent to:**

- dcook@alliance1g.com

**Comments:**

---

Sender Name: Debra Capas - Email: taubfamilylawyers@msn.com

**Filing on Behalf of:** Robert B. Taub - Email: taubfamilylawyers@msn.com (Alternate Email: )

Address:  
4002 Tacoma Mall Blvd., #203  
Tacoma, WA, 98409  
Phone: (253) 475-3000

**Note: The Filing Id is 20220803150323D2393039**