IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON; PAULA J. HARMES-BOWSER, Respondents, v. TROY A. NYLANDER, Appellant.	No. 37400-5-II (Consol. with No. 39540-1-II) UNPUBLISHED OPINION

Armstrong, J. — Troy Nylander appeals judgments for past due child support, arguing that (1) two different statute of limitations have run on the action; (2) equitable grounds warrant mitigating the judgments; (3) the trial court erred in computing the interest owed on back support, and (4) the trial court did not follow statutory requirements in ordering the support. Finding no error, we affirm.

FACTS

A. Background

Troy Nylander and Paula Harmes-Bowser had a brief relationship in 1990, during which time their daughter, J.H., was conceived. Throughout their relationship, and much of the 1990s, Nylander used the name Michael Cave. According to Harmes-Bowser, while they were together, Nylander worked in Alaska as a boat captain and at a Chevrolet dealership under this alias. She claims that Nylander used the false name to avoid criminal charges under the name Troy

Nylander, including a warrant for his arrest in Idaho.

The relationship was contentious. Harmes-Bowser claims that it ended when, after Nylander learned she was pregnant, he threatened to kill her and her daughter if she ever asked for child support. According to Harmes-Bowser, he also threatened to report her to Child Protective Services if she ever named him the father or asked for child support. There was also one documented incident of assault, but Nylander denied any intent to hurt Harmes-Bowser and claims he pleaded to fourth degree assault to put the incident behind them. He also denies that he ever threatened her.

During the pregnancy, Nylander left Washington to live in Canada. While there, Nylander called Harmes-Bowser's ex-husband to confirm the pregnancy. After her daughter's birth, Harmes-Bowser claims that she tried to locate Nylander on several occasions. She also claims that twice she contacted Nylander's mother, who refused to tell her where he was. It is on this basis that Harmes-Bowser maintains that Nylander purposefully concealed himself to avoid child support.

For much of J.H.'s childhood, Nylander traveled the world. Photographs[1] show him in Argentina, Bolivia, Chile, Ecuador, India, Nepal, Peru, Sri Lanka, and Thailand, as well as Alaska, Arizona, and California. Harmes-Bowser argues that this evidences his extravagant lifestyle; Nylander counters that the travels were infrequent, between seasonal work, and were always budget vacations.

[1] Nylander provided the photographs to the guardian ad litem in 2005, after paternity was established and he was attempting to build a relationship with J.H.

Nylander's financial situation is difficult to assess, in part because of his use of aliases. In early 1990s, he worked in the fishing industry and, after 1995, he worked in the construction industry. In 1997, he suffered from a work related injury for which he received labor and industry benefits. During 2008, his disability ran out and he received state assistance through food stamps. Nylander has several other injuries that persist and prevent him from obtaining stable employment.

B. Procedural History

On Aug 24, 2004, the State initiated a parentage action regarding J.H. After a paternity test confirmed Nylander to be the biological father, the State sought an order of paternity, an order of child support, and a judgment for back support.

On January 19, 2005, the trial court ordered temporary child support ($25 per month), but stated that it would set a final child support amount at a later date. The court also reserved ruling on the judgment for back support, pending the parenting investigator's report. On August 23, 2005, the court issued the final parenting plan order, stating that Nylander shall have no residential time or schedule without a change of circumstance.

After reviewing declarations and affidavits from both Harmes-Bowser and Nylander, the court finalized the child support amount and entered a judgment for back support on November 1, 2005. Because Nylander provided no financial information, the court imputed income to him and ordered him to pay $661 per month. The court calculated back child support at $53,011 for the period January 1998 to November 2005.[2] The court reserved the issue of back support from June

[2] Specifically, $392.56 per month from January 1998 to December 2000, and $661.00 after January 2001.

1991 through December 1997, as well as the issue of concealment.

On November 9, 2005, Harmes-Bowser moved for a judgment on back support from the period between June 1991 through December 1997.[3] On November 17, 2005, the court tentatively set back support at $100 per month subject to adjustment when information on the parties' income became available. The court also found that Nylander avoided the jurisdiction of the court and concealed himself after he was told of the pregnancy. On August 29, 2007, Harmes-Bowser asked the court to finalize the judgment for back support beginning in 1991.

On January 17, 2008, the court ordered back support from 1991 to 1997 in the amount of $62,056.08.[4] The court also entered a judgment for interest accrued since November 2005, but deferred calculating interest for the support owed before November 2005. The court ruled that the statute of limitations did not bar the relief granted because Nylander had concealed himself. Nylander appealed this order on February 5, 2008.[5]

Then, on June 15, 2009, at Harmes-Bowser's request, the court determined the interest as follows: $22,794.73 on the $53,011.00 judgment for 2005 to 2009, and $105,472.34 on the judgment for June 1991 to June 2009. Nylander appealed and we consolidated the appeals.

