IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of DON GLOVER, Respondent, and DEBBIE LEE GLOVER, Appellant.	)	No. 66946-0-I DIVISION ONE UNPUBLISHED OPINION FILED: April 23, 2012

Appelwick, J. — Debbie Glover appeals the trial court's orders dissolving her marriage to Don Glover and providing for the support of their children. Because Debbie fails to demonstrate any error or abuse of discretion in the orders before this court on review, we affirm. We also deny Don's request for attorney fees on appeal.

FACTS

Don and Debbie married in August 1999. In 2007, the couple adopted three teenage girls from Africa. Don and Debbie separated in July 2008 and Don filed a petition for dissolution in September 2008. Court commissioners

entered temporary orders requiring Don to pay maintenance to Debbie between October 2008 and August 2009.[1] A court commissioner entered a temporary child support order on January 8, 2010, requiring Debbie to pay $912 per month in child support beginning December 15, 2009. The Washington child support schedule worksheet attached to the order indicates that the court imputed income to Debbie because "mother is voluntarily unemployed [and] found to have failed to engage an adequate search for employment."

The trial court heard evidence and argument at trial in October 2010 and made an oral ruling on November 19, 2010. The court divided the couple's property, provided for the care of the children, refused to award maintenance, reduced the temporary orders to judgment, and ordered Debbie to pay child support. On January 24, 2011, the trial court entered findings of fact and conclusions of law, a decree of dissolution, a parenting plan, and an order of child support. The trial court denied Debbie's motion for reconsideration.

Debbie appeals.

ANALYSIS

Debbie first contends that the trial court erred by ruling that a determination regarding a division of personal property could not be made. She points to the court's oral ruling that "the testimony was so widely divergent about what was brought into the marriage, what has happened to it, . . . in whose possession it is . . . that, quite frankly, I have to admit that I can't decide that."

[1] The parties did not designate the temporary orders for transmission as clerk's papers to this court by the trial court.

But, the trial court went on to state, "The ultimate result of that is, I'm going to order that each party retain the property currently in their possession, because I think that it would be an exercise in futility for me to do anything else." In the decree, the trial court awarded each party the personal property in his or her possession but ordered each to return any items to the other that he or she knew belonged to the other.

In a dissolution action, all property, community and separate, is before the court for distribution. In re Marriage of Stachofsky, 90 Wn. App. 135, 142, 951 P.2d 346 (1998). The trial court's characterization of property as community or separate is a question of law that we review de novo. In re Marriage of Mueller, 140 Wn. App. 498, 503-04, 167 P.3d 568 (2007). We review an order distributing property for an abuse of discretion and will only reverse a trial court's decision if there is a manifest abuse of discretion. In re Marriage of Kraft, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). The relevant factors in determining a just and equitable distribution of property are provided by statute. They include (1) the nature and extent of community property, (2) the nature and extent of separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the division of the property is to become effective. RCW 26.09.080. The trial court is in the best position to determine what is "fair, just and equitable" under the circumstances. In re Marriage of Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). We do not weigh conflicting evidence or the credibility of witnesses or substitute our judgment for that of the trial court. In re Marriage of Rich, 80 Wn. App. 252, 259,

907 P.2d 1234 (1996).

Contrary to Debbie's claim, the trial court made a division of the personal property, awarding each party the items in his or her possession. The trial court did not make specific findings as to particular items, stating,

> [I]f I were to take a very dim view of [Mr. Glover] as a person, I could guess that, yeah, he's got everything, and it's hidden somewhere; or, in a fit of pique, he just destroyed everything, because it belonged to her; and pretty much the same for Ms. Glover. But my decisions cannot be based on guesses.

Debbie refers to the testimony presented at trial to support her claims to specific items of personal property and their locations and complains that the trial court's order is "too vague and unenforceable." But, as the trial court stated, Don presented contradictory evidence. Don testified that after leaving the family home on July 24, 2008, he returned to discover many of his possessions missing, including furniture, clothing, tools, and his Depression glass collection. He also found rental documents on the kitchen counter for a U-Haul truck and storage units. It appears that the trial court did not find either party to be significantly more credible than the other. Under these circumstances, Debbie fails to demonstrate a manifest abuse of discretion in the trial court's division of personal property. Regarding enforcement, to the extent Debbie believes Don has failed to follow the court's order to return specific items of property that he knows belong to her, her remedy is to bring a motion before the trial court.

