IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of: THOMAS THOMPSON, Appellant, and ELIZABETH SZOMBATHY, Respondent.	No. 39176-7-II UNPUBLISHED OPINION

Penoyar, J. — Thomas Thompson appeals the trial court's order to reimburse his ex-wife, Elizabeth Szombathy, for the cost of a therapeutic wilderness program for their son CT[1] under the terms of the parties' 2002 child support order. Thompson also appeals the trial court's order denying in part his petition to modify child support. We affirm the trial court's orders but remand for entry of an amended judgment on the costs of the therapeutic program.

FACTS

Thompson and Szombathy divorced in 2002. On August 22, 2002, the trial court entered a dissolution decree, a parenting plan, and a child support order with regard to CT.

The parenting plan order named Szombathy as CT's primary residential parent. The plan required joint decision making about major decisions, including CT's education and non-emergency healthcare. The plan's dispute resolution procedure called for a one-on-one meeting between Thompson and Szombathy to discuss the dispute, followed by a consultation with their therapist. If these steps were unsuccessful, Thompson and Szombathy could submit the issue to the court for resolution.

[1] We use CT's initials in order to protect his privacy.

The child support order did not require Thompson to pay monthly child support for CT, citing the parties' "substantial wealth."[2] Clerk's Papers at 16. Thompson's basic monthly obligation would have been $641.89. Instead, paragraph 3.7 of the child support order required Thompson to pay 100 percent of the following expenses for CT:

- [●] Sports/Camp fees, including transportation and lodging
- [●] Counseling fees
- [●] Private school fees; which shall include all of the [child's] needs, including reasonable living expenses
- [●] Medical and dental fees

CP at 16. The order required Thompson to pay these expenses "so long as [CT] is under the age of 18 and/or has not yet graduated from high school." CP at 16. Paragraph 3.7 also stated that Thompson's obligations "meet or exceed the monthly obligation owed by calculating child support pursuant to the guidelines. Therefore, the father's payment of these obligations shall be in lieu of paying child support to the mother on behalf of the minor child." CP at 16.

Paragraph 3.14 required Thompson to pay CT's post-secondary educational expenses, including graduate school, after CT depleted his educational trust fund. Any dispute as to the reasonableness of the expenses discussed in paragraphs 3.7 or 3.14 was subject to mediation and, if left unresolved, to binding arbitration. Paragraph 3.16 stated that "[t]he parties shall not adjust child support." CP at 18.

[2] The 2002 child support worksheet lists no assets for either party and includes a monthly net income of $4,644.08 for Thompson and $2,490.75 for Szombathy. Szombathy alleges that Thompson received an individual retirement account (IRA) of about $1,000,000 around the time of their divorce. Thompson acknowledges that he received an IRA, but he does not indicate its original value, and in 2008 he stated that the IRA was "nearly gone." CP at 89. According to Thompson's counsel, "[t]he money that was claimed years ago in 2002 was spent in litigation with the Chinese over a company that Mr. Thompson had and got in the divorce and is, in fact, all gone." CP at 295.

After the 2002 divorce, CT became increasingly angry and depressed, and his grades deteriorated. CT attended counseling intermittently, and his pediatrician diagnosed him with depression and prescribed antidepressants. CT got into fights, skipped school, mistreated school administrators and teachers, and began to use drugs and alcohol. During 2007 and 2008, Thompson and Szombathy considered various interventions, including boarding and military schools, wilderness schools, and sending CT to live with out-of-state relatives. In December 2007 or January 2008, police arrested CT for third degree theft. In late February 2008, Szombathy told Thompson that "[l]iving with [CT] has become untenable. He shouts, swears, physically attempts to intimidate me and is angry nearly all the time." CP at 181.

CT's high school counselor recommended to Szombathy that CT enroll in a program called SageWalk in Redmond, Oregon. SageWalk is "a therapeutic wilderness program that provides an intense intervention for teens ages 13 to 17 who may be experiencing emotional, academic, and/or behavioral problems." CP at 36. Students spend time backpacking and learning survival skills, receiving group and individual therapy from "master's level therapists," and completing academic studies and service projects. CP at 38. According to Thompson, SageWalk students backpack Friday through Monday and then spend Tuesday through Thursday in a base camp where they may meet with therapists, registered nurses, licensed teachers, and licensed chemical dependency counselors.

