IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:	)	
	)	No. 67353-0-I
WENDY MICHELLE MACHLEID,	)	
	)	
Respondent,	)	
	)	DIVISION ONE
and	)	
	)	UNPUBLISHED OPINION
ANDREW DOUGLAS MACHLEID,	)	
	)	
	)	
Appellant.	)	FILED: July 23, 2012
_____	)	

Dwyer, J. — Andrew Machleid appeals from the final parenting plan and property distribution entered in conjunction with a dissolution decree. But his failure to comply with the Rules of Appellate Procedure or to provide an adequate record precludes review of most of his allegations, and those allegations that we do review are frivolous. Accordingly, we affirm the trial court's decision and award attorney fees to Wendy Machleid for having to respond to a frivolous appeal.

I

Andrew and Wendy Machleid married in 2002 and separated in April 2010.[1] They have four children. On June 6, 2011, following a six-day trial, the trial court entered findings of fact and conclusions of law, a final parenting plan,

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

and a dissolution decree.

The parenting plan provides that the children will reside the majority of the time with Wendy. Among other things, the trial court found that Andrew had assaulted Wendy, neglected his parental functions, and pursued an abusive use of conflict that created a danger of serious damage to the children's psychological development, and imposed a continuing restraining order and restrictions under RCW 26.09.191. The parenting plan suspended Andrew's residential time with the children pending completion of a psychological evaluation and the submission of the evaluator's report to the court. Upon successful compliance with any treatment recommendations, the plan permits Andrew to resume supervised visits and, after six months, petition the court for residential time or expanded supervised visits.

The court awarded the family home to Wendy and a condominium and a rental home to Andrew. The court divided the parties' retirement accounts equally and divided the community liabilities essentially equally. The court did not award maintenance.

II

On appeal, Andrew challenges certain provisions of the parenting plan and the trial court's property distribution. But his failure to comply with the basic rules of appellate procedure precludes meaningful appellate review of most of

his allegations. Even though he is proceeding pro se, "the law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws." In re Marriage of Wherley, 34 Wn. App. 344, 349, 661 P.2d 155 (1983).

We will overturn the trial court's decisions on parenting plan provisions and the distribution of property only for an abuse of discretion. In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997); In re Marriage of Gillespie, 89 Wn. App. 390, 398, 948 P.2d 1338 (1997). The trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. In re Marriage of Mansour, 126 Wn. App. 1, 8, 106 P.3d 768 (2004). We review the trial court's findings of fact for substantial evidence and the conclusions of law de novo. In re Marriage of Zier, 136 Wn. App. 40, 45, 147 P.3d 624 (2006).

In his appellate brief, Andrew fails to adequately assign error to the trial court's relevant findings of fact. See RAP 10.3(a)(4). Nor does he support his factual allegations or arguments with meaningful citations to the record as required by RAP 10.3(a)(5) and (6). An appellate court has no obligation to search the record for evidence supporting a party's arguments. See Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992). And

Andrew's repeated attempts to incorporate arguments and issues by reference to documents presented to the trial court are equally ineffective. See US West Commc'ns, Inc. v. Wash. Utils. & Transp. Comm'n, 134 Wn.2d 74, 111-12, 949 P.2d 1337 (1997) (issues incorporated solely by reference to trial court memoranda will be deemed abandoned on appeal).

Most significantly, a party challenging the trial court's findings of fact has the burden of including in the appellate record "all evidence relevant to the disputed verdict or finding." RAP 9.2(b). The failure to provide an adequate record "precludes review of the alleged errors." Bulzomi v. Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994). Because Andrew has not provided a report of proceedings for any portion of the six-day trial, this court cannot review the sufficiency of the evidence or the trial court's evidentiary rulings. See In re Parentage & Custody of A.F.J., 161 Wn. App. 803, 806 n. 2, 260 P.3d 889, review granted in part, denied in part, 172 Wn.2d 1017 (2011). The trial court's findings of fact are therefore verities on appeal and binding upon this court. Morris v. Woodside, 101 Wn.2d 812, 815, 682 P.2d 905 (1984).

