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In the Matter of the Marriage of ELAINE IRENE CHOATE, Appellant, and FREDERICK LEWIS CHOATE, Respondent.

No. 35940-5-II

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

143 Wn. App. 235; 177 P.3d 175; 2008 Wash. App. LEXIS 466

February 20, 2008, Filed

CASE SUMMARY:

PROCEDURAL POSTURE: Respondent father filed a motion to modify his existing child support obligation for the two children of his former marriage. He based his request on the birth of his third child, born to his current companion. The Washington trial court granted the father's motion and reduced his support obligation. Appellant mother appealed.

OVERVIEW: The trial court indicated it was aware of the income of the father's companion at a hearing, but it did not enter written findings reflecting its consideration of all income and resources of each parent's household, or the total circumstances of both households pursuant to *Wash. Rev. Code* § 26.19.075(1)(e)(iv) and (2). Instead, the trial court relied on an unapproved worksheet that provided an amount not supported by factual findings. Acknowledgement of other children and the mere listing of other household income or a recitation that the trial court considered or was aware of other household income were insufficient to support a child support deviation. Thus, the trial court improperly modified the father's child support obligation. In addition, because the mother substantially prevailed on appeal and because, based on the financial information, the father had the resources to pay some or all of the mother's attorney fees and costs on appeal, under *Wash. Rev. Code* § 26.09.140 the appellate court granted the mother's request for rea-

sonable attorney fees and costs in an amount to be determined by a commissioner of the appellate court.

OUTCOME: The appellate court vacated and reversed the trial court's child support order and remanded the case to the trial court for further proceedings.

LexisNexis(R) Headnotes

Family Law > Child Support > Obligations > Computation > General Overview

[HN1] See *Wash. Rev. Code* § 26.19.050(1).

Family Law > Child Support > Obligations > Computation > General Overview

[HN2] See *Wash. Rev. Code* § 26.19.035(3).

Family Law > Child Support > Obligations > Computation > General Overview

Family Law > Child Support > Obligations > Computation > Guidelines

[HN3] *Wash. Rev. Code* § 26.19.011(8) defines standard calculation as the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion***Family Law > Child Support > Obligations > Modification > General Overview***

[HN4] An appellate court will not reverse a trial court's decision to modify child support absent a manifest abuse of discretion. The appellate court cannot substitute its judgment for that of the trial court unless the trial court's decision rests on unreasonable or untenable grounds.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

[HN5] A trial court necessarily abuses its discretion if it based its ruling on an erroneous view of the law.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion***Family Law > Child Support > Obligations > Computation > General Overview******Family Law > Child Support > Obligations > Computation > Guidelines******Family Law > Child Support > Obligations > Modification > General Overview***

[HN6] An appellate court must look to the child support schedule statute, Wash. Rev. Code ch. 26.19, and determine if a trial court abused its discretion in modifying the order of child support and granting a downward deviation.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion***Civil Procedure > Appeals > Standards of Review > De Novo Review******Evidence > Documentary Evidence > General Overview******Family Law > General Overview***

[HN7] An appellate court grants deference to a trial court's domestic relations decisions because (1) they involve emotional and financial interests that are best served by finality and de novo review may encourage appeals and (2) abuse of discretion is the proper standard of review when the trial court relies solely on documentary evidence in reaching its decision.

Family Law > Child Support > Obligations > Computation > General Overview

[HN8] See Wash. Rev. Code § 26.19.071(1).

Family Law > Child Support > Obligations > Computation > Guidelines

[HN9] See Wash. Rev. Code § 26.19.035(2).

Family Law > Child Support > Obligations > Computation > Guidelines

[HN10] See Wash. Rev. Code § 26.19.075(e).

Family Law > Child Support > Obligations > Computation > Guidelines

[HN11] A trial court clearly has discretion to deviate from the standard child support calculation based on a parent's duty of support to another child. Wash. Rev. Code § 26.19.075 unequivocally requires written findings of fact to support any deviation and a consideration of the total circumstances of both households.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion***Family Law > Child Support > Obligations > Computation > Guidelines***

[HN12] An unsupported deviation from the standard child support calculation is an abuse of discretion.