Szombathy wrote to Thompson about enrolling CT in SageWalk. At some point, the idea arose to split SageWalk's $15,950 tuition for a 30-day program. The parties dispute which of them originally broached the cost-splitting idea. On March 14, Thompson wrote to Szombathy, "I'm only willing to share equally with you the $15,950 cost of the thirty day program (and no

extensions after the thirty days)." CP at 66. Szombathy agreed to split the cost.

Beginning on March 17, 2008, CT attended a 30-day course at SageWalk. Near the end of the course, CT's counselor told Szombathy that CT would benefit from an additional 30 days at SageWalk. Szombathy e-mailed Thompson to inform him of the counselor's suggestion. In the e-mail, Szombathy told Thompson that paragraph 3.7 of the child support order required Thompson to pay for SageWalk. On April 13, Thompson told Szombathy that he had paid half the cost of an additional 30 days, stating, "I believe that [CT] is benefitting from the SageWalk experience, and I do not want his care to be interrupted." CP at 155. On April 14, Szombathy responded, "You owe SageWalk for the full amount per our divorce decree." CP at 155.

After CT returned home from SageWalk, he attended the Running Start Program at Seattle Central Community College. He earned a cumulative grade point average of 2.93 after the summer and fall terms. He took the SAT and made plans to attend college. Szombathy states that CT's life has made "a complete turnaround." CP at 111. Thompson characterizes CT as "not interested in school" and unwilling to take on responsibility. CP at 219.

The parties continued to dispute SageWalk's costs after CT's return. Szombathy requested a one-on-one meeting with Thompson to discuss parenting and financial issues, but Thompson declined because such meetings were "futile." CP at 68. Thompson's and Szombathy's therapist also declined to participate as a third party mediator because of her past therapeutic relationship with them. On July 3, Szombathy filed a motion requesting that the trial court appoint a mediator and arbitrator to resolve her claim that Thompson owed her over $20,000 in counseling, educational, sports, and medical fees, including the $14,943 that she paid to SageWalk.[3] The trial court appointed a mediator and arbitrator. The scheduled mediation

never occurred due to a recurrence of Thompson's health problems.

On October 2, 2008, Thompson petitioned for modification of the child support order. Thompson asked the trial court to recalculate the parties' child support obligations based on updated child support schedule worksheets and to order the parties to share all of CT's expenses, including post-secondary education, on a "equitable and pro rata basis." CP at 85. He submitted child support schedule worksheets indicating that his monthly net income had dropped from $4,644 in 2002 to $2,880, and he noted that his monthly $2,880 income "is imputed income as the . . . IRA has been depleted since the dissolution . . . This income [is] not available now[.]" CP at 83, 89.

Thompson submitted a declaration in support of his motion, which stated, "I have no income yet while voluntarily pursuing a career as a write[r]." CP at 220. Thompson noted that he primarily lived off of his current wife's salary. He disputed the various costs that Szombathy allegedly incurred on CT's behalf, and he explained his frustration with their parenting relationship. Szombathy filed a declaration refuting Thompson's allegations and reiterating her costs. Szombathy stated that Thompson has a Ph.D. and that he had been offered several positions as a university professor. Szombathy filed a financial declaration showing a monthly net income of $4,000 and monthly expenses of over $9,000.

On January 30, 2009, the trial court issued an oral ruling on the motions. The trial court subsequently noted in written findings and conclusions, that "this is a highly unusual Child Support Order, waiving child support in lieu of other expenses." CP at 278. The trial court ordered Thompson to reimburse Szombathy for her SageWalk expenses and to reimburse CT's

[3] Szombathy raised a number of other issues in her motion that are not relevant to this appeal.

educational trust account for any funds that Thompson withdrew to pay for SageWalk. The trial court denied Szombathy's claims for reimbursement for other expenses because she did not "receive[ ] the required agreement from Mr. Thompson to obligate him on these programs." CP at 278. The trial court stated that SageWalk's total cost was $31,900 and asked counsel to determine the exact amount that Thompson owed Szombathy. The trial court subsequently entered a judgment of $15,950, which is half of $31,900.