III

Andrew contends that the trial court applied the wrong legal standard when entering the residential provisions of the parenting plan. In particular, he alleges the trial court failed to comply with RCW 26.09.187(3)(a)(i), which directs

the trial court when deciding residential provisions to accord the greatest weight to the "relative strength, nature, and stability of the child's relationship with each parent." Andrew claims that the evidence was "undisputed" that he was the children's "primary and sole" caregiver.

But Andrew relies on nothing more than his own conclusory allegations to support these claims. He has failed to provide this court with the testimony on this issue that was presented at trial. And the trial court expressly found that Andrew

> made a number of serious accusations involving alleged unlawful and unethical behavior against the petitioner, against the Guardian ad Litem, against counsel for petitioner, and against several of the witnesses, including witnesses that the respondent had either identified as collateral resources for the GAL, or had subpoenaed to testify as the respondent's witness. Indeed, the respondent testified and argued to the court essentially that each witness who provided testimony that was unfavorable to the respondent was committing perjury. The respondent failed to produce any credible evidence in support of his accusations.
>
> The respondent also made various claims at trial for which he failed to produce any evidence, other than his own testimony, including his claims that he was the primary caregiver for the children, that the mother was neglectful, that the mother was dishonest, that the mother did not value education for the children, and that the mother had assaulted the respondent on numerous occasions.

The court further found that Wendy was "credible in all respects" and that Andrew's credibility "was called into question repeatedly." This court cannot

retry the facts on appeal, and we will defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence and credibility of the witnesses. Thompson v. Hanson, 142 Wn. App. 53, 60, 174 P.3d 120 (2007), aff'd, 168 Wn.2d 738, 239 P.3d 537 (2009).

Moreover, even if the evidence established that Andrew played a significant role as caregiver, the trial court imposed parenting restrictions based on RCW 26.09.191(2) and (3). For the reasons set forth above, the trial court's findings supporting imposition of those restrictions are verities on appeal, and those findings amply support the imposition of restrictions.

IV

Andrew contends that Wendy physically and verbally assaulted him "hundreds of times before[,] during[,] and after the marriage" and committed a series of state and federal crimes in an effort to prevent him from maintaining a relationship with his children. But he fails to identify even a shred of meaningful evidence supporting these allegations, and the trial court flatly rejected them. They warrant no further consideration on appeal. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

V

Andrew contends that the evidence failed to support the trial court's finding that he assaulted Wendy in the family car on April 5, 2010. He asserts that Wendy attacked him, that he merely attempted to shield himself from her attack, and that he had a right to defend himself. But the trial court heard and considered the evidence on this issue and found that Andrew "physically assaulted the mother in April of 2010 while in the car with the parties' Au Pair and the children." That finding is a verity on appeal.

Andrew asserts that even if the assault occurred, it did not support the imposition of parenting restrictions under RCW 26.09.191(2)(a), which requires "an assault . . . which causes grievous bodily harm." He maintains there was no evidence of grievous bodily harm.

But Andrew's argument neglects to address the complete statutory provision and the trial court's finding. RCW 26.09.191(2)(a) mandates restrictions on a parent's residential time if the court finds, as it did here, that the parent committed "an assault . . . which causes grievous bodily harm *or the fear of such harm*." (Emphasis added.) Moreover, the trial court based its imposition of parental restrictions not only on the finding that Andrew committed an assault, but also on findings of a substantial neglect of parenting functions and an abusive use of conflict. See RCW 26.09.191(3)(a), (e).

VI

Andrew contends that the trial court abused its discretion when it failed to make a just and equitable distribution of property. Among other things, he argues that the trial court failed to consider the separate character of his two rental properties, his efforts in constructing the family home, his management of the parties' retirement accounts, and his pursuit of community property litigation. He also challenges the trial court's award of $20,000 in attorney fees, the award of all community personal property to Wendy, and the trial court's decision requiring him to pay certain individual items, including emergency home repairs, a cell phone bill, 45 percent of the Children's Guild bill, and various community liabilities.

