IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE MARRIAGE OF:	No. 42039-2-II
JANE ASTLE HALE,	
Respondent,	
v.	
TIMOTHY DENNIS HALE,	UNPUBLISHED OPINION
Appellant.	

Hunt, J. — Timothy Dennis Hale appeals the following dissolution proceeding decisions by the trial court: (1) declining to find his former wife, Jane Astle[1], underemployed and declining to impute income to her; (2) declining to deviate from the standard child-support schedule based on Hale's time with the children; and (3) correcting an alleged "scrivener's error" in the parties' decree of dissolution entered the preceding month. Finding no abuse of trial court discretion, we affirm.

FACTS

Timothy Hale and Jane Astle married in 2000. At the time of their marriage, both worked

---

[1] The dissolution decree changed Jane Astle Hale's surname to Astle. We use Astle to refer to her in this opinion.

full-time as engineers for the federal government in San Diego, each earning approximately $130,000 a year. After the birth of their two children, Astle removed herself from the workforce. When the family moved to Washington "to support [Hale]'s career," Astle was unable to find similar employment. Clerk's Papers (CP) at 13. Eventually, however, she found another federal engineering position with the Navy at its Keyport facility in Kitsap County.

Astle and Hale separated in April of 2009 and eventually initiated dissolution proceedings. At the start of the dissolution process, the parties had no debts and owned a home. Hale was a full-time engineer at the Keyport facility at the time of separation. His 2010 gross income was about $151,000. Although Astle had notified Keyport of her availability to work a 40-hour week,[2] her position was budgeted for 30 hours and she was still working a 30-hour work week at the time of dissolution; she earned $87,000 a year with full federal benefits.

Procedure

A. Partial Settlement

In January 2011, Hale and Astle agreed to a partial settlement under CR 2A. As part of this agreement, Astle received ownership of the family home, and Hale was to receive a lump sum $237,000 equalizing payment, for which Astle needed a mortgage. The precise terms of this handwritten agreement provided for "J[udgment] Against Ms. Hale, Secured by note [and] D[eed of] T[rust] against House, in the amount $237,500 *to be paid within 60 days, no interest, After 60 days Judgment interest*." CP at 170 (emphasis added). The agreement did not specify a date on

[2] Astle "ha[s] been approached to interview for [full-time] government positions in San Diego and Washington D.C." Astle, however, wanted a position in Kitsap County "for the sake of [the] children." CP at 14.

which this 60–day-payment time period would commence.

B. Trial Court Decision on Remaining Issues

The CR 2A agreement also narrowed the scope of the parties' dispute such that only four issues remained for their initial hearing the following week; the date that the judgment interest would commence was not one of these issues identified as remaining for the trial court to resolve. At the hearing, Hale argued that the trial court should (1) impute income to Astle for voluntary underemployment, based on her 30-hour work week; (2) grant Hale a residential credit for his child support payments based on increased expenses he expects to incur when spending time with the children; (3) grant a child support "deviation downward" if Hale has to provide clothing for the children; and (4) agree with his proposed medical insurance plan for the children.[3] Report of Proceedings (RP) (Jan. 18, 2011) at 5. Hale also argued that an increased residential credit was proper because, under the parties' agreement, he would have "approximately 150 overnights per year" with the children and an additional 17 dinner visits.[4] CP at 19.

The trial court declined to impute income to Astle:

> I'm not going to impute income. I'm going to let the standard. So I have a differential between the incomes that's large, and that takes me then to the next step. Having used the factors of *Schumacher*[[5]], and at least I agree with [Hale] it has a bearing only up to a point, the real thing for me here is from what I look at the totality of what I've been able to glean, the steps that have been made[[6]] and

[3] Clothing and medical insurance issues are not part of the present dispute on appeal.

[4] Hale calculated his additional increased monthly expenses due to his time spent with the children as follows: (1) $600 for upgrading from a two to three bedroom apartment; (2) $110 for food expenses; (3) $20 for activities; (4) $30 for transportation; (5) $8 for "sundry items"; and (6) $15 for utilities. CP at 19. Hale's requested residential credit totaled $783 per month and it would have reduced his monthly child support payments to $337.

