IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of LORI L. LIEPPMAN, Appellant/ Cross-Respondent, and GARY D. FLANZER, Respondent/ Cross-Appellant.	)	No. 64706-7-I DIVISION ONE UNPUBLISHED OPINION FILED: November 29, 2010

Becker, J. — A superior court commissioner granted in part Lori Lieppman's petition to modify the child support order in effect since the 1993 dissolution of her marriage to Gary Flanzer. The commissioner ordered both parents to provide postsecondary education support for their daughter, now 18 years old and beginning college, and ordered Flanzer to pay modified child support from June 1, 2008, until the date their daughter left home for college. The commissioner denied Flanzer's claim to be reimbursed for day care expenses he allegedly paid Lieppman every month since 1996. The

commissioner also denied Lieppman's claim for reimbursement of past child care expenses over 11 years. Both parties sought revision of the commissioner's order, and the superior court judge denied their motions. Both parents appeal from the order denying revision. We affirm.

FACTS

On March 19, 1993, the King County Superior Court entered an order of child support requiring Flanzer to pay $450 per month as a transfer payment, specifying that "this payment shall include his apportioned day care obligation." The standard calculation was computed to be $242.97 per month. The remainder was based on the fact that the transfer payment "includes day care expenses for the child which are related to the mother's employment." The order provided for periodic modification as follows: "The transfer payment . . . above, shall be paid through April, 1993. Effective May 1, 1993, the transfer payment shall increase to $525.00. This amount shall be paid through April of 1994."

Thereafter, child support "shall be reviewed and adjusted" on "the first of each May every other year thereafter." The order provided that on or before April 15 of each adjustment year, "the parents shall exchange" federal income tax returns, W-2 forms, and documentation of financial information under the Washington State Child Support Schedule and Worksheets. After the contemplated exchange, the basic monthly child support payable the previous year or years "shall then be adjusted according to the Washington State Child Support Schedule then in effect."[1]

In 1996, Flanzer moved to modify the parenting plan and child support order. In December 1996, a King County Superior Court commissioner heard a motion concerning Flanzer's complaint that he had overpaid for day care. The commissioner held as follows:

> The issue of modifying or adjusting child support is reserved for trial, and the day care portion of the present child support obligation is suspended. Furthermore, the father shall receive a credit for day care expenditures for the portion of the child support attributable to day care for the last 12 months, unless the mother shall provide, in camera, copies of day care evidence by January 8, 1997 to this court.[2]

The record does not reveal whether Lieppman made any such showing.

On February 21, 1997, the trial court dismissed Flanzer's petition to modify the parenting plan and child support order for lack of adequate cause, except for the following issues:

1. Implementation, enforcement, and minor adjustments to the existing parenting plan;
2. Change of [the child's] therapist;
3. Procedure for an annual or semiannual daycare accounting, provided the parents exchange proposed orders in advance. Any proposal should attempt to provide location confidentiality for mother but also provide sufficient assurances to father of the validity of alleged daycare expenses and should not unduly burden the court's time;
4. Whether mother should engage in additional therapy or evaluation;
5. Modification of child support to the extent that father has properly complied with statutory procedures for modification;
6. Mother's motion to reduce unpaid daycare and healthcare expenses to a sum certain judgment, up to the extent as resolved earlier on this Motion Calendar.[3]

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[1] Clerk's Papers at 134-36 (some alteration in original).
[2] Clerk's Papers at 155.
[3] Clerk's Papers at 172-73.