In a dissolution proceeding, all property, both community and separate, is before the court for distribution. In re Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). The court's distribution of all marital property "shall appear just and equitable after considering all relevant factors," including the nature and extent of the community and separate property, the duration of the marriage, the economic circumstances of each spouse at the time of the distribution, "including the desirability of awarding the family home . . . to a spouse . . . with whom the children reside the majority of the time." RCW 26.09.080. The trial court is clearly in the best position to determine what is fair and equitable. Brewer, 137 Wn.2d at 769.

Although Andrew challenges certain individual components of the property distribution, he makes no effort to demonstrate that the trial court failed to consider all relevant factors when dividing the property or that the overall distribution was not fair or equitable. For this reason alone, Andrew's challenge to the property distribution fails.

Moreover, Andrew's allegations rest on factual assertions that are either unsupported by any evidence or were expressly rejected by the trial court. The trial court found that Andrew had failed to present any evidence supporting his request for compensation for managing the parties' retirement accounts or for an award for his work as a general contractor on the family home. The court also found that Andrew's handling of the community property litigation "likely resulted in economic waste to the community." Finally, the trial court's findings of Andrew's repeated refusals to comply with the law, court orders, and discovery requests, his repeated filings of frivolous motions, and his ongoing abusive use of conflict, amply support the award of $20,000 in attorney fees for Andrew's intransigence. See In re Marriage of Buchanan, 150 Wn. App. 730, 739, 207 P.3d 478 (2009).

Here, the record shows that both parties had stable employment. With some adjustments, the court awarded the family home to Wendy, and the two rental properties, which it characterized as Andrew's separate properties, to

Andrew. The court divided the parties' retirement accounts equally and, contrary to Andrew's assertions, distributed community personal property, including vehicles, to both parties. The court divided certain community liabilities equally and directed Andrew to pay 45 percent of other community obligations. Viewed in light of the parties' economic circumstances, the nature and extent of the property, and the provisions of the parenting plan, we find no abuse of discretion.

VII

Andrew contends that the trial court erred in prohibiting him from calling certain witnesses, including "friends, family members, attorneys, police officers, and building officials." He claims these witnesses would have impeached the testimony of Wendy's witnesses.

But Andrew does not identify the offer of proof that he made for any of these witnesses or the trial court's stated basis for its exclusion of the proposed evidence. Consequently, he has not preserved the alleged error for review or demonstrated that the trial court abused its discretion in excluding the testimony. See Kysar v. Lambert, 76 Wn. App. 470, 490-91, 887 P.2d 431 (1995); ER 103(a)(2) (error may not be predicated on ruling excluding evidence unless substance of evidence was made known to the court); City of Spokane v. Neff, 152 Wn.2d 85, 91, 93 P.3d 158 (2004) (trial court evidentiary rulings are reviewed for an abuse of discretion).

VIII

Andrew has moved to stay the trial court's order requiring him to transfer his interest in the family home to Wendy. He claims the transfer would "irreparably harm" him if it were carried out before he has a chance to prevail on appeal.

But the trial court has twice denied Andrew's motions to stay enforcement

of the dissolution decree. He has not sought review of those trial court's decisions. Nor has he exercised his right to stay enforcement of trial court decisions affecting property by filing a supersedeas bond or other security in the trial court. See RAP 8.1(b)(2). Because Andrew has not identified any cognizable basis for this court to stay enforcement of the dissolution decree, the motion is denied. See RAP 8.1(b)(3).

IX

Wendy has requested an award of attorney fees on appeal. We exercise our discretion and award attorney fees for a frivolous appeal. RAP 18.9(a). An appeal is frivolous "if the appellate court is convinced that the appeal presents no debatable issues upon which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal." In re Marriage of Foley, 84 Wn. App. 839, 847, 930 P.2d 929 (1997). Andrew's reliance on the same unsupported and self-serving allegations that he raised in the trial court, his failure to address the evidence before the trial court or the bases for the trial court's decisions, and his failure to provide an adequate record for review satisfy that standard here. Wendy is awarded her attorney fees on appeal, subject to compliance with RAP 18.1(d).

Andrew's motion for a stay is denied; the trial court's decision is affirmed.

Dwyer, J.

WE CONCUR:

Cox, J.

Grosse, J.