The trial court issued a separate order denying in part and granting in part Thompson's petition to modify the child support order. The trial court declined to order the parties to share CT's expenses pro rata, including CT's post-secondary education expenses. However, the trial court stated that Thompson's support obligations under paragraph 3.7 of the 2002 order would not extend beyond CT's twentieth birthday even if CT was still enrolled in high school, Running Start, or a GED program.[4] The trial court also required CT to seek summer employment, grants, and scholarships to help pay for his education after exhausting the funds established for his college education.

Thompson now appeals.

ANALYSIS

I. Enforcement of Child Support Order

Thompson argues that the trial court erred by concluding that the child support order requires him to pay the entire cost of the SageWalk program. He also assigns error to the amount of the trial court's judgment and to findings that he agreed to send CT to SageWalk, that

[4] In July 2008, Thompson and Szombathy had agreed that Thompson's child support obligations would remain in effect as long as CT attended either high school or Running Start.

Szombathy acted under duress when she agreed to pay for half of the program, and that SageWalk was a necessary program for CT. Substantial evidence supports the trial court's findings, but we remand to the trial court for entry of an amended judgment reflecting the actual amount that Szombathy paid SageWalk.

A. Standard of Review

We do not disturb a trial court's findings of fact if substantial evidence supports the findings. *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 423, 154 P.3d 243 (2007). Substantial evidence is evidence that would persuade a fair-minded rational person of the truth of the declared premise. *In re Welfare of C.B.,* 134 Wn. App. 942, 953, 143 P.3d 846 (2006). We defer to the fact finder on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *Weyerhauser v. Tacoma-Pierce County Health Dep't.*, 123 Wn. App. 59, 65, 96 P.3d 460 (2004); *In re Dependency of A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991). An appellant waives an assignment of error by presenting no argument in support of the assigned error. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Unchallenged findings are verities on appeal. *In re Interest of Mahaney*, 146 Wn.2d 878, 895, 51 P.3d 776 (2002). We review conclusions of law de novo. *Brundridge v. Fluor Fed. Servs., Inc.,* 164 Wn.2d 432, 441 n.2, 191 P.3d 879 (2008).

B. Thompson's Obligation to Pay for SageWalk

Thompson argues that the trial court erred by determining that "the [SageWalk] program was contemplated in the Order of Child Support entered August 22, 2002," and he assigns error to the related conclusion of law. Appellant's Br. at 5. He also assigns error to the finding that he agreed to send CT to SageWalk.[5] We reject Thompson's arguments.

Although Thompson's brief does not address the issue in any detail, a threshold issue is whether SageWalk's cost falls within the scope of the following categories, for which Thompson was 100 percent responsible under paragraph 3.7 of the 2002 child support order:

- [●] Sports/Camp fees, including transportation and lodging
- [●] Counseling fees
- [●] Private school fees; which shall include all of the [child's] needs, including reasonable living expenses
- [●] Medical and dental fees

CP at 16. SageWalk describes itself as "a therapeutic wilderness program" that assists teenagers with emotional, academic, and/or behavioral problems. CP at 36. Professional therapists provide students with individual and group therapy. Licensed teachers provide academic instruction, and students meet with registered nurses. Students also backpack, learn survival skills, and perform service projects. Although SageWalk does not fit cleanly into a single category listed in the child support order, the evidence supports the trial court's finding that SageWalk's program falls within the scope of paragraph 3.7 of the support order. Therefore, the trial court did not err by finding that Thompson was obliged to pay for SageWalk.

Thompson's main argument that he is not 100 percent responsible for SageWalk's expenses appears to be that Thompson and Szombathy were free to alter Thompson's child support obligations through negotiation. However, primarily because they touch on the interests of children, modifications to child support orders require court intervention. *See* former RCW 26.09.170 (2008), RCW 26.09.173, and former RCW 26.09.175 (2002). The child support order

[5] The finding states: "Both parties were desperate to assist their son to do whatever it took to take care of him. [CT] was spiraling downward rapidly . . . Mr. Thompson agreed, perhaps reluctantly, but nonetheless, agreed that his son needed intervention and agreed to send him to SageWalk." CP at 278.

also put Thompson on notice of this fact, stating that "[t]he parties shall not adjust child support." CP at 18.

