IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of KENNETH GREEN, Appellant, and CHERYL GREEN, Respondent.	)	No. 66044-6-I DIVISION ONE UNPUBLISHED OPINION FILED: September 26, 2011

Becker, J. — Kenneth Green appeals the child support order entered by the trial court. Because he fails to establish that the trial court abused its discretion in imputing income to him or in calculating the amount of imputed income, we affirm.

FACTS

Kenneth and Cheryl Green separated in April 2009. A few months later,

Kenneth filed a petition to dissolve the parties' 15-year marriage. Kenneth, a certified public accountant (CPA) and auditor, was unemployed at the time. He had worked as a senior internal auditor at Safeco, but his position was eliminated in December 2008 when Safeco was acquired by another company. Cheryl worked full time as a revenue officer for the Internal Revenue Service.

For purposes of entry of a temporary order of child support for the parties' high-school-aged daughter, Cheryl argued that Kenneth's obligation should be calculated based on imputed income of $85,000, the amount he earned in 2008.[1] Cheryl asserted that between December 2008 and April 2009, Kenneth had "put no effort into trying to find a new position."

Kenneth, on the other hand, denied that he was voluntarily unemployed. He submitted a declaration and stated that because of his age and the current economic conditions, he had not found employment despite "sending resumes and letters to many prospective employers." He set forth his credentials and work history between 1998 and 2008. During that 10-year period, Kenneth worked for three different entities as a "senior internal auditor." He had also worked as a "senior treasury analyst" for a bank and as an adjunct instructor for a university for a brief period. According to Kenneth, his salary ranged from

[1] Although Cheryl alleged that Kenneth earned $85,000 the second year he was employed at Safeco, Kenneth maintained that his salary never exceeded $80,000.

$50,000 to $80,000. While he was hopeful he would soon find employment, due to the economic downturn, Kenneth doubted his ability to find a position at his prior salary level.

The commissioner denied the request to impute income and based Kenneth's obligation amount on his actual monthly net income of $2,200 from unemployment benefits. This resulted in a monthly transfer payment of $383 to Cheryl.

A two-day trial took place in June 2010. Kenneth was still unemployed and had received an extension of unemployment benefits. Among the issues to be resolved at trial was Cheryl's reasserted claim that Kenneth's continued unemployment was voluntary and the court should impute income to him for purposes of determining child support. Kenneth again opposed imputing income. He maintained that his unemployment was involuntary because he had not quit his job, but was laid off. He claimed that his job search had been "fruitless" on account of the economic climate, not because of lack of effort. Kenneth asked the court to take judicial notice that the unemployment rate in Washington was "approaching 10%."

At trial, Kenneth testified about his education and previous employment. He also submitted as an exhibit the job-search log he was required by the Washington State Employment Security Department to keep in order to receive

unemployment benefits. He said his job search had been "much more extensive" than documented in the exhibit, but he offered no additional details nor provided further documentation of his efforts.

Cheryl testified that during the marriage, Kenneth had been unemployed on several prior occasions. She said that his typical pattern was to work for a year or two, then his employer would let him go, and he would collect unemployment. She said he would come "close to exhausting" his unemployment benefits before resuming employment.

In written findings of fact and conclusions of law, the trial court stated:

> Father has advanced degrees and a history of progressively more responsible employment. His record of employment inquiries shows a total of only two in-person contacts over the last 18 months. He is voluntarily unemployed.

In the order of child support, the court imputed annual income of $65,000 to Kenneth and stated that the amount of imputed income was based on Kenneth's "admission of potential earning capacity, as stated in his Declaration dated November 4, 2009." Based on this income level, the court ordered Kenneth to make monthly transfer payments of $732.

ANALYSIS

When assessing the income and resources of each household for the purpose of calculating child support, the court must impute income to a parent when that parent is voluntarily unemployed. RCW 26.19.071(6); In re Marriage of Pollard, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000). "The court shall determine whether the parent is . . . voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors." RCW 26.19.071(6); Pollard, 99 Wn. App. at 52-53. "Voluntary unemployment" is "unemployment . . . brought about by one's own free choice and is intentional rather than accidental." In re Marriage of Blickenstaff, 71 Wn. App. 489, 493,

859 P.2d 646 (1993).

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); Pollard, 99 Wn. App. at 52. "This court will not substitute its own judgment for that of the trial court where the record shows that the trial court considered all relevant factors and the award is not unreasonable under the circumstances." In re Marriage of Fiorito, 112 Wn. App. 657, 664, 50 P.3d 298 (2002). A court abuses its discretion if its decision is "based on an incorrect standard or the facts do not meet the requirements of the correct standard." Fiorito, 112 Wn. App. at 664.

Kenneth challenges the court's basis for imputing income. While he has certifications as a CPA, an auditor, and a fraud examiner, he points out that he has no advanced college degrees beyond a bachelor's degree in business administration. He also contends that the evidence does not support the court's finding of "progressively more responsible employment" because apart from the fact that his salary increased between 1998 and 2008, there is no evidence in the record about the responsibilities of his respective positions. However, the court's findings about Kenneth's education and work experience are relevant only to its conclusion that Kenneth has credentials, experience, and is generally

employable. Kenneth does not actually dispute that he possesses education and job skills.

What Kenneth is actually challenging is the court's determination that his unemployment is voluntary. The only finding that is material to that conclusion is the court's finding that his record of employment inquiries shows "only two in-person contacts over the last 18 months." Kenneth asserts that the document actually shows six in-person contacts. But while it is true that Kenneth did check the "In Person" box for "Contact Type" for six of the approximately 250 entries listed on the log, two of those entries did not involve in-person contact with prospective employers. It appears that those entries designate trainings. Of the other four contacts listed as "in person," three were job interviews and one was an in-person resume submission.

Regardless of whether the correct number was two, four, or six in-person contacts, Kenneth maintains that the court could not rely on any specific number in the absence of evidence establishing what amount of in-person contact would be expected or reasonable under the circumstances. He also appears to contend that the only possible in-person contact is a formal job interview and since the granting of interviews is solely within the control of employers, it is unfair to hold him responsible for the lack of interviews.

We disagree with both contentions. There was no need for expert

testimony to establish that Kenneth's unemployment was voluntary or, specifically, that a serious effort to obtain employment would entail more personal contact with potential employers than was evidenced by Kenneth's job-search log. Interviews are certainly not the only possible avenue for such in-person contact with possible employers. The vast majority of the entries in the job-search log reported submissions of resumes and completion of on-line applications. Although Kenneth testified that his job search was more extensive, he offered no evidence to support this self-serving assertion. The court concluded that the evidence reflected only minimal efforts, and we cannot say the court abused its discretion in reaching this conclusion based on the evidence before it. Moreover, the court's conclusion that Kenneth's current unemployment is voluntarily was also supported by Cheryl's testimony about Kenneth's previous pattern and practice of exhausting his unemployment benefits before returning to the workforce.

Kenneth also contends that the court erred in relying only on his work history and failing to consider "other relevant factors," such as his age and the economy. However, Kenneth argued below that his age and economic conditions were causes of his unemployment. Thus, we assume the trial court did consider these circumstances in reaching its decision.

Finally, Kenneth challenges the amount of income imputed to him. He

contends there was no admissible evidence in the record upon which the court could have based its decision to impute income of $65,000. The court should determine the amount of imputed income based on the level of employment at which the parent is "capable and qualified." Schumacher v. Watson, 100 Wn. App. 208, 215, 997 P.2d 399 (2000). Kenneth contends that because his November 2009 declaration documenting his work history and previous salaries was submitted at pretrial, and not admitted as an exhibit at trial, the trial court was not entitled to rely on it in determining his potential salary.

But the premise of Kenneth's argument, that no evidence regarding his earning capacity was admitted at trial, is incorrect. In Kenneth's financial declaration, admitted as an exhibit at trial, he reported that the gross monthly income he earned when he was last employed was $6,667, equivalent to a salary of $80,000. In Cheryl's financial declaration, also admitted at trial, in addition to listing her own monthly gross and net income, she provided those amounts for Kenneth. Cheryl's figures amounted to an annual salary of $65,000 for Kenneth. When asked about her financial declaration at trial, Cheryl agreed that she had used imputed, rather than actual, income for Kenneth. When questioned about the basis for using $65,000, she testified that it was derived from Kenneth's salary levels from his last five years of employment.

Therefore, even assuming the court should not have relied on Kenneth's

declaration in the court file, the evidence admitted at trial established that he was capable of earning between $65,000 and $80,000 per year. "If a trial court's finding is within the range of the credible evidence, we defer." In re Marriage of Rockwell, 141 Wn. App. 235, 248, 170 P.3d 572 (2007), review denied, 163 Wn.2d 1055 (2008). The imputed income of $65,000 per year is within the range of the evidence. There was no error.

Both parties request attorney fees on appeal. We decline to award fees to either party.

Affirmed.

Becker, J.

WE CONCUR:

Spearman, J.

Cox, J.