[5] *Schumacher v. Watson*, 100 Wn. App. 208, 997 P.2d 399 (2000).

[6] Although not clear from the record, it appears that this reference to "[t]he steps that have been made" related to the trial court's discussion of the parties' joint decision that Astle could re-enter

> the availability of the funds that are there with her work history, it doesn't justify doing voluntary underemployment.

RP (Jan. 18, 2011) at 38. The trial court also relied on the importance of Astle's remaining a federal employee "to be back in long enough into the system then to build the kind of position you maybe want at 40." CP at 38. And it did not want to punish Astle for not moving out of state to other federal positions because that move would not be in the best interests of the children.

The trial court did not grant Hale's requested residential credit for time spent with the children. The trial court reasoned:

> I didn't think there was a residential credit. . . . The principal reason—[t]his is a discretionary call. The principal reason is the income differential that I'm seeing, again. [Mr. Hale has] been blessed with the fortune to [be] able to have a very good job and to have your wits and sensibilities about you to keep it. And given the disparity and the financial situation that I understand, two-thirds of carrying this load, and these guys are just going to get a heavier load as it goes on. . . . I can't see a residential credit on it even if it had been given before, but that's what I couldn't see.

RP (Jan. 18, 2011) at 40. The parties agreed that Hale would draft the Findings of Fact, the Decree of Dissolution, and the Parenting Plan and that Astle would draft the Order of Child Support.

---

the workforce. RP (Jan. 18, 2011) at 38.

C. Drafting of Trial Court's Orders

The next month, February, Hale sent Astle draft copies of the findings of fact, the decree of dissolution, and the parenting plan. Hale's first version of the decree of dissolution contained two provisions pertaining to when the 60-day payment time period would commence. Paragraph 1.3 of the Decree provided:

> There shall be no interest on this judgment *if it is paid within sixty days*. If not paid within sixty days, interest shall accrue at the judgment rate.

CP at 164 (paragraph 1.3) (emphasis added). Paragraph 1.3 did not designate the date on which such 60-day period would begin. Paragraph 3.2(12), however, specified that the 60-day period would begin on the date the dissolution decree was entered:

> Judgment against [Astle] secured by a Note and Deed of Trust against the family residence in the amount of $237,500 *to be paid within sixty days of the entry of the Decree of Dissolution*. In the event that the judgment is paid within sixty days of the decree, there shall be no interest on the judgment amount. If the judgment is not paid in that period of time, the judgment shall accrue at the judgment interest rate thereafter.

CP at 164 (paragraph 3.2(12)) (emphasis added). Neither Hale nor Astle raised the judgment interest 60-day commencement date at the two subsequent hearings in March and April.

At the April 8 hearing, both parties came prepared with their own versions of the decree of dissolution, based on Hale's original February draft. Hale's new draft required fewer modifications than Astle's draft to reflect the trial court's decisions; so the parties used Hale's new draft to make written modifications. Unbeknownst to Astle and the trial court, however, Hale had altered the interest provisions in his new draft. Newly altered paragraph 1.3 read:

> There shall be no interest on this judgment if it is paid within sixty days *of January 11, 2011*. If not paid within sixty days, interest shall accrue at the judgment rate.

CP at 158 (emphasis added). Newly altered paragraph 3.2(13)[7] read:

> Judgment against [Astle] secured by a Note and Deed of Trust against the family residence in the amount of $237,500 *to be paid within sixty days of the entry of the Decree of Dissolution*. In the event that the judgment is paid *within sixty days of January 11, 2011* there shall be no interest on the judgment amount. If the judgment is not paid *in that period of time*, the judgment shall accrue at the judgment interest rate thereafter.

CP at 159 (emphasis added).

Hale's adding "January 11" as the start date for the 60-day judgment-interest-free period in newly altered paragraph 1.3 departed from both original paragraph 3.2(12)'s and newly altered paragraph 3.2(13)'s use of "the entry of the Decree of Dissolution," April 8, as the start date.[8] CP at 164, 158-59. Without Astle's or the trial court's awareness of Hale's alterations, however, the parties signed his new draft, and the trial court entered it as the parties' Decree of Dissolution. Hale's alteration also created inconsistent start dates *between* newly altered paragraphs 1.3 and 3.2(13) and *within* newly altered paragraph 3.2(13).