Substantial evidence also supports the trial court's finding that Thompson agreed to send CT to SageWalk. Thompson admits as much in his brief: "The mother agreed to shoulder 50% of the burden and then the father agreed under that condition." Appellant's Br. at 18. Thompson also agreed to extend CT's enrollment by 30 days. That Thompson thought he only had to pay for half of the tuition does not vitiate his consent.

Thompson also seems to interpret the trial court's order requiring him to pay for SageWalk as placing undue emphasis on the child support order to the detriment of the parties' parenting plan. For example, he states that the "rights of the Parenting Plan [with regard] to joint decision making are as significant as the Child Support Order." Appellant's Br. at 18. Thompson's argument ignores the fact that, in this instance, the parties abided by the joint decision making and dispute resolution provisions of the parenting plan. They agreed to send CT to SageWalk and to renew his enrollment for 30 days. Szombathy only filed her motion after the one-on-one meeting, therapist intervention, and scheduled mediation and arbitration failed. Moreover, the related issue of who was responsible for paying the program costs was a child support matter that was properly before the court.

C. Judgment Amount

Thompson assigns error to the trial court's judgment and the related finding that SageWalk cost $31,900. The trial court apparently relied on both counsel's calculation when it entered the $15,950 judgment to "reimburse [Szombathy] for the cost of SageWalk." CP at 279. However, Szombathy's original motion stated that she paid a sum of $14,943 to SageWalk.

Subsequently, she submitted a spreadsheet indicating that she paid either $14,950 or $15,089.50 to SageWalk.[6] Because the trial court incorrectly calculated the cost of SageWalk and the amount that Szombathy paid, we remand to the trial court to enter an amended judgment that reflects the correct reimbursement amount.[7]

D. Szombathy's Agreement to Split Costs

Thompson also assigns error to the finding[8] that Thompson placed Szombathy in an untenable position by agreeing to pay for only half of SageWalk's costs. While it appears that substantial evidence supports this finding, the parties' negotiations and agreements are not dispositive. As we pointed out in section B above, the statutes and the child support order dictate that the court, not the parties, shall decide all child support issues. The trial court acted properly

---

[6] The figure of $15,089.50 is probably incorrect because it includes what appear to be unrelated medical expenses in the amounts of $91.00 and $48.50. Thompson states that he reimbursed Szombathy for these expenses.

[7] The incorrect judgment amount likely resulted from the trial court's belief that each 30-day period at SageWalk cost $15,950: "The 30-day program was $15,950, times two, for a $31,900 total amount . . . . I am going to order the father to reimburse [the mother] for her half of the payments that she made to SageWalk." CP at 287-89. It appears, however, that parents pay a discounted rate of $13,950 for a 30-day extension. Thompson asserts that the evidence "established at most a total cost of $30,025.50." Appellant's Br. at 6. He does not explain how he arrives at this number.

[8] The finding of fact states:

> The court finds that Mr. Thompson would only agree to the attendance by their son [CT] at Sagewalk if Ms. Szombathy would pay one half of the cost of SageWalk. This put Ms. Szombathy in an untenable position to either pay or to not have her son [attend] this program. Ms. Szombathy was under duress when she agreed to pay for one half of the program.

CP at 278.

in disregarding the parties' agreement to split costs, regardless of whether Szombathy was under duress.

E. Necessity of SageWalk

Thompson assigns error to the trial court's finding that SageWalk was "a necessary program for [CT]." Appellant's Br. at 5. Thompson fails to argue this assignment in much detail, noting only briefly that SageWalk was not the only available remedy for CT "as the parties [had] discussed in numerous e-mails." Appellant's Br. at 20. Thompson appears to be referring to other programs—such as boarding and military schools—that the parties had considered for CT. While other programs might also have helped CT, SageWalk provided CT with professional therapists and teachers, along with a 60-day intensive intervention at a problematic time in CT's life. Substantial evidence supports this finding.