Family Law > Child Support > Obligations > Computation > Guidelines

[HN13] Acknowledgement of other children and the mere listing of other household income or a recitation that a trial court considered or was aware of other household income are insufficient to support a child support deviation.

Civil Procedure > Appeals > Standards of Review > Substantial Evidence > General Overview***Family Law > Child Support > Obligations > Computation > Guidelines***

[HN14] Written findings of fact supported by substantial evidence are required when a trial court deviates from the standard child support calculation.

Family Law > Child Support > Obligations > Computation > Imputed Income > General Overview

[HN15] Wash. Rev. Code § 26.19.071(6) states that a trial court shall not impute income to a parent who is gainfully employed on a full-time basis.

Civil Procedure > Appeals > Reviewability > Preservation for Review

[HN16] Generally, an issue cannot be raised for the first time on appeal unless it is a manifest error affecting a

constitutional right. *Wash. R. App. P. 2.5(a)(3)*. Whether *Wash. R. App. P. 2.5(a)(3)* applies is based on a two-part test: (1) whether the alleged error is truly constitutional and (2) whether the alleged error is manifest. An error is manifest when it had practical and identifiable consequences in the trial at issue.

Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > Statutory Awards

Civil Procedure > Remedies > Costs & Attorney Fees > Costs > Court & Marshal Fees

Family Law > Child Support > Obligations > Modification > General Overview

[HN17] In a child support modification case, *Wash. Rev. Code § 26.09.140* allows an appellate court to, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney fees in addition to statutory costs based on the financial resources of both parties.

SUMMARY:

WASHINGTON OFFICIAL REPORTS SUMMARY

Nature of Action: A father sought modification of his child support obligation for two children from a prior marriage based on his becoming the father of a third child with a new partner.

Superior Court: The Superior Court for Pierce County, No. 05-3-02428-2, Linda CJ Lee, J., entered a judgment granting modification on February 8, 2007.

Court of Appeals: Holding that an unapproved worksheet that did not consider the new partner's income and the total circumstances of both households was insufficient to support a deviation from the standard child support calculation, the court *reverses* and *vacates* the judgment and *remands* the case for further proceedings.

HEADNOTES

WASHINGTON OFFICIAL REPORTS HEADNOTES

[1] **Divorce -- Child Support -- Modification -- Review -- Standard of Review.** A trial court's modification of a divorced parent's child support obligation will not be disturbed by a reviewing court absent a manifest abuse of discretion. Under the abuse of discretion standard, the appellate court cannot substitute its judgment for that of the trial court unless the trial court's decision rests on unreasonable or untenable grounds. A trial court would necessarily abuse its discretion if it bases its ruling on an erroneous view of the law.

[2] **Divorce -- Child Support -- Child Support Schedule -- Deviation -- Statutory Provisions -- In General.** In setting the child support obligations of divorced parents, a court may deviate from the standard calculation only as provided in chapter 26.19 RCW.

[3] **Divorce -- Child Support -- Factors -- Income -- Other Household Adults.** Under *RCW 26.19.071(1)*, a court determining the basic child support obligations of divorced parents may consider only the parents' income and not the income or resources of any other person.

[4] **Divorce -- Child Support -- Child Support Schedule -- Deviation -- Parent's Support Obligation to Another Child.** Under *RCW 26.19.075(1)(e)*, a court setting the child support obligation of a divorced parent may justify a downward deviation from the standard calculation on the grounds that the parent has a duty of support to children from another relationship, provided that the deviation is supported by written findings of fact and is based on consideration of the total circumstances of both parents' households.

[5] **Divorce -- Child Support -- Child Support Schedule -- Deviation -- Calculation -- Reliance on Unapproved Worksheet -- Validity.** Under *RCW 26.19.035(3)*, a trial court may not rely on an unapproved worksheet to justify a deviation from the standard calculation in setting the child support obligation of a divorced parent in the absence of findings showing that the court considered all statutorily required factors.