D. Motion To Correct Scrivener's Error

A week later, Astle discovered these changed terms while reviewing the Decree of Dissolution with her mortgage broker. She filed a motion to correct this "scrivener's error." CP at 163. At the May 13, 2011 hearing on Astle's motion, Hale's counsel revealed that Hale had suggested amending the language in order to avoid "confusion as to the running of the 60 days"

---

[7] Newly altered paragraph 1.3 had been paragraph 3.2(12) in Hale's original February draft.

[8] Also, using January 11 as the start date for the 60-day payment period, would have resulted in judgment interest beginning to accrue on March 11; but the Decree of Dissolution did not list any dollar amount under "Interest to day of Judgment." CP at 158.

and that “[Hale’s counsel] agreed with him.” RP (May 13, 2011) at 6.

The trial court granted Astle’s motion and issued its order correcting the dissolution decree nunc pro tunc to April 8. The trial court told the parties that “there [was] no right answer” and that “[it was] using the date of the dissolution as the date there” because (1) “there [was] enough practicality in that being the appropriate date,” and (2) using the date of the CR 2A agreement, January 11, would have “urge[d]” the parties to change how quickly they proceeded in the dispute. RP (May 13, 2011) at 10.

ANALYSIS

I. Child Support; No Imputation of Income

Hale argues the trial court abused its discretion by not imputing income to Astle because she was voluntarily underemployed, working only 30 hours a week, and by not reducing his child support payments accordingly. Hale asserts that the trial court considered factors outside the statutory framework provided by RCW 26.19.071 and pertinent case law when it considered (1) Astle’s desire to preserve her federal benefits by remaining in the federal employment system and (2) the income differential between the two parties. This argument fails.

In child support proceedings, the trial court applies the uniform child support schedule, basing the support obligation on the combined monthly incomes of both parents. *In re Marriage of Pollard*, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000). Under RCW 26.19.071(6), trial courts must impute income to a parent who is voluntarily underemployed in order to prevent that parent from avoiding child support obligations. *In re Marriage of Didier*, 134 Wn. App. 490, 496, 140 P.3d 607 (2006). RCW 26.19.071(6) provides in pertinent part,

> **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors.

When trial courts determine that a parent is voluntarily underemployed, "income should be imputed as if that parent were employed at the level at which the parent is capable and qualified." *In re Marriage of. Sacco*, 114 Wn.2d 1, 4, 784 P.2d 1266 (1990).

Hale argues that the following principles justified a finding that Astle was underemployed: (1) Trial courts must consider the level of employment that the parent is capable of and qualified to perform; (2) a parent working fewer than 40 hours per week can be found to work full time only if that is customary in their profession; (3) working part time as a homemaker does not constitute "'gainful employment'" for purposes of RCW 26.19.071(6);[9] and (4) job benefits or training for another position do not shield a party from having income imputed. He also asserts that trial courts may not "insert[] a provision into the statute that provides that a parent who does not make as much as the other need not work on a full time basis." Br. of Appellant at 12.

Citing *In re Marriage of Brockopp*, 78 Wn. App. 441, 446 n.5, 898 P.2d 849 (1995), Astle counters that voluntary underemployment stems from "one's free choice." Br of Resp't at 12. Astle argues that she did not choose to be employed only 30 hours per week, that full time work would have required her to move to San Diego or the east coast, and that any move would have been unsatisfactory for the children and require significant travel expenses.

We review child support awards, including a decision whether to impute income, for an

[9] Br. of Appellant at 9 (quoting *Pollard*, 99 Wn. App. at 53).

abuse of discretion. *Pollard*, 99 Wn. App. at 52-53. To overturn a trial court's child support award, we must find the trial court abused its discretion such that it ruled on untenable or manifestly unreasonable grounds. *In re Marriage of Curran*, 26 Wn. App. 108, 110, 611 P.2d 1350 (1980). We find no such abuse here.