II. Modification of Child Support Order

Thompson argues that the trial court erred in denying his motion to modify the child support order based on a substantial change in circumstances. In the alternative, he argues that the trial court erred by failing to modify the child support order under former RCW 26.09.170(9)(a).[9] We reject Thompson's arguments.

A. Standard of Review

A party moving to modify child support bears the burden of showing a substantial change in circumstances. *In re Marriage of McCausland*, 159 Wn.2d 607, 615-16, 152 P.3d 1013

[9] Thompson assigns error to the trial court's finding that "none of the statutory exceptions set forth in [former] RCW 26.09.170" applied. Appellant's Br. at 6. We address only the applicability of former RCW 26.09.170(9)(a) because that is the only subsection that Thompson addresses in his brief. *See Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

(2007); *see also* former RCW 26.09.170. In some situations, the trial court may modify child support orders without a showing of a substantial change in circumstances. *See, e.g.,* former RCW 26.09.170(5), (6), (9), (10). We will not reverse the trial court's decision absent a manifest abuse of discretion. *McCausland*, 159 Wn.2d at 616. Thus, we cannot substitute our judgment for the trial court's unless the trial court's decision rests on unreasonable or untenable grounds. *McCausland*, 159 Wn.2d at 616 (quoting *In re Marriage of Leslie*, 90 Wn. App. 796, 802-03, 954 P.2d 330 (1998)).

B. Change in Circumstances

Thompson asserts a change of circumstances based on the "loss of his substantial wealth since the entry of the Child Support Order in 2002" and the fact that he is "a full-time writer [who] has not sold anything (i.e. under-employed or voluntarily unemployed)." Appellant's Br. at 22-23. We conclude that the trial court properly determined that Thompson did not demonstrate a substantial change in circumstances.

Thompson describes himself as a full-time writer with no income who is "under-employed or voluntarily unemployed." Appellant's Br. at 23. Szombathy notes that Thompson has a Ph.D. and has been offered jobs as a professor. Thompson's voluntary unemployment or underemployment cannot, by itself, constitute a substantial change in circumstances. Former RCW 26.09.170(7). Indeed, the trial court was required to impute income to Thompson when determining whether to modify his child support obligation. *See* former RCW 26.19.071(6) (2008); *see also In re Marriage of Brockopp*, 78 Wn. App. 441, 445-46, 898 P.2d 849 (1995). Here, while the trial court did not impute income to Thompson or make a specific finding that Thompson was voluntarily unemployed, we find that Thompson's previous job offers, level of

education, and admission of voluntary unemployment provide tenable grounds for the trial court's finding of no substantial change in circumstances.

In addition, Thompson's petition and declaration provide little explanation for the loss of his substantial wealth. Thompson's petition refers to "major health issues that have surfaced in the last 1.5 years," but Thompson presents no evidence that his medical condition is related to his financial status. CP at 83. After the trial court issued its oral ruling, Thompson's counsel noted in passing that Thompson lost his money and business in a dispute "with the Chinese." CP at 295. In sum, because Thompson failed to meet his burden to demonstrate a substantial change in circumstances, the trial court properly denied his petition.

C. Modification under Former RCW 26.09.170(9)(a)

Thompson also argues that the trial court abused its discretion by failing to modify the child support order under former RCW 26.09.170(9)(a). That statute reads: "All child support decrees may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the adjustment by filing a motion and child support worksheets." The trial court properly denied Thompson's petition for modification under former RCW 26.09.170(9)(a).

The child support worksheets indicate that Thompson's monthly net income fell from $4,644.08 in 2002 to $2,880.00 in 2008. While this change in income certainly permitted Thompson to seek a modification under former RCW 26.09.170(9)(a), the trial court was not obliged to modify his child support obligations. As noted above, Thompson's voluntary unemployment is the primary basis for his change in income. The trial court properly exercised its discretion.

Both parties request attorney fees under RAP 18.1(c), but neither party filed the mandatory financial affidavit under that rule. Therefore, we deny the parties' requests for attorney fees.

We affirm the trial court's orders but remand for entry of an amended judgment on the costs of the therapeutic program.

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.

Penoyar, C.J.

We concur:

Armstrong, J.

Van Deren, J.