IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

In the Matter of the Marriage of CORRY TIGHE MARTIN, Appellant, and CRYSTAL MARIE MARTIN, Respondent.	No. 67367-0-I DIVISION ONE UNPUBLISHED OPINION FILED: December 27, 2011

Leach, J. — Corry Martin appeals the trial court's dismissal of his petition to modify a parenting plan. Because the record sufficiently supports the trial court's finding of no adequate cause for modification, we affirm.

FACTS

Corry and Crystal Martin married in 2001.[1] The couple had three children together. In 2007, while on deployment in Iraq, Corry was summoned home to Fort Lewis, Washington, and given notice that Child Protective Services (CPS) had taken the children into protective custody. After the children were released to Corry, the couple separated, and Corry filed for dissolution. The court finalized the dissolution and entered a parenting plan in 2009. The parenting plan awarded Corry primary residential care and provided Crystal with standard

[1] For clarity, the parties will be referred to by their first names.

visitation rights, with no limiting factors found. Later that year, Corry petitioned for modification of the parenting plan to restrict Crystal's visitation rights. The petition alleged that Crystal had "longstanding," untreated drug and mental health issues that "pose a serious risk to the health and well-being of the children." Corry's supporting evidence primarily consisted of photocopies of documents he filed in the original dissolution proceeding in 2007[2] to support his request for temporary orders. The only postdecree facts he alleged to establish a "substantial change in circumstances" were an outstanding arrest warrant (that had been resolved by the hearing date) and Crystal's cohabitation with the father of her youngest child, a man with prior felony drug convictions. The commissioner found adequate cause for a hearing had not been established and denied the petition. The trial judge refused to revise the commissioner's decision and dismissed the modification petition. Corry appeals.

ANALYSIS

A parenting plan modification follows the two-step process set out in RCW 26.09.260 and RCW 26.09.270. First, a party seeking to modify a final parenting plan must file a motion supported by an affidavit "setting forth facts

[2] The documents related to the Fort Lewis military police and CPS investigations into the conditions of the Martin home while Corry had been deployed. The criminal mistreatment charges against Crystal during that time period were dropped, and the CPS investigations were closed as being "unfounded" and "inconclusive" of child neglect or mistreatment.

supporting the requested order or modification."[3] Only if the court finds adequate cause will the court conduct a full hearing on the motion to modify. The court "shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits."[4]

When a party appeals an order denying revision of a court commissioner's decision, this court reviews the superior court's decision, not the commissioner's.[5] We review a trial court's adequate cause determination for an abuse of discretion.[6]

A trial court abuses its discretion if its decision is manifestly unreasonable or is based on untenable grounds or untenable reasons.[7] "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard."[8] A decision is based on untenable grounds if "the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet

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[3] RCW 26.09.270. The statute provides,

> A party seeking a . . . modification of a . . . parenting plan shall submit together with his motion, an affidavit setting forth facts supporting the requested . . . modification. . . . The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested . . . modification should not be granted.

[4] RCW 26.09.270.

[5] In re Marriage of Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010).

[6] In re Marriage of Kinnan, 131 Wn. App. 738, 749-50, 129 P.3d 807 (2006) (citing In re Marriage of Flynn, 94 Wn. App. 185, 189-91, 972 P.2d 500 (1999)).

[7] In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

[8] In re Marriage of Fiorito, 112 Wn. App. 657, 664, 50 P.3d 298 (2002).

the requirements of the correct standard."[9] "[A] trial court's findings will be upheld if they are supported by substantial evidence."[10] Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.[11]

This case presents the single question of whether Corry presented sufficient evidence to establish adequate cause for his petition to modify to proceed to trial. Corry contends that under In re Marriage of Timmons,[12] the court should have considered the predecree facts he presented to decide this question. In Timmons, our Supreme Court held that when a dissolution is uncontested, a judge may consider predecree facts not considered by the court at the time of entry of a decree in a modification proceeding.[13] However, the court also stated that the statutory preference for custodial continuity remains, and "[t]he court must still find that modification is 'necessary to serve the best interests of the child[ren],' and shall 'retain the custodian established by the prior decree' unless agreement, integration, or detriment to health is shown."[14]

Corry's affidavit in support of the motion to modify alleged only that

> Crystal Martin has a longstanding untreated drug addiction; Crystal Martin is residing with a convicted felon who also has a longstanding untreated drug addiction; Crystal Martin has

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[9] Fiorito, 112 Wn. App. at 664.

[10] In re Marriage of McDole, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

[11] Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

[12] 94 Wn.2d 594, 617 P.2d 1032 (1980).

[13] Timmons, 94 Wn.2d at 598-99.

[14] Timmons, 94 Wn.2d at 599 (alteration in original) (quoting former RCW 26.09.260(1) (1973)).

> longstanding untreated severe mental health issues that pose a serious risk to the health and well-being of the children.

The documents he submitted to support these allegations were all copied from the original dissolution pleadings. Additionally, Corry alleged that Crystal had an outstanding arrest warrant for a DUI (driving under the influence of an intoxicant) charge (a charge that had been resolved prior to the adequate cause hearing) and that she had a baby by and was living with a convicted drug user.

Based on facts alleged in Corry's affidavit and supporting documents, the commissioner did not find adequate cause to modify the parenting plan. On revision, the trial judge also considered Corry's pleadings and affidavits and agreed that he had not shown adequate cause. Despite Corry's characterization, the trial court did not misapply Timmons. Corry's argument ignores the requirement that even in the context of an uncontested decree, the court must still find a substantial change in the circumstances of the children or parents and that a change is necessary to serve the children's best interests. Even considering the predecree evidence, the trial court found insufficient evidence to warrant a trial on these issues. The record supports this finding. Based on the record before the trial court, we cannot conclude that the trial court's determination was manifestly unreasonable or based on untenable grounds.[15]

[15] Fiorito, 112 Wn. App. at 664.

CONCLUSION

Because the trial court properly exercised discretion in refusing to find adequate cause, we affirm.

Leach, J.

WE CONCUR:

Dwyer, C. J.

Ellington, J.