In August 1997, the superior court conducted a four day trial on these issues. On November 12, 1997, the trial court made extensive findings of fact and conclusions of law relevant to the issues in the present case, including: "This Court is not ruling on the issue of day care accounting" and the "father's request for an adjustment of child support is denied."[4]

In 1999, Flanzer requested an administrative hearing before the Office of Administrative Hearings for the Department of Social and Health Services (DSHS) to challenge the actions of DSHS as follows:

> Child Support Division is requiring me to pay the day care portion of my child support order and have refused to obtain receipts from the mother for child day care she actually spent while gainfully employed or to credit me with overpayments because the money was not spent for day care.[5]

The Administrative Law Judge (ALJ) concluded that the office of administrative hearings lacked jurisdiction and observed that the 1997 superior court orders revealed that the superior court "intended to retain jurisdiction over the entire action between the parties including the issue of day care credits."[6] Flanzer appealed the ALJ decision to the DSHS Board of Appeals. The board concluded that:

> [A] dispute over credits made toward court-ordered child support must be resolved in superior court because of the provision in the parenting plan which provides that "disputes between the parties shall be submitted to this court only."

The board also concluded that the parents' arguments "must be presented in

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[4] Clerk's Papers at 174-75.
[5] Clerk's Papers at 29.
[6] Clerk's Papers at 36 (ALJ ruling).

superior court."[7] The record does not reveal whether, after this administrative ruling, Flanzer attempted to raise his argument in superior court before the present proceeding initiated by Lieppman in 2008.

In June 2008, Lieppman petitioned for modification of child support. The petition alleged that the parents' income had changed and that their child needed postsecondary support and support beyond her eighteenth birthday. Lieppman requested the superior court to modify child support by: (1) ordering child support payments based on the Washington State Child Support Schedule, (2) extending child support beyond the child's eighteenth birthday until her graduation from high school, (3) allowing for postsecondary educational support, (4) ordering payment of uncovered health care expenses, (5) requiring Flanzer to provide certified proof that he has a life insurance policy with the child as sole beneficiary, (6) ordering Flanzer to pay attorney fees and costs, and (7) ordering reimbursement of various health care and child care expenses incurred over the prior 11 years.[8] Lieppman submitted a financial declaration, listing her total monthly household expenses as $3,867 and her total annual income as $21,377. Lieppman's petition identified the most recent support order as the March 19, 1993 order.

Flanzer asserted a counterclaim, seeking a credit against child support. In relevant part, he claimed he overpaid $207.03 per month for 156 months beginning January 1, 1996. Flanzer did not object to postsecondary education

[7] Clerk's Papers at 39-40 (board of appeals ruling).
[8] Clerk's Papers at 82-83.

support for the child:

> The modification should provide for post-secondary education financial support from both parents for the child in accordance with RCW 26.19.090; the respondent's portion should be paid directly to the school or the child; the child support should commence when the child begins attending post secondary school.

Flanzer's response to Lieppman's petition stated that the March 19, 1993 order of child support was "modified" by order entered January 10, 1997.[9] However, that order expressly stated that "[t]he issue of modifying or adjusting child support is reserved for trial."[10] And after the 1997 trial, the court held that "[t]he father's request for an adjustment of child support is denied."[11]

Following several continuances, trial by affidavit was held on September 23, 2009, before Commissioner Meg Sassaman. In ruling on the parents' claims, the commissioner emphasized that there were problems with both parents' evidence: "There are holes on both sides in regards to proof and evidence supplied to this court."

The commissioner rejected Lieppman's claims for reimbursement of past expenses for failure of proof:

> I recognize that it is difficult to go back 11 years, dig up all your receipts, and show proof, but that is what you have to do if you want to get reimbursement for expenses made. I don't know why the mother waited and failed to try to get reimbursed, but she made that choice and that decision not to come to court sooner, and now she's here and she doesn't have the proof that she needs, and I can't just come up with an average number that seems reasonable. There's no basis for that under the current structure of our statutes. So I'm going to deny the claims regarding past due amounts in relation to insurance and medical expense[s] on the mother's side.

[9] Clerk's Papers at 129.
[10] Clerk's Papers at 155.
[11] Clerk's Papers at 174-75.

The commissioner also rejected Flanzer's claim for reimbursement of day care, finding that the challenged order did not specify the portion of the transfer payment attributable to day care after the initial period ended on May 1, 1993:

> On the father's side, he argues that he is due a daycare reimbursement, and in looking at the prior order of support at paragraph 3.13, it indicates that as of May 1, 1993, the transfer payment automatically adjusted to $525. It makes no mention of whether that includes daycare or not. Nobody went back and had this order reconsidered, revised, appealed, clarified, nothing. It stands as stated. Therefore, I am going to decline the father's request that he be granted a credit for overpayment going back to that order.

The commissioner awarded child support through the child's departure for college and postsecondary support. The commissioner was unable to determine the parents' income with precision and imputed income to both:

> In regards to calculating support, I recognize that the mother is claiming that she is unable to be fully employed because of her disabilities. I have only her own statement as to what those disabilities are and how they affect her ability to work, and I have nothing further. I do have proof of what her actual income is, but I have no indication that she's unable to earn additional income to supplement what she gets from her annuity.
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> In regards to the information provided by the father, I have very limited information about his actual income. He's purchasing properties, he's doing a lot of financial transactions that seem unlikely, at best, to be funded on his claims -- if he's actually making the amount of money that he claims he's making of $10,000 a year. That's just not credible to me. He seems -- he has not presented me with any information about a disability, an inability to work, any reason why he could not be fully employed.
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> So based on that information on both sides, let me just look, I'm going to impute income to both parents. I'm going to impute to the mother -- let me see.
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> Well, I'm going to accept her actual income, and then I'm going to add an additional imputed amount so that her total income comes up to the average income for a woman her age based on our charts of what that would be.

In relation to the father's income, the mother claims that his income should be imputed at $15,000 per month, and that's just based on her sort of averaging out what she thinks he has available to him. He indicates that his income should be imputed based on his age, which would be $2,880 per month. I find it not -- I find it credible that he's making more than $2,880 per month and that he has substantial assets available to him, so I will impute his income at $4,000 per month. That's for the purpose of calculating the child support from June 2008 up and through the month before the child went to college.

The commissioner ordered postsecondary support as follows:

[B]ecause the parents are both in agreement that there should be a post-secondary support obligation, I will impose one . . . .

. . . .

In regards to calculating post-secondary support, we will come up with a set number, and I'm going to base it -- because we're here in the State of Washington, we will use the University of Washington budget for an in-state student living in the dormitory, and the obligation will be based upon tuition, fees, room, board, and books under that budget for an in-state student. The child will be obligated to apply for and obtain scholarships and grants that are available to her, and those will be applied first to the obligation. Whatever remains after applying her scholarships and grants will be divided between the parties.

Now, looking at the mother's income, she has a very limited ability to contribute to the costs of this child's education, post-secondary education, and ordering her to contribute an amount that would put her below the poverty level is not permitted by our statute. In essence, any amount I order is going to put her below our poverty level in the state of Washington, but I've imputed income to her, so I will order that she will pay $500 per semester as a set amount, based on what her income is.

The father will pay, after subtracting the mother's obligation, the scholarships, grants that are available to the child, whatever amount is left to be paid, the father will pay -- let me see what the percentages are.

His -- let's see, okay. I will order the father to pay 50 percent of whatever remains. This leaves a substantial amount unpaid, and it will be the obligation of the child.[12]

The commissioner's written Order of Child Support on Lieppman's petition

[12] Report of Proceedings at 74-78.

to modify was entered on October 29, 2009.[13] The effective date of the modification order was the date that Lieppman filed her original petition, June 1, 2008.[14] The commissioner denied Flanzer's subsequent motion for reconsideration.

Both parents moved for revision of the commissioner's order. Superior Court Judge Steven González denied both motions. Both parents appeal from the order denying revision.

ANALYSIS

Standard of Review

We review modification proceedings to determine whether the trial court's findings of fact are supported by substantial evidence and whether the trial court has made an error of law that may be corrected upon appeal. In re Marriage of Shellenberger, 80 Wn. App. 71, 80-81, 906 P.2d 968 (1995); In re Marriage of Stern, 68 Wn. App. 922, 929, 846 P.2d 1387 (1993). Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002), review denied, 148 Wn.2d 1023 (2003). In reviewing decisions setting child support, we defer to the sound discretion of the trial court unless that discretion is exercised in an untenable or unreasonable way. In re Marriage of Griffin, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). Once the superior court makes a decision on a motion for

[13] Clerk's Papers at 297-308.
[14] Clerk's Papers at 75.

revision, any further appeal is from the superior court's decision, not the commissioner's ruling. State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004).

Lieppman's Appeal

Lieppman first argues that Flanzer "refused to submit his tax returns," and that the trial court "improperly considered false financial information from Flanzer." Accordingly, she contends, the trial court abused its discretion in its award of child support and its apportionment of postsecondary support. We disagree.

The commissioner expressly found that Flanzer's income was impossible to compute due to his failure to fully document his finances and his apparent deception. The record contains substantial evidence that Flanzer's reticence concerning his finances rendered his claimed income unverifiable. Imputing income in accordance with census tables was proper under this record because Flanzer's situation was analogous to voluntary underemployment or voluntary unemployment. RCW 26.19.071(6); In re Marriage of Dodd, 120 Wn. App. 638, 645, 86 P.3d 801 (2004) ("It is consistent with the plain language of the statute and its underlying purpose to consider a parent who conceals income in order to escape his or her support obligation as voluntarily underemployed or voluntarily unemployed for purposes of imputing income under RCW 26.19.071(6)."); see In re Marriage of Sievers, 78 Wn. App. 287, 305-06, 897 P.2d 388 (1995) (When a party fails to provide credible evidence of income, the trial court may determine income by any rational means based upon evidence in the record). The court's determination of the proper measure of Flanzer's income was well within the disputed evidence provided by the parties and is supported by substantial

evidence.

Lieppman's contention that the trial court abused its discretion in apportioning postsecondary support is similarly unavailing. "A trial court has broad discretion to order a divorced parent to pay postsecondary education expenses." In re Marriage of Newell, 117 Wn. App. 711, 718, 72 P.3d 1130 (2003); RCW 26.19.090(2).[15] We have reviewed the entire record of proceedings and discern no action by the trial court that could be considered an abuse of its broad discretion in these matters. The court imputed income to both parents within the disputed evidence. The trial court considered the parents' resources in determining that the postsecondary support would not cover the entire cost of education and limited the parties' obligation to the cost of a public education in the State of Washington. Such an award was within the trial court's discretion considering the statutory factors set forth in RCW 26.19.090(2) and was based upon findings that were supported by the evidence.

Lieppman next argues that the commissioner allowed several continuances, which "severely prejudiced Appellant's case resulting in [the child] beginning college without any contribution in the past or future from Flanzer."

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[15] RCW 26.19.090(2) provides in relevant part:
> The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

Thus, she contends, the "entire financial burden fell on Appellant's shoulders and must be reimbursed by Flanzer." But the trial court's order expressly provided that the father will pay a portion of the daughter's postsecondary education support, both in the future and backdated to June 1, 2008. The trial court has discretion to make the modification effective upon the filing of the petition. In re Marriage of Pollard, 99 Wn. App. 48, 55, 991 P.2d 1201 (2000). Because Flanzer is responsible for his proportion of the child's postsecondary expenses as of the time of Lieppman's petition, Lieppman fails to demonstrate any prejudice, much less an abuse of discretion.

Lieppman next argues that the trial court erred by failing to award past child support for the couple's daughter. However, the trial court determined that Lieppman failed to meet her evidentiary burden because she did not provide documentation of the 11 years' worth of expenses she sought to recoup. Because she was unable to provide the evidence she needed to prove her claim, Lieppman has failed to show that the trial court exercised its discretion "in an untenable or manifestly unreasonable way." In re Marriage of Griffin, 114 Wn.2d at 779.

Lieppman's remaining contentions on appeal consist of nothing more than conclusory allegations of trial court error, unsupported by any meaningful legal argument or discussion of the specific evidence before the trial court. Inadequate argument generally precludes appellate review. See Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

In conclusion, Lieppman's arguments do not furnish a basis for appellate relief.

