

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of)	No. 66573-1-1
)	
UYEN LE, a.k.a. MONIQUE LE,)	DIVISION ONE
)	
Appellant,)	
)	
and)	
)	
TONY MAI,)	UNPUBLISHED
)	
Respondent.)	FILED: <u>November 13, 2012</u>
)	
)	

COX, J. — Uyen Le appeals her award of attorney fees following the trial court’s denial of Tony Mai’s petition to modify the child support order providing for the support of their daughter. Le also claims that the trial court should have disqualified Mai’s attorney based on a conflict of interest. Because Le fails to demonstrate any abuse of discretion in the orders before this court on review, we affirm. We also deny Le’s request for attorney fees on appeal and her motion to supplement the record.

Uyen Le and Tony Mai married in September 2007 and separated in March 2008. In June 2009, the superior court entered orders dissolving their marriage and providing for the care and support of their daughter. The child support order included a transfer payment from Mai to Le of \$1,500 per month, an agreed deviation from the standard calculation of \$717.81 per month.

In April 2010, Mai filed a petition for modification of child support, claiming

that he could no longer work as a real estate developer given the downturn in the economy and the weak real estate market. He claimed he had lived on savings and credit cards and lost his home in a short sale while making a transition to insurance sales.

Le, appearing pro se, opposed the motion, alleging that Mai was concealing his income and assets. Le claimed that the petition was frivolous and that Mai brought it in bad faith. She also requested an award of attorney fees of over \$18,000. This amount appears to have been based on the fees she had paid to at least three attorneys for assistance in responding to the petition and investigating Mai's financial circumstances.

After a contentious litigation, including voluminous filings and Le's motions to disqualify Mai's attorney and to compel discovery, a superior court commissioner held a trial by affidavit. In denying the petition for modification, the commissioner stated:

I simply can't tell what his income is. He's self-employed. He submitted one profit and loss statement. It's not sworn to by anybody. I don't doubt that along with everyone else in this economy Mr. Mai has suffered some financial setbacks. What I can't tell, because I don't think I have a full financial picture from him, is, are those setbacks so significant as to warrant reducing his child support from the level that it was set at in 2009.^[1]

The commissioner found that Mai failed to meet his burden to demonstrate a substantial change in circumstances and awarded Le \$1,000.00 in attorney fees "because he failed to meet his burden." The commissioner also said to Le, "I have a very hard time looking at all this information knowing what

¹ Report of Proceedings (Nov. 12, 2010) at 2.

his income is compared to what your income is.” Both Mai and Le petitioned for revision. A superior court judge denied both motions. The judge noted:

[I]t’s unclear what exactly is going on with [Mai’s] income. Every single month, however, that we look at, there’s at least two, three, four, \$6,000 coming in and going out. To where, unknown. And that’s the picture the Commissioner was referring to as unclear.^[2]

The judge denied Mai’s motion for revision based on his failure to establish a substantial change in circumstances. As to Le’s motion for revision of the attorney fee award, the judge stated:

She’s filed multiple motions in this case. Even after motions were denied, she filed additional motions. She’s actually increased the husband’s attorney’s fees. She is responsible for her own attorney’s fees.^[3]

Le appeals.

ATTORNEY FEES

Le challenges the attorney fee award, arguing that the trial court abused its discretion by failing to enter sufficient findings to demonstrate its method of calculation, to order adequate fees, and to award fees under CR 11 or RCW 26.09.260(13)⁴ based on Mai’s alleged bad faith. We disagree.

Under RCW 26.09.140, the trial court has authority to order a party to pay “reasonable attorneys’ fees” incurred in child support modification proceedings “after considering the financial resources of both parties.” We review a trial court’s decision on attorney fees under RCW 26.09.140 for abuse of discretion.⁵

² Report of Proceedings (Dec. 22, 2010) at 18.

³ *Id.* at 19.

⁴ RCW 26.09.260(13) provides: “If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney’s fees and court costs of the nonmoving parent against the moving party.”

⁵ *In re Marriage of Steadman*, 63 Wn. App. 523, 529, 821 P.2d 59 (1991).

Similarly, we review a trial court's decision on the question of bad faith for abuse of discretion.⁶ In the absence of an express finding of bad faith by the trial court, this court will not assume such a finding, even where the record would support such a finding.⁷

The record reveals that the trial court considered all the material submitted by the parties, including Le's extensive briefing regarding matters not directly related to Mai's income.⁸ As the court noted, Mai did not sufficiently document his claimed income. Le's papers did not make Mai's income any clearer to the trial court. Despite Le's repeated request for a finding of bad faith on Mai's part, the trial court did not make such a finding. The trial court also indicated that Le's own actions unnecessarily increased the attorney fees incurred in the case. Le fails to identify any relevant authority to support her claim that the trial court abused its discretion under these circumstances by failing to award the entire amount of attorney fees she requested. Likewise, there is no authority to support a claim that \$1,000 is not reasonable here.

MOTION TO DISQUALIFY ATTORNEY

Le also argues that this court should review de novo the superior court commissioner's order denying her motion to disqualify Mai's attorney. She also argues that this court should impose CR 11 sanctions on Mai's attorney for

⁶ In re Pearsall-Stipek, 136 Wn.2d 255, 266-67, 961 P.2d 343 (1998) (in the absence of any findings of bad faith, trial court abused its discretion in awarding attorney fees under authority requiring finding of bad faith).

⁷ State v. S.H., 102 Wn. App. 468, 479, 8 P.3d 1058 (2000).

⁸ Le designated over 700 pages as clerk's papers, the majority of which are her own filings, and some of which refer to Mai's alleged criminal and domestic violence history, among other irrelevant matters.

representing him despite the fact that an attorney in the same firm had represented Le in a previous divorce. We disagree.

Our review is limited to orders properly before this court based on a designation in a timely notice of appeal.⁹

The commissioner denied Le's motion to disqualify Mai's attorney on September 24, 2010. It does not appear that Le filed a timely petition for revision in the trial court or a timely notice of appeal in this court. Le did not designate the order in her notice of appeal filed January 24, 2011. She fails to identify any authority requiring review of the undesignated order.¹⁰ Under these circumstances, we decline to address any of Le's arguments regarding the alleged conflict of interest as a basis for an additional award of attorney fees.

ATTORNEY FEES ON APPEAL

Le requests attorney fees on appeal, arguing that Mai filed his petition in bad faith. Le has appeared pro se in this appeal. Attorney fees are not available on appeal to a nonlawyer, pro se litigant.¹¹

We affirm the orders properly before us in this appeal.

Cox, J.

WE CONCUR:

⁹ RAP 5.2(a); RAP 5.3(a)(3).

¹⁰ See RAP 2.4(b) ("A timely notice of appeal of a trial court decision relating to attorney fees and costs does not bring up for review a decision previously entered in the action that is otherwise appealable under rule 2.2(a) unless a timely notice of appeal has been filed to seek review of the previous decision.").

¹¹ In re Marriage of Brown, 159 Wn. App. 931, 938, 247 P.3d 466 (2011).

Jan, J.

Grosse, J