

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ANIL PRASAD,)	No. 66158-2-I
)	
Appellant,)	
v.)	UNPUBLISHED OPINION
)	
JULLIET PRASAD,)	
)	
Respondent.)	FILED: August 22, 2011

Schindler, J. — Anil Prasad appeals denial of his motion to terminate a temporary maintenance order and modify a temporary child support order, and denial of his motion for reconsideration of an award of attorney fees. We affirm.

A petition for dissolution of the marriage between Anil and Julliet Prasad was filed on October 3, 2007.¹ During the marriage, Anil and Julliet acquired two residential properties in Mukilteo and one in Shoreline. Anil operated his mortgage brokerage business at the house located in Shoreline. Anil and Julliet also owned a restaurant that Anil managed. After the parties separated, Julliet and the children remained in the family home in Mukilteo located at 49th Avenue West. Anil lived in the other house in Mukilteo located on LaMarr Drive. Julliet paid the mortgage of \$832 per month on the family home.

¹ We refer to the parties by their first names for clarity. No disrespect is intended.

The record indicates that sometime in May 2008, the court entered a temporary order requiring Anil to pay \$2,500 per month in maintenance and child support. In February 2010, Julliet received a foreclosure notice. Julliet learned for the first time that Anil had obtained a second mortgage on the family home in Mukilteo and had not made payments since September 2009. Julliet tried to modify or reinstate the loan but the bank would not do so because the second mortgage was obtained by Anil. Nonetheless, the bank agreed to accept payment of \$800 to extend the date of the trustee sale to August 2010.

In March 2010, Julliet filed a motion for an order of contempt against Anil for failing to pay the mortgage on the family home and on the Shoreline home as required by previous court order. The trustee sale on the family home and the Shoreline home was scheduled for August 13.

At the August 5 hearing on the motion for contempt, Julliet asked the commissioner to order Anil to pay approximately \$5,000 to reinstate the loan and avoid foreclosure on the family home, or order Anil to work with the bank to modify the loan. Because it was unlikely either party could pay the \$28,000 necessary to reinstate the loan and avoid foreclosure on the house in Shoreline, Julliet asked the court to give her the exclusive authority to negotiate with the bank to delay the trustee sale to allow her to sell the Shoreline home.

In a financial declaration filed with the court, Anil states that he received \$1,900 in income but had \$3,000 in expenses. In Anil's 2009 tax return, he claimed a loss of \$300,000 for the restaurant. However, a financial statement from Anil's accountant

showed that he received \$6,500 per month in income from the restaurant.

Anil told the commissioner that he did not have the money to pay the amount owed on either of the properties. But Anil conceded that the financial statement prepared by the accountant was correct, and admitted that he received \$3,500 per month in rental income from the other house he owned in Mukilteo that he did not disclose in his financial declaration. Anil said that the first mortgage on that house was current but that he had obtained a second mortgage on all three homes and used the proceeds. Anil admitted that he was not paying the monthly amount due on any of the mortgages.

The commissioner found that Anil was not credible and that he was in contempt of the previously entered order requiring him to make mortgage payments on the family home and the house in Shoreline. The commissioner then addressed the remedy with Anil:

[Commissioner]: Is there any of the community property that you're managing properly sir?

[Anil]: Your Honor, I've been working on modifications –

[Commissioner]: You have two choices here. One I put you in jail until you pay off the second mortgage on the family home –

[Anil]: – um-hum.

[Commissioner]: – that you haven't paid. You're paying everything else. Or I simply say she's gonna manage everything – you're to sign all the property over to her totally so she can talk to the – all the mortgage companies that you have. Because you're not doing a very good job.

[Anil]: I do not have the funds to pay the five thousand. I did agree to pay nine hundred eighty-four dollars to the Key Bank on second mortgage Your Honor.

[Commissioner]: Where did you get that money from if you're behind in your own mortgage – if out of the sixty-five hundred dollars you're taking out of your business?

[Anil]: Nine hundred eight-four dollars is due on

August 30th. And which I will come up with Your Honor.

[Commissioner]: I – I don't know – I just don't believe you! I mean you're taking sixty-five hundred out of the company. You're paying twenty-five hundred – you've got money left over there. You're not paying part of your expenses you report on your own financial declaration.

[Anil]: I – Your Honor – as for the taxes – you know – I do not take that amount of money from there. That letter was drawn up from my request so we tried to modify the home in Shoreline. That's –

[Commissioner]: But that's not what your accountant says sir! You've got two hundred and four dollars in personal expenses but you can't come up with a hundred and seventy dollars for the second mortgage on the house that you're supposed to be paying!

[Anil]: And there are some personals that I did not put in there and I should have Your Honor.

[Commissioner]: You're out of the restaurant and you're out of all these properties. She's managing everything. You're to sign a doc – an order today that says that and she's allowed to negotiate with all the banks on all of these things. You're not the – you're not to go into the restaurant period at all! She will manage it totally. You're mismanaging all of these properties!