Debbie next contends that the trial court erred by refusing to order Don to pay maintenance. We review the trial court's decision on an award of maintenance for abuse of discretion. In re Marriage of Zahm, 138 Wn.2d 213,

226-27, 978 P.2d 498 (1999). "An award of maintenance that is not based upon a fair consideration of the statutory factors constitutes an abuse of discretion." In re Marriage of Crosetto, 82 Wn. App. 545, 558, 918 P.2d 954 (1996). The court must consider the parties' postdissolution financial resources; their abilities to meet their needs independently; the duration of the marriage; the standard of living established during the marriage; the parties' age, health, and financial obligations; and the ability of one spouse to pay maintenance to the other. In re Marriage of Williams, 84 Wn. App. 263, 267-68, 927 P.2d 679 (1996); RCW 26.09.090(1)(a)-(f). Ultimately, the court's main concern must be the parties' economic situations postdissolution. Williams, 84 Wn. App. at 268.

It is clear from the record that the trial court here explicitly considered each factor in its oral ruling and finally determined although Debbie had a need for maintenance, Don did not have the ability to pay. The court stated:

> Mr. Glover, right now, has ongoing expenses; plus he has, as I've said, the primary and almost sole responsibility for the day-to-day needs of three young girls. In looking through his financial declaration, I couldn't find any place where I could expect him to really seriously cut back; and according to that declaration, he is spending more per month than he makes anyhow.

Debbie does not contend that the trial court failed to consider any of the statutory factors. Instead, without citation to authority, Debbie argues that the great disparity between the parties' incomes alone justified an award of maintenance. Debbie points to Don's financial declaration showing that Don's salary is "well over $60,000 per year" but also complains that he failed to provide any evidence to support his declaration and demonstrate the accuracy of his

income and expenses. Debbie did not dispute Don's financial declaration at trial or offer any contradictory evidence regarding his ability to pay.

The trial court considered these factors: Debbie's ongoing education and her employment potential after graduation; the fact that she was "not self-supporting" at the time of trial; that it could be approximately ten months before she would begin working; that the length of the marriage was "middle-range" with a "reasonably good standard of living"; the fact that the parties could each expect to continue working for 20 to 25 years; as well as Don's ability to meet his needs and financial obligations while paying maintenance. The trial court has the discretion to weigh these factors and we do not substitute our judgment for that of the trial court. Zahm, 138 Wn.2d at 227. Debbie fails to demonstrate any abuse of discretion.

Debbie next contends that the trial court erred by refusing to either vacate or revise the temporary child support order. Without citation to the record, Debbie claims that she requested at trial that the trial court either vacate the temporary child support order or reduce the amount to reflect imputed income based on minimum wage. At trial, Don introduced the temporary order as an exhibit and testified that Debbie had not made any child support payments since entry of the order. Debbie admitted that she had not made any child support payments and testified that she did not know anything about the temporary order until four weeks after it was entered.

In its oral ruling, the court stated,

> Now, I am sorry to see that we came into trial here with a

> fairly sizable debt against Ms. Glover, which, quite frankly, it amazes me that Ms. Glover didn't take any steps to try and get things under control. I can appreciate that separation and divorce are upsetting and confusing; but to simply pretend it is not an issue accomplishes nothing except, in this case, to have a very big child support debt. So the child support debt that had been incurred up until the time of trial is going to have to be reduced to a judgment. But from the time of trial, I heard enough information -- and I think accurately assessed it -- to say that the child support from the date of trial on should be something different than what was previously ordered. I don't think Ms. Glover, quite frankly, is in a much better position right now than to be more than a minimum wage worker. I applaud her for deciding, even at this late date, that she needs to do something to become self-supporting, because I don't think she has ever been self-supporting, really. She has had an unfortunate situation where she came into some money because of the passing away of a person. She was more like a hobbyist than a real wage-earner. I don't think I can expect, if I were to send her out today and say, "Go find a job," that she could find one for more than minimum wage.
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> Consequently, for the next year, the child support order will reflect a minimum wage imputation of income. That is going to give a certain figure at the end that I'm going to order for, I think, a reasonable period of time. The absolute rock-bottom dollar amount that can be ordered for any child who is dependent on a parent is $50 a month. I'm going to do that because I want Ms. Glover to continue in her education; and I think it's only a realistic reflection of what I expect of these parties that I reduce the child support, by way of deviation, down to $50 a month per child, which will be reviewable next September.
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> My expectation and my hope is that Ms. Glover by that time has graduated and has found employment.