Flanzer's Cross Appeal

Flanzer first contends that he is entitled to reimbursement for day care under RCW 26.19.080(3).[16] He claims he paid for day care expenses as a portion of his monthly transfer payment, but Lieppman did not actually incur any day care expenses. He assigns error to the trial court's finding of fact 3.22, which states:

> The claim pursued by the Respondent for overpayment of daycare is denied based on the language from the previous child support order, which does not show daycare as an amount. The Respondent failed to prove over-payment.[17]

Flanzer fails to demonstrate any abuse of discretion or error of law in the trial court's decision. The trial court's finding that the 1993 order "does not show daycare as an amount" is substantially supported by the 1993 order. The 1993 order provided that the initial $450 transfer payment, which exceeded the standard calculation of $242.97 per month, "*includes*" day care expenses. However, the order did not specify an amount attributable *only* to day care expenses.[18] In addition, the transfer payment specified in the 1993 order applied only for one month, through April 1993. Thereafter, the transfer payment

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[16] RCW 26.19.080(3) provides in pertinent part:
If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses.

[17] Clerk's Papers at 324.

[18] See Clerk's Papers at 134-35 (emphasis added).

increased to $525.00, and no specific amount attributable only to day care expenses was specified. As the commissioner observed, the 1993 order also specifically provided a means for Flanzer to seek review and relief by resolving such disputes about specific day care expenses with the superior court. Flanzer apparently never sought to have his support transfer payment modified or clarified via this review procedure.

Flanzer's argument that the January 1997 order modified his obligation by removing the child care obligation is not persuasive. First, that order provided, "The issue of modifying or adjusting child support is reserved for trial." While it is true that the January 1997 order also said "the day care portion of the present child support obligation is suspended," it did not specify an amount attributable only to day care expenses. It also gave Lieppman the opportunity to provide "in camera, copies of day care evidence by January 8, 1997 to this court." The record does not reveal whether Lieppman made any such showing. After the trial in August 1997, the court declined to rule on the issue of day care accounting. Having failed to obtain a ruling in his favor on this issue in 1997, Flanzer fails to demonstrate that the January 1997 order established that any of his transfer payments to Lieppman amounted to "day care . . . expenses . . . not actually incurred" as referenced in RCW 26.19.080(3).

The trial court's finding that Flanzer failed to prove overpayment is supported by substantial evidence. Flanzer demonstrates no abuse of discretion or error of law by the trial court regarding day care expenses.

Flanzer also argues that the trial court erred by imposing $500 in sanctions after it found that he did not submit documents in the form the trial court ordered. The record on appeal does not demonstrate that this issue was raised on revision. Our review is limited to the issues before the revision court. Accordingly, the issue is not properly before this court and we decline to reach it.

Attorney Fees

Both parties argue that the trial court erred by refusing to award attorney fees. The trial court held as follows:

> I'm not going to award fees. I don't have a basis for awarding them in terms of intransigence, and from this record, I cannot make a determination regarding -- the mother has the need, there's no doubt about it, but I cannot make a determination as to what the father could afford to pay.[19]

An award of attorney fees is within the trial court's discretion. In re Marriage of Griffin, 114 Wn.2d at 776; In re Marriage of Crosetto, 82 Wn. App. 545, 560, 918 P.2d 954 (1996); In re Marriage of Knight, 75 Wn. App. 721, 729, 880 P.2d 71 (1994), review denied, 126 Wn.2d 1011 (1995). Intransigence is a basis for awarding fees. In re Marriage of Morrow, 53 Wn. App. 579, 590, 770 P.2d 197 (1989). Nothing in the record indicates the court abused that discretion when it denied attorney fees and costs to both parents.

Both parties also request attorney fees on appeal. Because we deny relief to both parties, find no intransigence by either party on appeal, and determine that neither party's appeal is frivolous, we decline to award attorney

[19] Report of Proceedings at 78.

fees and costs on appeal to either party.

Affirmed.

Becker, J.

WE CONCUR:

Dwyer, C.J.

Cox, J.