Contrary to Hale's assertion, the trial court did not "insert[] a provision into the statute that provides that a parent who does not make as much as the other need not work on a full time basis." Br. of Appellant at 12. Although the trial court did reference the parties' difference in income, it focused more attention on (1) Astle's work history, which included leaving her 40-hour-week federal position in San Diego to move to Washington to support Hale's career, (2) the importance of keeping Astle in Washington for the children's interests, and (3) the importance of her remaining employed within the federal system to maximize her retirement and other benefits.

The trial court's reliance on Astle's work history as a federal employee was expressly within the scope of RCW 26.19.071(6). And the children's best interests qualify as "any other relevant factor" under RCW 26.19.071(6). Accordingly, we hold that the trial court did not abuse its discretion when it declined to find Astle voluntarily underemployed, to impute income to her, and to reduce Hale's child support payments.

III. Residential Credit

Hale next argues the trial court abused its discretion when denying residential credit solely based on the difference in incomes between the parties, which credit would have required the trial court to deviate from the standard statutory child support calculations. Again, his argument fails.

RCW 26.19.075(1)(d) permits trial courts to deviate from the standard statutorily-

imposed child support schedules:

> **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.

RCW 26.19.075(1)(d). This deviation is discretionary, however, and deviation from the standard child support schedules "remains the exception to the rule," to "be used only where it would be inequitable not to do so." *In re Marriage of Burch*, 81 Wn. App. 756, 760, 916 P.2d 443 (1996).

Hale argues that RCW 26.19.075(1)(d) required the trial court to consider evidence of increased expenses to him or decreased expenses to Astle and that the trial court erred by failing to consider such evidence. We disagree. RCW 26.19.075(1)(d) expressly provides that the trial court is to consider those factors "[w]hen *determining the amount* of the deviation" after first determining whether deviation from the standard calculation is appropriate, not when determining whether to deviate in the first instance, which is what Hale seeks here.

Given Hale's substantial resources and earning capacity compared with the factors hindering Astle's full time employment and increased earning capacity, the trial court's decision to deny Hale's request for a deviation from the standard statutory calculation was not "inequitable." *See Burch*, 81 Wn. App. at 760. Therefore, we hold that the trial court did not abuse its discretion by relying on the relative financial situations of the parents in declining Hale's request

for residential credit.

III. "Scrivener's Error"

Hale argues that the trial court erred in modifying a "scrivener's error" in the decree of dissolution because (1) the parties did not share common understanding for when the judgment interest would begin to accrue, and (2) in making this "correction," the trial court essentially modified the parties' CR 2A agreement based on what it thought was fair. Br. of Appellant at 18. Citing *In re Estate of Harford*,[10] Hale argues that "a scrivener's error occurs when the intention of the parties is identical at the time of the transaction but the written agreement errs in expressing that intention." Br. of Appellant at 18. This *Harford* rule, however, guides courts acting in equity to reform contractual agreements, and it does not apply to an order correcting a dissolution decree nunc pro tunc. *See Harford*, 86 Wn. App. at 263.

We review a trial court's decision to enter a decree nunc pro tunc for abuse of discretion. *Bruce v. Bruce*, 48 Wn.2d 635, 636, 296 P.2d 310 (1956). A trial court has inherent authority to enter a decree nunc pro tunc in dissolution proceedings. *In re Marriage of Pratt*, 99 Wn.2d 905, 909, 665 P.2d 400 (1983).

> [A motion nunc pro tunc] may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken. If the court has not rendered a judgment that it might or should have rendered, or if it has rendered an imperfect or improper judgment, it has no power to remedy these errors or omissions by ordering the entry nunc pro tunc of a proper judgment.

Pratt, 99 Wn.2d at 911 (alteration in original) (quoting *State v. Ryan*, 146 Wash. 114, 117, 261 P.

---

[10] 86 Wn. App. 259, 263, 936 P.2d 48 (1997).