Following trial, on January 4, 2011, Debbie filed a CR 60 motion to vacate the temporary child support order and noted a hearing date of January 19, which was later stricken. Then on February 3, 2011, Debbie filed a motion for reconsideration of the trial court's January 24 orders. She claimed the trial court abused its discretion by refusing to vacate or revise the temporary child support order because (1) she was out of the country and not represented by counsel at

the time of the hearing on a temporary order of support; (2) she has never worked full time outside the home and she has hearing loss in both ears and suffers from carpal tunnel syndrome; (3) the commissioner imputed income to her based on RCW 26.19.071(6)(e) rather than RCW 26.19.071(6)(c) or (d);[2] and (4) the judgment of $7,026 for back support was a substantial injustice.

In its order denying reconsideration, the trial court stated,

> Back Child Support: Temporary orders regarding child support were entered early in this dissolution. Respondent took no action, apparently until trial, to address the orders or the basis thereof. Now, she asks the court to reward such non-involvement by vacating those orders. This court believes, even in the emotional upheaval a dissolution generates, that such inaction does not justify "re-writing history". Once the Respondent engaged in the process at trial, and offered the court information other than inaction, appropriate orders were entered. The court adheres to its ruling.

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[2] RCW 26.19.071(6) provides for imputation of income in the absence of records of a parent's actual earnings in the following order of priority:

> (a) Full-time earnings at the current rate of pay;
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> (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
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> (c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
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> (d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;
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> (e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

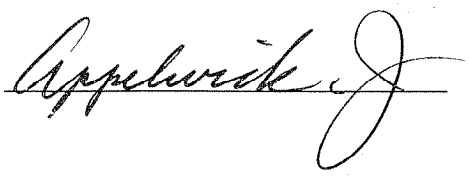
Motions for reconsideration are addressed to the sound discretion of the trial court and we will not reverse a trial court's ruling absent a showing of manifest abuse of discretion. Wilcox v. Lexington Eye Institute, 130 Wn. App. 234, 241, 122 P.3d 729 (2005). Even assuming that Debbie did not learn of the temporary order until four weeks after its entry in January 2010, she offers no explanation for her failure to seek relief or produce evidence of her income, or lack thereof, until the October 2010 trial. Under these circumstances, Debbie fails to establish a manifest abuse of discretion. More importantly, Debbie also fails to articulate any legal basis to vacate the original temporary child support order and fails to acknowledge that the trial court had no authority to modify child support retroactively. See In re Marriage of Barone, 100 Wn. App. 241, 244, 996 P.2d 654 (2000) ("Delinquent support payments become vested judgments as they fall due, and generally, they may not be retrospectively modified."); RCW 26.09.170(1)(a) (child support may only be modified as to installments accruing subsequent to petition for modification or motion for adjustment).

Debbie also contends that the trial court erred by refusing to order Don to pay at least a portion of her attorney fees based on the wide disparity in their incomes and her continuing need for support. A trial court's decision not to award fees under RCW 26.09.140 will be reversed only if "untenable or manifestly unreasonable." In re Custody of Salerno, 66 Wn. App. 923, 926, 833 P.2d 470 (1992). In its oral ruling regarding attorney fees, the trial court acknowledged Debbie's need but determined that Don did not have the ability to

pay Debbie's attorney fees. Debbie fails to show an abuse of discretion.

Finally, Don requests attorney fees on appeal under RCW 26.09.140, providing for an award of attorney fees based on the financial circumstances of the parties, and RCW 4.84.185, providing for award of attorney fees where "the position of the nonprevailing party was frivolous and advanced without reasonable cause." In light of the trial court's decision to award no attorney fees and given Don's failure to claim or demonstrate that he has the financial need and Debbie the ability to pay, we deny his request for attorney fees under RCW 26.09.140. And, while we find Debbie's arguments to be largely without merit, we decline to hold that the appeal is frivolous or advanced without reasonable cause under RCW 4.84.185.

Affirmed.



WE CONCUR: