IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of CAROLYN CHRISTINE KENDALL, Respondent/Cross-Appellant, and JEFFREY ELDON KENDALL, Appellant/Cross-Respondent.	)	No. 66835-8-I DIVISION ONE UNPUBLISHED OPINION FILED: March 5, 2012

Grosse, J. — Within statutory parameters, the trial court has broad discretion to modify child support. The evidence here supported the trial court's calculation of Jeffrey Kendall's income, and the court properly exercised its discretion in implementing the parties' agreement about payment for the children's extracurricular activities. Accordingly, we affirm the order modifying child support.

FACTS

Carolyn Kendall and Jeffrey Kendall were married in 2000 and dissolved their marriage in 2006.[1] They have two minor children. The parties entered into an agreed parenting plan in 2006. The plan included a provision that "capped" Jeffrey's "total responsibility for extracurricular activities . . . at $300.00 per month."

In July 2009, Carolyn petitioned for modification of the parenting plan, alleging that the current arrangements were causing emotional distress to the children. Jeffrey filed a counter petition for modification alleging similar grounds. Both parties asked the court to modify child support if it modified the parenting plan. The parties eventually agreed to a modified parenting plan in October 27, 2010. That plan also included the provision governing payments for extracurricular activities.

[1] For purposes of clarity, we refer to the parties by their first names.

On January 14, 2011, following a trial based on affidavits, the commissioner rejected Carolyn's claim that Jeffrey was earning $25,000 per month and found that his current monthly gross income was $7,500 for purposes of child support. Consistent with the parenting plan, the court included an obligation of $300 per month for extracurricular activities as part of the child support worksheet. Carolyn was to provide a quarterly and yearly accounting of the amounts actually spent. The court also awarded Carolyn $2,500 in attorney fees for Jeffrey's intransigence and failure to provide financial information in a timely manner.

Carolyn moved for revision, challenging, among other things, the commissioner's calculation of Jeffrey's income, the amount of the attorney fee award, and the accounting provisions for extracurricular activities. On revision, the superior court struck the accounting provisions, but otherwise left the commissioner's support order in place. The court declined to award Carolyn any further attorney fees.

Jeffrey now appeals.[2]

ANALYSIS

Standard of Review

On revision, the superior court reviews a commissioner's ruling de novo based on the evidence and issues presented to the commissioner.[3] The superior court's denial of revision constitutes an adoption of the commissioner's decision.[4] We review an order modifying child support for an abuse of discretion.[5]

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[2] Carolyn also filed a notice of appeal, but has withdrawn her appeal.
[3] See RCW 26.12.215; RCW 2.24.050; In re Marriage of Moody, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999).
[4] In re Dependency of B.S.S., 56 Wn. App. 169, 171, 782 P.2d 1100 (1989).
[5] In re Marriage of Schumacher, 100 Wn. App. 208, 211, 997 P.2d 399 (2000).

Jeffrey first contends that the trial court erred in making the new child support payment retroactive to August 1, 2009, the first full month after Carolyn filed her modification petition. He argues that the court had no authority to order child support based on the new child support table before the statute's effective date of October 1, 2009. The 2009 amendment to RCW 26.19.020 did not change the existing amounts, but extended the presumptive amounts of the economic table from a combined net monthly income of $7,000 to $12,000.[6]

When asked whether he wanted "to say something about the [proposed child support] start date," Jeffrey's counsel responded, "Yeah, I object." But a general objection that does not specify the particular ground on which it is based is insufficient to preserve the issue for appellate review.[7] Jeffrey does not identify anything in the record indicating that he raised a specific legal challenge to the start date or asked the commissioner to rule on such a challenge. Jeffrey did not seek revision of the commissioner's decision, and he does not allege that he raised the issue in the superior court. Under the circumstances, Jeffrey has failed to preserve the issue for appellate review.[8]

We note that in any event, the trial court has discretion to make a support modification "effective upon the filing of the petition, upon the date of the order of modification, or any time in between."[9] Jeffrey has not established any abuse of discretion.

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[6] Laws of 2009, ch. 84, § 1, eff. Oct. 1, 2009.
[7] Presnell v. Safeway Stores, Inc., 60 Wn.2d 671, 675, 374 P.2d 939 (1962).
[8] See RAP 2.5(a); In re Marriage of Burch, 81 Wn. App. 756, 761, 916 P.2d 443 (1996) (refusing to consider challenge to health care credit in child support calculations for the first time on appeal).
[9] In re Marriage of Pollard, 99 Wn. App. 48, 55, 991 P.2d 1201 (2000).

Jeffrey next contends that the evidence failed to support the trial court's finding that his gross monthly income was $7,500. He argues that the court erroneously relied on the "large sums of money [that] were passing through his checking account" as evidence of income. As he did in the trial court, Jeffrey maintains that he established that "he was living primarily off assets he had accumulated." Based on the evidence before her, however, the commissioner found Jeffrey's claims were not credible. The superior court agreed.

When determining child support obligations, the trial court considers "[a]ll income and resources" of each parent.[10] Monthly gross income includes "income from any source," except those sources of income expressly excluded in RCW 26.19.071(4).[11]

At oral argument on January 14, 2011, the commissioner expressed considerable frustration with Jeffrey's failure to provide complete and understandable financial information, in particular, details about his 82 percent interest in a family-owned real estate company, Steel Icon, LLC. On August 30, 2010, Jeffrey submitted a financial declaration stating that his net monthly income in August 2010 was $3,559, with total household expenses of about $6,000. He claimed that he had spent about $85,000 to date on "attorney fees and costs." In a financial declaration prepared on October 1, 2010, Jeffrey claimed a monthly net income of $2,044 and payment to date of $1,051,475 in attorney fees and costs.

Carolyn maintained that Jeffrey's monthly income was at least $25,000, based on the monthly average of $25,000 that he transferred into his personal bank account

[10] RCW 26.19.071(1).
[11] RCW 26.19.071(3).

from other bank accounts. She complained that Jeffrey had failed to respond adequately to interrogatories about his income and assets despite two orders compelling production. She further claimed that he had failed to disclose the sale of one of the buildings that Steel Icon sold during 2010 and account for its proceeds.

The commissioner rejected Carolyn's argument that all of the money transferred into Jeffrey's bank account constituted income. The court acknowledged the possibility of "some fluidity" in the movement of assets, but then continued:

> There is a huge problem, however, with the information provided by the father. It's true, there were two motions to compel discovery in this case. And while I can appreciate that he was at times pro se and had several different attorneys, it's still his responsibility to comply with discovery in a timely manner.
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> The sale of the business is very disturbing to this Court. You can talk about the letter of what a question says . . . . What this Court cares about at the trial is . . . have you been forthcoming with regard to all of the transactions that are relevant for the Court to determine child support. And a sale of a building is relevant, and was not disclosed by the father but was fettered out by the mother.
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> . . . I don't know what happened with regard to the sale, and I should. I shouldn't be in the position of not knowing that. That was the father's responsibility.
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> In addition, his financial declaration is not credible. He indicates what his net income is, and then he has expenses that are over $5,000, and there is no indication that he is going into debt on a monthly basis in excess of what he indicates his income is. That would have been the shining light that says: what I'm telling you is absolutely true, because look how my debt is growing every single month. And it isn't. And, in fact, he -- his mortgage is more than what he is indicating he can pay with regard -- or what he is receiving with regard to income. So it simply isn't credible.
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> The other thing that I'm going to point out is in 2006 when these parties were indicating -- or when I think the original child support order was entered, the Social Security earnings for the father were $27,955. And he signed a support order that indicated his gross income was $7500 per month.
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> So there is some question as to what his actual income is and how it's being reported and how it's being used. . . .

> So we're stuck with what figure do we actually use. In 2006 when the $7500 was used, the net income was very close to what the father currently says his monthly expenses are. And that makes sense to this Court, that he is making money to cover his monthly expenses. . . . But I do believe that there is income flowing in and out that he is using on a regular basis for purposes of his expenses in the amount of $7500 gross, and that will be his gross income for purposes of determining child support.

On revision, the superior court agreed with the commissioner's resolution.

On appeal, Jeffrey repeatedly asserts that he presented "detailed information" to the trial court, establishing that his monthly income was at most $3,500 and that the monthly transfers of $25,000 to his personal bank account constituted the depletion of "assets he had accumulated." But Jeffrey has not provided this court with any information, detailed or otherwise, explaining the nature of these transactions.

