IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

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| In re the Marriage of:JOHN D. SMITH,Petitioner,andJANE D. SMITH, Respondent. | No. 96-3-02932-9FATHER’S PRE-ARBITRATION STATEMENT OF PROOF |

Petitioner John Smith (“Father”) hereby submits his Pre-Arbitration Statement of Proof. This is a child support modification action filed by the Snohomish County Civil Prosecutor’ Office (“Prosecutor”) at the request of Respondent Jane Smith (“Mother”). Prosecutor and Mother request an increase in Father’s monthly transfer amount. The requested modification should be denied for the following reasons:

1. Mother’s requested transfer amount would jeopardize Father’s ability to care for the children living in Father’s current household; and

2. Past earnings from overtime and a second job should not be included in Father’s income, since Father no longer works a) at the job that afforded him overtime nor b) at a second job.

I. **FACTUAL BACKGROUND SUMMARY**

Mother and Father divorced in 2003 after four years of contentious, motion heavy litigation. They have one child in common, thirteen-year-old Abby Smith (“Abby”); and litigation regarding Abby has continued virtually unabated since. The court docket for their dissolution and post dissolution proceedings contains more than five hundred entries.

 In relevant part, Mother petitioned to gain primary residential care of Abby from Father in 2015. During mediation, Father recognized he would likely lose custody of Abby and could no longer afford to proceed with litigation. He was financially strapped and having difficulty supporting his new household, which consisted of his wife, Shawna Smith (“S. Smith”), and his young daughter Danita. The parties agreed to place Abby primarily with Mother, award Mother the yearly tax exemption for Abby, and enter a deviated support transfer payment of $25. Father and Mother discussed one valid basis for Father’s deviated transfer payment. The basis was Father’s inability to otherwise support his current household.

The 2015 order did not state the basis for Father’s deviated support payment.

Father currently works for Boeing, where he makes less than he did in 2015.

I. **ARGUMENT**

1. ***Father cannot afford to pay the amount Mother requests***.

Father cannot pay the transfer amount Mother requests. Father has two large, pre-existing, and unavoidable expenses that are primarily responsible for his tight budget: a) medical bills and b) his 2007 mortgage.

 A. *Medical Bills*. Father’s medical bills stem from the health of Father’s wife, Shawna Smith (“S. Smith”). S. Smith suffered multiple ailments and injuries that ultimately left her disabled. She continues to incur medical costs, no longer works, and has no other income while she appeals for disability benefits. Father has little choice but to become further indebted due to his wife’s medical situation. This medical debt is “extraordinary debt not voluntarily incurred” and is reason for deviation. RCW 26.19.075.

 B. *2007 Mortgage*. Father purchased a modest home with a mortgage in 2007. At the time, S. Smith was able to work, and Father received child support for the parties’ daughter, Abby. Since then, S. Smith has become unemployable, said medical costs have become an issue, and Father no longer receives child support for Abby. Father cannot pay the mortgage and the requested support transfer amount in the face of these numerous financial shifts. The only option would be to sell the home, but the home’s value is depressed due to the economic downturn. Selling Father’s house would also remove Father’s two young daughters from the only home they have ever known.

Forcing Father to sell his modest home in this situation would be akin to showing preference to Abby over Father’s two younger daughters, a violation of stated public policy. Children do not deserve more or less based on birth order. State ex rel J.V.G. v. VanGuilder, 137 Wn.App. 417 (2019). Meeting the needs of all children concerned is the primary goal when considering deviations. Id.; accord RCW 26.19.075. Children living with the obligor should not lead significantly less fortunate lives than those with the obligee. See In re Marriage of Oakes, 71 Wash.App. 646 (1993).

 Further, Mother’s requested transfer payment is not necessary for Mother to provide Abby with the quality upbringing and care Abby is entitled to. Mother’s family makes more than $100,000 per year, Abby attends a school that Mother describes as “nearly free”, and Father’s Boeing health insurance should cover the expense of any special care Abby might need. Granting Mother the amount she requests would run counter to the most salient policy considerations.

2. ***Past earnings from overtime and a second job should not be considered in determining Father’s income***.

Overtime and income from a second job should not be added to Father’s income: he no longer works the position that afforded him overtime, no longer works a second job, and his newly expanded domestic responsibilities may prevent him from working overtime or a second job even if they were available.

 Father earned overtime income when he worked as a painter for Benson Technologies. Father now works for Boeing. New Boeing employees in Father’s work area generally are not allowed overtime.

 Similarly, Father no longer works his second job. He has not worked a second job in more than a year.