[6] **Divorce -- Child Support -- Child Support Schedule -- Deviation -- Findings of Fact -- Necessity -- In General.** A trial court may not deviate from a standard child support calculation absent sufficient supporting findings of fact. A failure to support a deviation with sufficient findings of fact constitutes an abuse of discretion.

[7] **Divorce -- Child Support -- Child Support Schedule -- Deviation -- Method -- "Whole Family Method."** In setting the child support obligation of a divorced parent who has a new child by a new partner, a trial court may not justify a downward deviation from the standard calculation on the grounds of a "whole family formula" that considers the parent's support obligation for the new child unless the deviation is supported by findings of fact supported by substantial evidence that accounts for all household income and resources, including the income and resources of the parent's new partner.

[8] **Divorce -- Child Support -- Factors -- Parents' Economic Circumstances -- Earning Capacity -- Im-**

puted Income -- Current Full-Time Gainful Employment -- Effect. Under *RCW 26.19.071(6)*, when a divorced parent is currently gainfully employed in a full-time position, the court must consider that employment in calculating the parent's income for purposes of determining the parent's child support obligation and may not impute income to the parent based on the parent's prior unemployed status.

[9] Appeal -- Review -- Issues Not Raised in Trial Court -- Constitutional Rights -- Court Rule -- Requirements. A claim of constitutional error may not be raised for the first time on appeal under *RAP 2.5(a)(3)* unless the asserted error is (1) manifest and (2) truly of constitutional magnitude. An error is manifest when it had practical and identifiable consequences in the trial.

[10] Appeal -- Review -- Constitutional Issues -- Analysis -- Necessity. An appellate court may decline to consider a constitutional issue for which the proponent has not provided the court with argument or citations to authority.

[11] Divorce -- Attorney Fees -- On Appeal -- Factors -- Ability To Pay. An appellate court may award attorney fees on appeal to a substantially prevailing party in a divorce related proceeding under *RCW 26.09.140* based on a comparison of the financial resources of each party.

COUNSEL: *Frederick L. Choate*, pro se.

James H. MaGee (of *Law Office of James H. MaGee*), for appellant.

JUDGES: [***1] Van Deren, A.C.J. We concur: ARMSTRONG, J., QUINN-BRINTNALL, J.

OPINION BY: VAN DEREN

OPINION

[*238] [As amended by order of the Court of Appeals February 26, 2008.]

[**176] ¶1 VAN DEREN, A.C.J. -- In this child support modification case, Elaine Choate appeals the trial court's order granting a deviation from the standard child support schedule based on the birth of a new child to Frederick Choate, ¹ Elaine's former husband and father of their two children. She contends that the trial court (1) failed to consider the total circumstances of both households, (2) failed to enter written findings of fact supporting the child support deviation reducing Frederick's support obligation for their children, and (3) improperly calculated their gross income. We vacate, reverse, and remand, directing the trial court to consider all circum-

stances of both households and to enter findings supporting any decision to deviate from the standard support calculation.

1 We refer to the parties by their first names to avoid confusion. We mean no disrespect.

FACTS

¶2 On December 12, 2006, Frederick filed a motion to modify his existing child support obligation for the two children of his former marriage. He based his request on the birth of his third child, born to his current companion, Rayanne Sasser. Apparently, [***2] the trial court ruled at the time of dissolution that Frederick could seek a modification after the third child was born. Elaine objected to any modification, arguing that Frederick had failed to show paternity and that his motion was procedurally defective. On January 18, 2007, Frederick filed a paternity affidavit establishing his paternity.

[*239] ¶3 At the February 2, 2007, hearing on the matter, the trial court granted Frederick a modification of child support under *RCW 26.19.075(1)*. The trial court stated that it considered (1) Frederick's average monthly income for 2005 and 2006 based on his 2005 tax return and 2006 W-2 form, (2) Elaine's gross monthly income of \$ 2,426.67 minus her 2006 deductions, and (3) the total circumstances of both households.

¶4 The trial court's child support schedule worksheet shows that Frederick's "monthly income of \$ 4,845.72 is based on the average gross monthly income of the father for 2005 and 2006 tax returns and W-2's" ² and that Elaine's "gross monthly income is based on her hourly rate of \$ 14/hour x 40 hrs = \$ 2426.70." Clerk's Papers (CP) at 227. The original child support order states that Frederick's proportional share of their total income is [***3] 63 percent and that the standard child support payment due from him was \$ 721.00. The trial court then reduced Frederick's support obligation to \$ 585.87, based on the "Whole Family Formula" because Frederick has a child with Sasser. CP at 218.

2 We note that Frederick did not produce an income tax return for 2006 but, rather, only the W-2 for 2006. The order of child support was entered in February 2007. The trial court's oral ruling stated that Frederick's "gross monthly income shall be based on the average of his 2005-2006 income. The 2006 income shall be based on the 2006 W2 form that was submitted. And the 2005 income shall be based on the tax return that was filed." Report of Proceedings at 25.

¶5 The trial court attached an unofficial electronically generated worksheet ³ entitled [**177] "Whole

Family Formula Deviation" that mechanically allocates the parents' child support obligations based on the RCW 26.19.020 child support economic tables, each parent's proportional share of income, and the standard calculation defined in RCW 26.19.011(8).⁴ [*240] CP at 229. Other than referring to Frederick's child with Sasser, the trial court did not make findings of fact supporting the downward deviation [***4] or the method used to derive the final child support transfer payment.

3 [HN1] RCW 26.19.050(1) provides that the "administrative office of the courts shall develop and adopt worksheets and instructions to assist the parties and courts in establishing the appropriate child support level and apportionment of support" and [HN2] RCW 26.19.035(3) states that

[w]orksheets in the form developed by the administrative office of the courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the courts.

4 [HN3] RCW 26.19.011(8) defines "standard calculation" as "the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation."

¶6 Elaine appeals.

ANALYSIS

¶7 Elaine contends that the trial court "abused its discretion in failing to consider the total circumstances of both households when granting the deviation" to Frederick by reducing his support for their two children from \$ 721.00 to \$ 585.87. Br. of Appellant at 22. She argues that the trial court [***5] "erred in failing to consider the income and expenses of [Frederick]'s co-resident, [Sasser], in granting a deviation." Br. of Appellant at 10. Elaine also contends that the trial court erred in failing to make specific findings supporting the deviation.

I. STANDARD OF REVIEW

[1] ¶8 [HN4] We will not reverse the trial court's decision to modify child support absent a manifest abuse of discretion. *In re Marriage of McCausland*, 159 Wn.2d

607, 616, 152 P.3d 1013 (2007). And we "cannot substitute [our] judgment for that of the trial court unless the trial court's decision rests on unreasonable or untenable grounds." *In re Marriage of Leslie*, 90 Wn. App. 796, 802-03, 954 P.2d 330 (1998). [HN5] "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). [HN6] We must look to the child support schedule statute, *chapter 26.19 RCW*, and determine if the trial court abused its discretion in modifying the order of child support and granting a downward [*241] deviation. [HN7] We grant deference to the trial court's domestic relations decisions because (1) they involve emotional and [***6] financial interests that are best served by finality and de novo review may encourage appeals and (2) abuse of discretion is the proper standard of review when the trial court relies solely on documentary evidence in reaching its decision. *See In re Parentage of Jannot*, 149 Wn.2d 123, 126-28, 65 P.3d 664 (2003).

II. DEVIATION FROM STANDARD CHILD SUPPORT CALCULATION

[2-4] ¶9 *Chapter 26.19 RCW* governs the calculation of child support and any deviation from the standard calculation. [HN8] RCW 26.19.071(1) states that "[o]nly the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation." [HN9] RCW 26.19.035(2) states that "[a]n order for child support ... shall include reasons for any deviation from the standard calculation." And [HN10] RCW 26.19.075(1)(e) states that

[t]he court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and [***7] children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the [**178] basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children

from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) *When the court has determined that either or both parents have children from other relationships, deviations under this [*242] section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.*

(Emphasis added.)

¶10 [HN11] A trial court clearly has discretion to deviate from the standard calculation based on a parent's duty of support to another child. *See RCW 26.19.075; see also In re Parentage of J.M.K., 155 Wn.2d 374, 387-88, 119 P.3d 840 (2005) (paternity affidavit establishes [***8] the duty of support regardless of marital status); In re Marriage of Bell, 101 Wn. App. 366, 371 n.9, 4 P.3d 849 (2000); Fernando v. Nieswandt, 87 Wn. App. 103, 111, 940 P.2d 1380 (1997) ("duty of support" ... means all support obligations, not merely payments of court-ordered child support.)*. The statute also unequivocally requires written findings of fact to support any deviation and a consideration of the total circumstances of both households. *McCausland, 159 Wn.2d at 620* ("Although cursory findings of fact and the trial record might appear to justify awarding a child support amount that exceeds the economic table, only the entry of written findings of fact demonstrate that the trial court *properly exercised its discretion* in making the award.").

[5-7] ¶11 Furthermore, *RCW 26.19.035(3)* states that the trial "court shall not accept ... worksheets that vary from the worksheets developed by the administrative office of the courts." And the appendix to *chapter 26.19 RCW* does not list a worksheet entitled "Whole Family Formula Deviation." CP at 227. The trial court's acceptance of, and reliance on, these worksheets without findings showing consideration of all household circumstances constitutes error similar to that our Supreme [***9] Court noted in *McCausland*. As in *McCausland*, any deviation from the standard calculation is necessarily a fact-intensive decision. *159 Wn.2d at 620*.

¶12 Here, the child support order states only that the reason for deviation was "Whole Family Formula applied," [*243] and the trial court attached a form

worksheet entitled "Whole Family Formula Deviation." CP at 218, 229. This worksheet mechanically calculates the "Whole Family Deviation Amount" based on the total number of Frederick's children, using only Elaine and Frederick's combined net monthly income for the new standard support obligation and Frederick's proportional share of that obligation. CP at 229. It did not address Sasser's income or the circumstances of Frederick and Sasser's household.⁵ It, thus, appears to simply recalculate child support based on the children from the former marriage and any new children, in this instance Frederick and Sasser's child, without explanation of how all involved parents' circumstances affect the children's needs.

5 At oral argument, Frederick represented that he provided a home for Sasser and their child, that she did not pay rent, and that they kept their finances separate.

¶13 Although the trial [***10] court indicated it was aware of Sasser's income at the February 2 hearing, it did not enter written findings reflecting its consideration of "[a]ll income and resources" of each parent's household or "the total circumstances of both households." *RCW 26.19.075(2), (1)(e)(iv)*. Instead, it relied on an unapproved worksheet that provided an amount not supported by factual findings. In *McCausland*, our Supreme Court held that unsupported extrapolation of child support is an abuse of discretion. *159 Wn.2d at 620-21*. [HN12] An unsupported deviation is also an abuse of discretion.

¶14 In *McCausland*, the trial court directly extrapolated beyond the standard support [**179] calculation when the parents' combined incomes exceeded \$ 7,000 per month. *159 Wn.2d at 613-14*. In reversing the trial court's child support order, the court noted that none of the appellate courts had ruled correctly on extrapolating an increased amount of child support from the approved child support schedule. *McCausland, 159 Wn.2d at 619*. It held that, because the legislature did not provide for the extrapolation of child support for high-income families, trial courts must support any order exceeding the standard calculation with specific [***11] [*244] findings showing extraordinary expenses or circumstances necessitating the excess child support. *McCausland, 159 Wn.2d at 620-21*.

¶15 Here, contrary to *RCW 26.19.075(1)(e)*, the trial court relied on a worksheet that excludes consideration of Sasser's income and the total circumstances of both households. [HN13] Acknowledgement of other children and the mere listing of other household income or a recitation that the trial court considered or was aware of other household income are insufficient to support a child support deviation.

¶16 We hold that a trial court's reliance on an unapproved worksheet does not satisfy *chapter 26.19 RCW* or *McCausland*. [HN14] Written findings of fact supported by substantial evidence are required when a trial court deviates from the standard support calculation. *McCausland*, 159 Wn.2d at 620-21 (mechanical extensions of *chapter 26.19 RCW* do not satisfy the statute's requirements).

¶17 Thus, we vacate and reverse its child support order modifying Frederick's support obligation and remand for further proceedings consistent with this opinion.

III. INCOME CALCULATION

[8] ¶18 Elaine also contends that the trial court erroneously calculated both parties' gross monthly income. First, she [***12] argues that the trial court unfairly averaged Frederick's gross pay for the prior 24 months, but used only the previous 4½ months in averaging hers. But this argument ignores Elaine's assertion before the trial court that, because she was previously unemployed, her income should be imputed. And [HN15] *RCW 26.19.071(6)* states that a trial "court shall not impute income to a parent who is gainfully employed on a full-time basis." Therefore, the trial court properly considered Elaine's new job in calculating her income.

[9, 10] ¶19 Next, Elaine complains that while the trial court used her pay stubs, it used Frederick's 2005 tax return and his 2006 W-2; therefore, she was denied her [*245] right to equal protection. But Elaine did not allege that Frederick received a recent significant increase in pay that affected his child support obligation, nor does Elaine explain why the W-2 form that the trial court considered was less accurate than a corresponding collection of pay stubs. Moreover, she did not raise an equal protection argument before the trial court.

¶20 [HN16] Generally, an issue cannot be raised for the first time on appeal unless it is a "manifest error affecting a constitutional right." *RAP 2.5(a)(3)*. [***13] Whether *RAP 2.5(a)(3)* applies is based on a two-part test: (1) whether the alleged error is truly constitutional and (2) whether the alleged error is manifest. *State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999). An error is manifest when it had practical and identifiable consequences in the trial at issue. *WWJ Corp.*, 138 Wn.2d at 603; see also *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) (An appellant "must identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the [appellant]'s rights.").

¶21 We decline to address this argument because (1) Elaine identifies no manifest error affecting a constitu-

tional right; (2) Elaine fails to support her contention with authority or argument; and (3) in view of our decision to reverse and remand, the parties' incomes will be recalculated based on newer and more comprehensive evidence of income and household circumstances and, therefore, we do not further address Elaine's issues relating to the trial court's income calculations.⁶

6 Elaine also argues that Frederick overstated his monthly day care expenses when he claimed \$ 1,000 a month on his January 18, 2007, financial [***14] declaration. She raises this issue only as it relates to her assertion that the trial court failed to properly consider its decision to deviate. Because we remand, we leave this issue to the trial court to resolve in its consideration of all circumstances of both households. We recognize that, on remand, the trial court will have the opportunity to review additional income information and household circumstances of all parents, as well as additional information on the children's needs.

[*246] [**180] IV. ATTORNEY FEES

[11] ¶22 Elaine requests attorney fees of \$ 3,380 and costs of \$ 583 on appeal under *RCW 26.09.140* and *In re Marriage of Bell*, 101 Wn. App. 366, 379, 4 P.3d 849 (2000). Br. of Appellant at 28. [HN17] *RCW 26.09.140* allows an appellate court to, "in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney[] fees in addition to statutory costs" based on "the financial resources of both parties." Frederick does not seek attorney fees or costs but argues that "[t]here is no surplus in either parties['] household[]". Br. of Resp't at 18.

¶23 Elaine substantially prevailed on appeal. Both parties' financial declarations appear in the appellate record, [***15] although Frederick's does not reveal contributions from Sasser to the household or to their child's expenses. Based on the financial information before us, it appears that Frederick has the resources to pay some or all of Elaine's attorney fees and costs on appeal. Accordingly, we grant Elaine's request for reasonable attorney fees and costs in an amount to be determined by a commissioner of this court.

¶24 We vacate and reverse the trial court's child support order and remand for further proceedings consistent with this opinion.

ARMSTRONG and QUINN-BRINTNALL, JJ., concur.

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