The order states that Anil “willfully failed to pay community debts, failed to act in good faith and failed his fiduciary obligations to the wife.” The order requires Anil to immediately relinquish control of the restaurant and the three properties to Julliet, and gave Julliet the authority to negotiate with the banks and sell the Shoreline property. The commissioner also ordered Anil to provide a detailed accounting of the rental income he received, and the funds he obtained from the second mortgage and line of credit. The commissioner granted Julliet's request for \$3,500 in attorney fees for bringing the motion for contempt and entered judgment.

On August 16, Anil filed a motion for reconsideration of the attorney fee award. At the same time, Anil filed a motion to terminate maintenance and modify child support. On October 4, the commissioner denied the motion for reconsideration without oral argument. The order states that the “court finds that the motion fails based

on all the pleadings in this matter.”

Anil filed a second motion to terminate maintenance and modify child support. On October 18, the commissioner denied the motion. Following the dissolution trial in March 2011, the court entered a final decree and order for child support.

On appeal, Anil contends that the commissioner erred in denying his motion for reconsideration of the attorney fee award because the August 5 temporary order gives Julliet control of the restaurant and the three properties.²

The trial court's decision to deny a motion for reconsideration is reviewed for abuse of discretion. Aluminum Co. of Am. v. Aetna Cas. & Sur. Co., 140 Wn.2d 517, 537, 998 P.2d 856 (2000). We will disturb a trial court's decision to deny a motion for reconsideration only for a clear abuse of that discretion or when it is predicated on an erroneous interpretation of the law. State v. Cho, 108 Wn. App. 315, 320, 30 P.3d 496 (2001). An award of attorney fees is within the discretion of the trial court and will not be reversed on appeal unless it is untenable or manifestly unreasonable. Dakin v. Dakin, 62 Wn.2d 687, 693, 384 P.2d 639 (1963). It is well established that the court may award attorney fees against a party that acts in bad faith. Eide v. Eide, 1 Wn. App. 440, 445, 462 P.2d 562 (1969).

The decision to deny the motion for reconsideration of the attorney fee award was not an abuse of discretion. Julliet was forced to bring a motion for contempt for failure to pay the mortgages as required by a previous order in order to prevent foreclosure on the family home and the Shoreline property. The finding that Anil acted in bad faith and breached his fiduciary duty to Julliet by failing to pay the mortgage is

² On appeal, Julliet did not file a response.

supported by the record.³

Anil also asserts that the decision to deny the motion to terminate spousal maintenance and modify child support was an abuse of discretion. Anil did not designate the temporary order for maintenance and child support as part of the record on appeal. Nor has Anil designated any of the financial information presented below. Because Anil did not meet his burden of perfecting the record, we cannot review his challenge to the temporary order for maintenance and child support. RAP 9.1; In re Marriage of Haugh, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990) (the appellant has the burden of perfecting the record so that the court has before it all the evidence relevant to the issue raised on appeal).

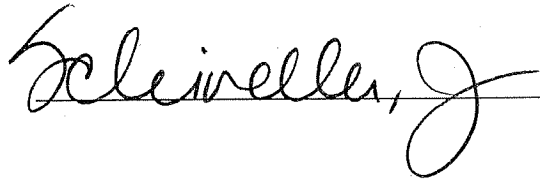
Next, Anil contends the commissioner was biased, violated the appearance of fairness doctrine, and his right to a fair trial. Because Anil did not raise an appearance of fairness challenge below, we decline to consider his argument for the first time on appeal. RAP 2.5(a) (an “appellate court may refuse to review any claim of error which was not raised in the trial court”); State v. Bolton, 23 Wn. App. 708, 714, 598 P.2d 734 (1979) (refusing to consider appearance of fairness issue raised for first time on appeal); In re Marriage of Wallace, 111 Wn. App. 697, 705, 45 P.3d 1127 (2002) (appellant waived an appearance of fairness claim by not raising the issue below).

Last, Anil argues that his constitutional right to due process was violated because the court denied him the opportunity to present oral argument on his motion for reconsideration. Due process requires “that a party receive proper notice of

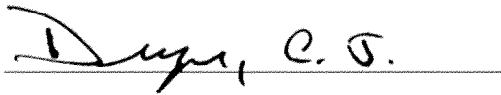
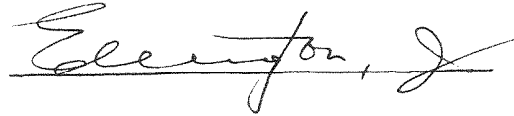
³ We also note that Anil did not designate the order awarding attorney fees or Julliet’s motion for contempt as part of the record on appeal, and that Anil’s motion for reconsideration was filed more than ten days after the order was entered. CR 59(b).

proceedings and an opportunity to present [his] position before a competent tribunal.” Parker v. United Airlines, Inc., 32 Wn. App. 722, 728, 649 P.2d 181 (1982). However, oral argument is not a due process right and under the Snohomish County Local Civil Rules (SCLCR), motions for reconsideration “will be taken under advisement” and “[o]ral arguments will be scheduled only if the court requests the same.” Parker, 32 Wn. App. at 728; SCLCR 59(e)(3)(B).

We affirm.

Handwritten signature of Schivella, J. in cursive script, written over a horizontal line.

WE CONCUR:

Handwritten signature of Dupre, C. S. in cursive script, written over a horizontal line.Handwritten signature of Eberly, J. in cursive script, written over a horizontal line.