Jeffrey repeatedly cites to the same 55 pages of clerk's papers as evidence of the depletion of his assets. But he does not identify or discuss any specific documents that support his claim.[12] Jeffrey's reliance on two "exhibits" appended to his opening brief "for the Court's convenience in reviewing Appellant's financial records" is equally misplaced. Neither exhibit was part of the record before the trial court. Nor does Jeffrey identify the source of the financial data in the exhibits or explain how they support his conclusory allegations.[13] This court has no obligation to scour a lengthy record to locate the portions relevant to a litigant's argument.[14] We decline Jeffrey's invitation to do so here.

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[12] And in any event, the referenced clerk's papers contain Carolyn's financial records, not Jeffrey's. See also Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992) ("Such shotgun references to the record are of little assistance and ill serve a party.")

[13] These appear to be the same exhibits that Jeffrey presented to the commissioner at oral argument on January 14, 2011.

[14] See Cowiche Canyon Conservancy, 118 Wn.2d at 819.

Contrary to Jeffrey's assertion, the trial court did not impute income without making the necessary finding of voluntary underemployment.[15] Rather, the court found that Jeffrey had more income than he claimed. In making its decision, the trial court considered undisputed evidence of a regular transfer of $25,000 into Jeffrey's personal bank account. Jeffrey also declared monthly expenses far exceeding his claimed monthly income. In a previous child support proceeding, Jeffrey had stipulated to a monthly income of $7,500, despite tax returns showing a much lower income, and he made no showing of any significant change in his financial circumstances. The foregoing circumstances, coupled with Jeffrey's failure to provide any meaningful evidence or explanation of his current business income and transactions or provide any support for the alleged depletion of assets, were sufficient to support the trial court's finding of a gross monthly income of $7,500.

Jeffrey also appears to argue that the trial court lacked authority to modify child support based on its finding that "there has been a change in the income of the parents." He reasons that the evidence failed to support this finding because the court determined that he had the same income as in 2006. But Jeffrey concedes that Carolyn's income had increased 20 percent since 2006, a fact that supports a modification under RCW 26.09.170(7)(a)(i). And in any event, the change in the economic table also supported the modification.[16] This court may affirm the trial court's ruling on any basis supported by the record.[17]

Finally, Jeffrey contends that the trial court erred in requiring him to pay for

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[15] See RCW 26.19.071(6).
[16] RCW 26.09.170(7)(a)(ii).
[17] In re Marriage of Rideout, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003).

extracurricular activities without a showing that Carolyn has expended the funds. Under the terms of the parties' parenting plan, Jeffrey agreed to pay a pro rata share of the children's extracurricular activities up to a cap of $300. The commissioner included a $300 obligation in the support worksheet, resulting in Jeffrey's 45 percent pro rata share. The commissioner also included a yearly accounting procedure, which the superior court struck on revision.

Under RCW 26.19.080(4), the trial court "may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation." Jeffrey does not challenge the trial court's determination, based on the children's past activities, that Carolyn had incurred and would likely continue to incur an average of at least $300 per month in expenses for extracurricular activities. Nor does he address the court's concerns about the friction between the parties that the mandatory accounting procedure could generate. Moreover, RCW 26.19.080(3) provides a procedure for Jeffrey to seek reimbursement if he believes that he has paid for expenses "that are not actually incurred." Under the circumstances, Jeffrey has not demonstrated that the trial court abused its discretion in implementing the parties' agreement to share extracurricular expenses.

Motion to Strike and Request for Attorney Fees

Carolyn has moved to strike Jeffrey's reply brief for violation of RAP 10.3(a)(5), which requires "[r]eference to the record . . . for each factual statement."[18] The reply brief contains numerous factual allegations about Jeffrey's personal and financial history, details of his current business and tax strategies, and assertions about

[18] See also RAP 10.3(a)(6) (argument in brief must contain references "to relevant parts of the record").

Carolyn's financial circumstances. Jeffrey provides no citation to the record for any of these allegations and does not dispute that these portions of the reply brief violate the Rules of Appellate Procedure. Accordingly, we grant the motion to strike the reply brief in part, and this court will consider only those factual assertions and legal arguments that comply with the Rules of Appellate Procedure.[19] Carolyn's request for the imposition of terms is denied.

Carolyn has also requested an award of attorney fees on appeal based on intransigence and the parties' relative financial circumstances. Based on our review of the record, the request is denied.

Carolyn's motion to strike is granted in part; her request for attorney fees is denied. The trial court's decision is affirmed.

Grosse, J.

WE CONCUR:

Leach, A.C.J.

Dwyer, C.J.

[19] See Nelson v. McGoldrick, 127 Wn.2d 124, 141, 896 P.2d 1258 (1995).