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[3] The State informed the court that it had no intention of pursuing back support for this period.

[4] Specifically, $785.52 per month since 1991.

[5] Commissioner Skerlec dismissed the appeal for failure to prosecute and mandated the case back to superior court for further proceedings. However, this court recalled the mandate and directed the case back to the Court of Appeals.

ANALYSIS

I. Statute of Limitations

Nylander argues that the trial court's support and interest judgments are barred by the statute of limitations under RCW 4.16.020(2) and RCW 26.26.134.

A. RCW 26.26.134

Nylander claims that under RCW 26.26.134, he is liable for back support only for the five years before August 2004, when the initial action was commenced. Specifically, he maintains that the trial court erred in ruling that the statute was tolled because the evidence is insufficient to prove that he concealed himself to avoid the court's jurisdiction.

The statute provides:

> A court may not order payment for support provided or expenses incurred more than five years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the court under this chapter shall not be included within the five-year period.

RCW 26.26.134.

Here, two different commissioners found that Nylander concealed himself from the court, tolling the statute of limitations under RCW 26.26.134. We review these rulings under the substantial evidence standard by asking whether the evidence is sufficient to persuade a reasonable person that the declared premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

Nylander's argument fails for two reasons. First, although Nylander claims that Harmes-Bowser relied on hearsay evidence, he does not identify specific examples of inadmissible hearsay used below. *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998) ("Passing

treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration."). And even if some of the evidence was arguably hearsay, Nylander did not object below. A party who fails to object to or move to strike deficiencies in affidavits or other documents, waives any defects. *See Bonneville v. Pierce County*, 148 Wn. App. 500, 509, 202 P.2d 309 (2008); *see also* ER 103(a)(1) (a party cannot appeal a ruling admitting evidence unless the party makes a timely and specific objection to the admission of the evidence). Consequently, Nylander waived any objection to Harmes-Bowser's evidence.

Second, substantial evidence supports the trial court's finding that Nylander concealed himself from the court's jurisdiction. Below, Harmes-Bowser submitted affidavits and other evidence that Nylander knew of Harmes-Bowser's pregnancy and that he fathered the child. Although Nylander denied this, (1) Harmes-Bowser testified that Nylander made threats against her while she was pregnant, (2) Harmes-Bowser's ex-husband stated by sworn affidavit that he told Nylander that Harmes-Bowser was pregnant, and (3) Phyllis Schmidt, a therapist who saw Nylander and Harmes-Bowser together, wrote in her report that the couple had been working on resolving issues surrounding their pregnancy. And Nylander does not dispute he went to Canada in 1990 and traveled extensively throughout the subsequent years. Harmes-Bowser submitted affidavits that she tried to contact him to no avail during this time period. Taken in its entirety, this evidence is sufficient to persuade a reasonable person that Nylander concealed himself from Harmes-Bowser and the jurisdiction of the court. Accordingly, the trial court did not err in ruling that the statute of limitations tolled under RCW 26.26.134.

B. RCW 4.16.020

Alternatively, Nylander argues that the 10-year statute of limitations under RCW 4.16.020(2) prohibits any attempt to collect a monthly installment of child support more than 10 years after its due date.

Indeed, RCW 4.16.020(2) states that an action upon a judgment must be commenced within 10 years. But the very next provision, RCW 4.16.020(3), states:

> The period prescribed for the commencement of actions shall be as follows:
>
> Within ten years:
> . . .
> (3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for an action to collect past due child support that has accrued under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after July 23, 1989.

This provision clearly allows a party to collect past due child support 10 years beyond the 18-year birthday of the child for whom the child support is ordered. Nylander relies on case law from before 1989 to support his position to the contrary. The legislature added subsection (3) of RCW 4.16.020 in 1989, however, to specifically address actions for past due child support. Laws of 1989, ch. 360, § 1. Nylander's argument that a 10-year statute of limitations applies is without merit.

II. Equitable Relief

Nylander next argues that the court should have applied equitable principles to mitigate the harshness of the claims for past due child support and to protect him from oppressive financial obligations.

We review a trial court's decision regarding child support for abuse of discretion, recognizing that such decisions are seldom disturbed on appeal. *In re Marriage of Pollard*, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000). Courts have the discretion to mitigate the harshness of a claim for back support. *In re Parentage of I.A.D.*, 131 Wn. App. 207, 218, 126 P.3d 79 (2006). But the trial court's discretion to modify a child support order is not unfettered; it must be exercised within the framework of established "equitable principles." *In re Marriage of Hunter*, 52 Wn. App. 265, 269, 758 P.2d 1019 (1998). Thus, courts have granted equitable relief in cases where traditional equitable principles apply. *See e.g.*, *Schafer v. Schafer*, 95 Wn.2d 78, 81-82, 621 P.2d 721 (1980) (holding that courts may allow an equitable credit for payments made directly to children); *Parentage of I.A.D.*, 131 Wn. App. at 216 (limiting father's liability for support to date he discovered the existence of his child); *Hartman v. Smith*, 100 Wn.2d 766, 769, 674 P.2d 176 (1984) (permitting an equitable estoppel defense); *In re Marriage of Watkins*, 42 Wn. App. 371, 374, 710 P.2d 819 (1985) (extending the concept to laches to claims of past due child support).

Nylander fails to identify any equitable principle that would justify relieving him from back child support. Without argument or supporting authority, a party waives a claimed error. RAP 10.3(a)(6); *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Although Nylander cites case law for the trial court's authority to apply equitable principles, none supports relief where the back support, although substantial, results from the obligor's years of success in avoiding payment of child support. *Compare State ex rel. O'Brien v. Cooperrider*, 76 Wn. App. 699, 702, 887 P.2d 408 (1995) (noting that the statute of limitations protected the alleged father from

oppressive financial obligations). We find no basis for equitable relief.

III. Interest Owed

Nylander argues that interest on back support should not be allowed because the principle amount is "unliquidated." Br. of Appellant at 9-10. Harmes-Bowser responds that we should not address the argument because Nylander did not make it below and that, in any event, the back support amount is liquidated. Harmes-Bowser is correct that we need not address the argument. RAP 2.5(a). Moreover, the argument fails on its merits.

Each installment of child support becomes a separate judgment and bears interest from that due date. *In re Marriage of Abercrombie*, 105 Wn. App. 239, 243, 19 P.3d 1056 (2001). Interest is properly awarded if a claim is liquidated; that is, "'where evidence furnishes data which makes it possible to compute the amount with exactness, without reliance on opinion or discretion.'" *In re Marriage of Bocanegra*, 58 Wn. App. 271, 281-82, 792 P.2d 1263 (1990) (quoting *Sime Constr. Co. v. WPPSS*, 28 Wn. App. 10, 18, 621 P.2d 1299 (1980)). Here, each order for back child support set forth the exact amount owed for each month in the relevant period. The court ordered that 12 percent interest would accrue from the due date of each installment. The interest is in fact liquidated because it is possible to compute exactly the interest owed on each separate judgment. Nylander's argument accordingly fails.

IV. Compliance with RCW 26.19.035

Finally, Nylander contends that the trial court deviated from the standard calculation of child support without complying with RCW 26.19.035. He maintains that the court failed to make the required findings of fact with respect to the "deviation/denial" of the January 18, 2008

order. Nylander further contends that the trial court erred by considering unsigned worksheets to calculate child support. Again, Nylander raises these issues for the first time on appeal. Accordingly, this court need not address his argument on the merits. RAP 2.5(a).

Nylander relies in RCW 26.19.035, which provides in part:

> (2) **Written findings of fact supported by the evidence.** An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.
> (3) **Completion of worksheets.** Worksheets in the form developed by the administrative office of the courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the courts.

Here, the court made findings regarding the income and set child support without deviation. The court did not enter findings explaining a deviation because there was none. Nor is there evidence in the record that Nylander requested a deviation. Moreover, although RCW 26.19.035(3) requires complete worksheets to be filed in every proceeding, it does not require the parties to sign each worksheet. Since worksheets were filed at the relevant proceedings, the trial court complied with RCW 26.19.035(3). Nylander's claims accordingly fail.

V. Attorney Fees

Harmes-Bowser asks for attorney fees on appeal under RCW 26.09.140 and RAP 18.9. She urges us to consider that she has been unemployable since a severe car accident in 2000, and has no other source of income.

RCW 26.09.140 grants us discretion to order a party to pay the cost of maintaining the appeal, in addition to statutory costs. Under this provision, we consider the financial resources of both parties. RCW 26.09.140. RAP 18.9(a) authorizes us to order a party who files a frivolous appeal to pay terms or compensatory damages to any other party who has been harmed by the delay. Under this rule, we can award attorney fees and costs to the prevailing party. *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007).

Nylander's meritless arguments justify an award of attorney fees under RAP 18.9(a), and Harmes-Bowser's inability to work warrants attorney fees under RCW 26.09.140. Accordingly, we grant Harmes-Bowser attorney fees on appeal in an amount to be set by a commissioner of this court.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Quinn-Brintnall, J.

Johanson, J.