 Even when overtime or a second job becomes available, Father may not be able to conscionably accept them. S. Smith’s health conditions necessitate that Father spend more time at home.

 Finally, policy should lead one to err toward underestimating rather than overestimating Father’s income. Speculative overestimation of Father’s income would lead to a support transfer amount that could have far-reaching negative implications for Father’s household. On the other hand, underestimating Father’s income and decreasing the transfer amount is unlikely to have as evident an impact on Mother’s well-to-do household.

3. ***Attorney Fees to Father***.

Father should be awarded attorney fees from Mother based on need and ability to pay. RCW 26.09.140. Father borrowed from a friend to pay attorney fees in this matter, and Father currently lacks the resources to pay the friend back.

III. **WITNESSES**

 Father reserves the right to call any witnesses listed by other parties. In addition, Father intends to call the following witnesses:

1. John Smith (“Father”). Father will testify in person regarding all aspects of the matter. See above.

2. Shawna Smith (“S. Smith”). S. Smith is Father’s wife and is expected to testify in person in support of Father on all aspect of the matter, especially S. Smith’s disabilities.

IV. **EXHIBITS**

 Father reserves the right to submit any exhibits or documents listed and/or provided by the parties, including the attached pleadings previously submitted in this matter. In addition, Father intends to offer exhibits supplied to the parties pursuant to SCLSCCAR 5.3:

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| **Exhibit** | **Author or Maker** | **Author or Maker’s Address and Phone Number** |
| 1. Father’s 2015 Financial Declaration | Father | Contact Genesis Law Firm |
| 2. Father’s Earnings Statements from 2015 and 2020 | Benson Technologies, Inc. | Contact information listed on said documents |
| 3. 2015 Agreed Order on Modification | Bridget Llewellyn | Contact information listed on said document |
| 4. 2015 Declaration of Mother | Mother | 555 55th St. SWEverett, WA 98201425-555-5555 |
| 5. Emails and Mediation Agreement Filed by Mother in 2015 | Mother | See above |
| 6. June 16 2020 Email from Marianne Klaus of Global Staffing re Boeing Position | Marianne Klaus | Address unknownMarianne.klaus@boeing.com206-555-5555 |
| 7. June 22 2020 Email from Marianne Klaus re Overtime Estimate | Marianne Klaus | See above |
| 8. June 30 2020 Email from Charlene Lott-Sierra of Global Staffing re Boeing Position | Charlene Lott-Sierra | Address unknownCharlene.lott-sierra@boeing.com206-556-5555 |
| 9. August 8 2020 Letter from Dr. Andrews (along with related documents written by the same author) | Mack D. Andrews, MD  | 555 Yellar AvenueArlington, WA 98223360-555-5555 |
| 10. August 3 2019 Letter from Nancy Rake re Phone Bill | Nancy Rake | Address unknownrakedm@netzero.com907-555-5555 |
| 11. July 29 2020 Comcast Bill | Comcast | PO Box 34227Seattle, WA 981241-800-266-2278 |
| 12. Wells Fargo Mortgage Statement | Wells Fargo | Contact information listed on said document |
| 13. Right Way Pharmacy Bill | Jack R. Right | Contact information listed on said document |
| 14. Kaiser August 15 2019 Medical Bill | Kaiser Permanente | Contact information listed on said document |
| 15. Western Washington Medical Group Statement | Western Washington Medical Group | 3726 Broadway #201Everett, WA 98201425-317-9119 |
| 16. Skagit Regional Clinics February 25 2020 Statement | Skagit Regional Clinics | Contact information listed on said document |
| 17. Skagit Valley Medical Center January 15 2019 Statement | Skagit Valley Medical Center | Contact information listed on said document |
| 18. Collection Letter re Skagit Valley Medical Center Services Provided in February of 2015 | SB&C, Ltd | Contact information listed on said document |
| 19. August 24 2020 Collection Letter from SB&C, Ltd | SB&C, Ltd | Contact information listed on said document |
| 20. February 21 2020 Statement from Skagit Valley Hospital | Skagit Valley Hospital | Contact information listed on said document |
| 21. August 24 20120 Statement from Skagit Valley Hospital | Skagit Valley Hospital | Contact information listed on said document |
| 22. Community Health Plan Statement re February 10 2020Service | Community Health Plan | Contact information listed on said document |
| 22. December 9 2019 Statement from Skagit Valley Hospital | Skagit Valley Hospital | Contact information listed on said document |
| 23. Collection Letter from Penn Credit Corporation | Penn Credit Corporation | Contact information listed on said document |
| 24. Biomedical Systems Billing Statement | Biomedical Systems | Contact information listed on said document |
| 25. June 17 2019 Collection Letter from Evergreen Professional Recoveries, Inc. | Evergreen Professional Recoveries, Inc. | Contact information listed on said document |
| 26. May 6 2020 Collection Letter from NAR | NAR | Contact information listed on said document |
| 27. July and August 2020 Regence Explanations of Benefits | Regence Blue Shield | Contact information listed on said documents |
| 28. 2019 Statements from Arlington Physical Therapy | Arlington Physical Therapy | Contact information listed on said document |
| 29. ARstrat Delinquency Notice | ARstrat | Contact information listed on said document |
| 30. Caine & Weiner June 2 2020 Collection Letter | Caine & Weiner | Contact information listed on said document |
| 31. May and July 2020 Collection Letters from HRRG | HRRG | Contact information listed on said documents |
| 32. Skagit Valley Hospital November 23 2019, October 10 2019, and December 30 2019 Statements | Skagit Valley Hospital | Contact information listed on said documents |
| 33. SB&C, Ltd April 8 2020, July 28 2020, and Second April 8 2020 Collection Letters | SB&C, Ltd | Contact information listed on said document |
| 34. C.N. Collections Inc. July 8 2019 Collection Letter | C.N. Collections Inc. | Contact information listed on said document |
| 35. Arlington Fire Department Bill for August 2 2015 | Arlington Fire Department | Contact information listed on said document |
| 36. Marysville Fire District Bill for October 3 2015 Closing Date | Marysville Fire District | Contact information listed on said document |
| 37. Skagit Valley Hospital October 23 2019 and December 30 2019 Billing Statements | Skagit Valley Hospital | Contact information listed on said document |
| 38. Gateway Surgery Center March 18 2019 Delinquency Notice | Gateway Surgery Center | Contact information listed on said document |
| 39. Northwest Emerg Phys, Inc. February 16 2020 and February 20 2020 Statements | Northwest Emerg Phys, Inc. | Contact information listed on said documents |
| 40. NCC Collection Letters Dated March 5 2019 | NCC | Contact information listed on said document |
| 41. Arlington Fire Department December 30 2015 Statement | Arlington Fire Department | Contact information listed on said document |
| 42. Cascade Valley Hospital and Clinic December 1 2015, May 17 2020, March 9 2019, May 23 2019, January 1 2019, January 6 2019, and March 10 2019 Statements and Delinquency Notices | Cascade Valley Hospital | Contact information listed on said document |
| 43. Audit and Adjustment Company, Inc. February 25 2019 and February 11 2019 Collection Letters | Audit and Adjustment Company, Inc. | Contact information listed on said document |
| 44. Zwicker and Associates, P.C. Collection Letter | Zwicker and Associates, P.C. | Contact information listed on said document |
| 45. Cascade Radiology Consultants Inc PS January 12 2020 Statement | Cascade Radiology Consultants Inc PS | Contact information listed on said document |
| 46. Option Care, Inc. March 3 2019 Statement | Option Care, Inc. | Contact information listed on said document |
| 47. WWWMG Dept of Orthopedics July 14 2020 Statement | WWWMG Dept of Orthopedics | Contact information listed on said document |
| 48. NCO Financial Systems, Inc. Collection Letters | NCO Financial Systems, Inc. | Contact information listed on said document |
| 49. Cascade Radiology Consultants, Inc. P.S. August 6 2015 Statement | Cascade Radiology Consultants, Inc. P.S. | Contact information listed on said document |
| 50. Pacific Coast Commercial Adjusters LLC August 6 2019 Collection Letter | Pacific Coast Commercial Adjusters LLC | Contact information listed on said document |
| 51. Northwest Emerg Phys, Inc July 18 2010 Statement | Northwest Emerg Phys, Inc | Contact information listed on said document |
| 52. City of Arlington Delinquency Notice for Water Bill | City of Arlington | Contact information listed on said document |
| 53. Snohomish County PUD July 22 2020 Utility Invoice | Snohomish County PUD | Contact information listed on said document |
| 54. Cascade Natural Gas Past Due Billing Notice | Cascade Natural Gas | Contact information listed on said document |
| 55. GEICO Notice of Cancellation for Nonpayment of Premium | GEICO | Contact information listed on said document |

NOTICE OF APPEARANCE

 DATED this \_\_\_\_\_\_ day of January, 2021.

GENESIS LAW FIRM, PLLC

SAMUEL K. DARLING, WSBA #40157

Attorney for Respondent