775 (1927)).[11] RCW 26.09.290 also gives trial courts express authority to issue dissolution decrees nunc pro tunc in circumstances involving mistake, inadvertence, or neglect, when necessary to validate a subsequent marriage. *Pratt*, 99 Wn.2d at 909. Trial courts cannot, however, use a decree nunc pro tunc to correct matters of substance in, remedy omissions in, or change the terms of, the prior decree. *City of Pasco v. Napier*, 109 Wn.2d 769, 775, 755 P.2d 170 (1988).

Here, the trial court's May 13, 2011 order correcting the dissolution decree nunc pro tunc to April 8, 2011, resolved and amended inadvertently conflicting terms in the final decree of dissolution that neither the parties nor the trial court had recognized or addressed at the April 8 entry of the decree. According to Astle, the parties did not have a "meeting of the minds" about these terms, namely the date for beginning the running of the 60-day period, at the end of which judgment interest would commence. Br. of Resp't at 18. For purposes of our analysis, we assume, without deciding, that in amending terms of the decree neither the parties nor the trial court had previously addressed, argued, or agreed upon, the trial court exceeded its "limited power" to enter a decree nunc pro tunc in a dissolution setting to correct "ministerial or clerical error." *Pratt*, 99 Wn.2d at 911.

IV. Corrected Order Valid Under CR 60(a)

Nevertheless, we may affirm the trial court on any ground that the record supports. *Syrovy v. Alpine Resources, Inc.*, 80 Wn. App. 50, 54-55, 906 P.2d 377 (1995). CR 60(a)

---

[11] In a dissolution setting, trial courts may also exercise discretion to enter a decree nunc pro tunc only where it is necessary to effectuate public policy, such as avoiding bigamy or bastardy, or where necessary to correct a clerical or ministerial error. *Pratt*, 99 Wn.2d at 909.

permits a trial court to correct clerical mistakes before review is accepted by an appellate court. A clerical mistake "in judgments, orders or other parts of the record and *errors therein arising from oversight or omission* may be corrected by the court at any time of its own initiative." CR 60(a) (emphasis added). When a trial court signs a decree that fails to capture its intentions, whether through misplaced confidence in an attorney who presented the decree or otherwise, the trial court may correct an error contained in such decree under CR 60(a). *In re Marriage of Getz*, 57 Wn. App. 602, 604, 789 P.2d 331 (1990).

Hale's original February draft of the dissolution decree, which both parties and the trial court used as the starting point for the final decree language entered at the April 8, 2011 hearing, did not suffer from internal inconsistencies: Paragraph 1.3 was silent about to the judgment interest start date, and paragraph 3.2(12) specifically listed the start date as 60 days after entry of the decree of dissolution. But without express notice to the trial court or to Astle, Hale inserted "January 11" into his redrafted dissolution decree as the date on which the 60–day period would commence before presenting this revised draft at the April 8 hearing to finalize the decree. CP at 166.

By inserting "[t]here shall be no interest on this judgment if it is paid within sixty days *of January 11, 2011*,"[12] Hale injected inconsistent terms in the parties' April 8 decree of dissolution: (1) Hale's newly added dates created inconsistent provisions within paragraph 3.2(13) and between that paragraph and paragraph 1.3; and (2) in the money judgment summary portion of the decree of dissolution, the parties did not list any judgment interest then owing, even though, if

[12] CP at 158 (emphasis added).

the 60-day period had begun on Hale's inserted January 11 date, interest would have begun accruing on March 11. Hale's insertion of these unannounced inconsistencies was an unwitting mistake that the trial court and the parties failed to notice before signing and entering the dissolution decree. Furthermore, it is unlikely that the trial court would have covertly inserted, or permitted insertion of, a new term in the April 8 decree that would have added thousands of dollars in judgment interest to Astle's obligation without first having conducted a hearing to address this new term directly.

Reviewing the trial court's May 13 order correcting the decree nunc pro tunc to April 8, 2011 under CR 60(a), we hold that the trial court did not abuse its discretion in resolving the internal inconsistencies that Hale created with unannounced, unilateral, and unnoticed insertions.

We affirm the trial court's decisions not to impute income to Astle and not to grant Hale a residential credit. We affirm on other grounds the trial court's order correcting the dissolution decree nunc pro tunc to April 8, 2011.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worswick, C.J.

Johanson, J.