

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Parentage of:)	
)	DIVISION ONE
A.M.,)	
Child,)	No. 65555-8-1
)	
JOHN KARL FISCHER,)	
)	
Respondent,)	UNPUBLISHED OPINION
)	
and)	
)	
THERESA A. MCDONALD,)	
)	
Appellant.)	FILED: January 17, 2012
_____)	

Dwyer, C.J. – Theresa McDonald appeals orders providing for the care and support of her son A.M., claiming the trial court denied her a meaningful opportunity to be heard and entered orders contrary to the parties’ agreements. She also claims the trial court erred by refusing to impute income to A.M.’s father and failing to award her the federal income tax exemption for the child. Because McDonald fails to demonstrate error, we affirm. We also deny McDonald’s request for attorney fees on appeal.

Following a brief dating relationship with Dr. John Fischer, Theresa McDonald gave birth to their son, A.M., on February 13, 2008. Fischer is a dentist with a practice in La Conner. McDonald lives in Seattle and works for

Nintendo as a Manager of Financial Systems. Fischer filed a petition for a parenting plan and child support in December 2008. The trial court entered a temporary parenting plan providing for A.M. to reside with McDonald a majority of the time, appointing a parenting evaluator, and ordering Fischer to pay child support to McDonald. In November 2009, the parenting evaluator filed a report recommending designation of Fischer as primary residential parent, a gradual increase of residential time with Fischer until the child resides with him a majority of the time, designation of Fischer as sole decision making authority for non-emergency health care, and that McDonald participate in individual therapy to address her psychological issues.

Following negotiations, the parties agreed that (1) they would have nearly equal residential time; (2) Fischer would have sole decision making authority for non-emergency health care; and (3) McDonald would commit to mental health evaluation and treatment if covered by her insurance. The parties also agreed to have the trial court decide the remaining disputed issues on affidavits and argument. Prior to the hearing, McDonald filed a brief requesting that (1) neither parent be designated as “custodian” or primary parent or that the designation alternate between the two annually; (2) the court impute income to Fischer and order Fischer to pay child support to McDonald; and (3) the court resolve disputes on certain details of the residential schedule. In his brief, Fischer asked the court to designate him as the primary or custodial parent and to order no transfer payment of child support based on the shared residential schedule.

At a hearing on February 3, 2010, the trial court heard argument. On March 19, 2010, the trial court filed findings of fact and conclusion of law establishing parentage, a parenting plan, and a child support order. The trial court designated Fischer as the primary parent, ordered McDonald to pay child support to Fischer, and declined to impute income to Fischer. On May 17, 2010, the trial court entered judgment against McDonald for sanctions previously imposed, ordered McDonald to reimburse Fischer for half of the evaluator and mediation fees, and denied McDonald's motion for reconsideration.

McDonald appeals.

II

McDonald contends that she was denied due process and an opportunity to be heard when the trial court treated all matters as contested and resolved matters differently than previously agreed by the parties. She claims she did not expect the court to address such matters based solely on documentary evidence and that she should have been allowed to present live testimony to rebut Fischer's evidence. But McDonald does not specifically identify in her argument any particular issue which she believes the trial court resolved in a manner contrary to the prior agreement of the parties. We will not comb the record to determine what portions of the orders on appeal McDonald intended to challenge or construct arguments for her. See In re Estate of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998). It is undisputed that McDonald agreed to have the trial court enter final orders based on affidavits and argument rather than

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exercise her right to a trial. She fails to identify or establish any error resulting from the procedure she requested.

III

Next, McDonald claims that the trial court erred by refusing to impute income to Fischer and by awarding a federal income tax exemption to each parent in alternating years. We review a child support order for abuse of discretion. In re Marriage of Bell, 101 Wn. App. 366, 370-71, 4 P.3d 849 (2000).

If a parent is “gainfully employed on a full-time basis” the court may not impute income to that parent “unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent’s child support obligation.” RCW 26.19.071(6). McDonald claims Fischer is underemployed because he works only four days per week. But Fischer filed a declaration describing his employment as full time, in that he sees patients four days per week, and spends at least part of the fifth day in the office “running the business” or “doing paper work, conference calls, office repairs, yard maintenance, etc.” Clerk’s Papers at 491. Because the trial court was entitled to accept Fischer’s testimony to determine that Fischer is employed on a full-time basis and nothing in the record requires a finding that Fischer is voluntarily underemployed for the purpose of reducing his child support obligation, there was no lawful basis to impute income to him. RCW 26.19.071(6); In re Marriage of Peterson, 80 Wn. App. 148, 155, 906 P.2d 1009 (1995). McDonald fails to establish error.

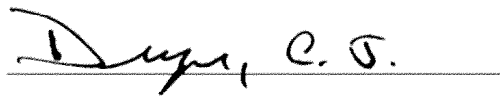
Under RCW 26.19.100, the trial court “may divide the exemptions between the parties, alternate the exemptions between the parties, or both.”

McDonald argues that the trial court should have awarded her the exemption because she would realize a significant benefit and because Fischer owns a business and a home while she does not. The record establishes that the trial court considered her request and her arguments and decided to alternate the exemptions between the parties. Because this decision is clearly within the trial court's wide discretion under RCW 26.19.100, McDonald fails to establish error.

IV

Finally, McDonald requests attorney fees on appeal under RCW 26.26.140 because she is struggling financially and recently filed for bankruptcy. The record reflects that McDonald is gainfully employed, earning over \$100,000 annually. We exercise our discretion and deny her request for an award of fees.

Affirmed.



We concur:

