

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In re Marriage of:

JEAN L. ROBBINS,

Respondent,

v.

JESSE D. ROBBINS,

Appellant.

No. 39682-3-II

UNPUBLISHED OPINION

Armstrong, J. — Jesse D. Robbins appeals the trial court’s denial of his motion to vacate a child support order, contending that the order was void for lack of jurisdiction. We affirm.

Facts

Jesse and Jean Robbins were married in 1986 and had two children before they separated in 2001. Jean filed a pro se dissolution petition in Yakima County Superior Court on December 14, 2001.<sup>1</sup> At that time, she and the children lived in Washington. In the petition, Jean requested primary custody of the children and child support pursuant to the Washington State Support Schedule. Jesse’s signature appears on the final page of the petition under language stating, “The respondent joins in the petition. By joining in the petition, the respondent agrees to the entry of a decree in accordance with the petition, without further notice.” Clerk’s Papers (CP) at 146. Jesse’s signature also appears on the child support worksheets and proposed parenting plan filed the same day.

The final dissolution papers filed on August 15, 2002, contain only Jean’s signature. The

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<sup>1</sup> Because the parties have the same last name, we refer to them by their first names for clarity.

final child support order requiring Jesse to pay Jean \$999 per month lists a Yakima address as Jesse's service address. The findings and conclusion state that Jesse resides in Washington.

Jesse eventually moved to Colorado. In 2005, the State of Washington attempted to collect past due support from him under the Uniform Interstate Family Support Act, chapter 26.21A RCW. Over the years, Jesse paid less than \$7,000 in child support, with more than \$60,000 owing in arrears.

In 2008, Jesse moved to vacate the child support order under CR 60(b)(5) and (11), contending that the order was void for lack of personal jurisdiction.<sup>2</sup> Jesse asserted that his signature under the petition's joinder provision was forged, that he was residing in Montana when it was filed, and that Jean never served him with the petition, the decree, or any of the associated filings. He claimed that he did not know about the child support order until the State sought to enforce it in 2005.

The trial court denied the motion to vacate. The court reasoned that the controlling issue was whether Jesse had signed the joinder provision in the petition for dissolution. It compared the signature in the petition with other documents containing Jesse's signature, and it cited evidence showing that Jesse was in the area when the petition was filed. The court cited additional evidence showing that Jesse knew of the child support order "very early on." CP at 6. The court found that Jesse signed the joinder provision as well as the proposed parenting plan and child support worksheets. Those signatures, coupled with the fact that the final child support order was identical to the support suggested in the child support worksheets, showed that Jesse

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<sup>2</sup> Jesse apparently challenged the child support order in other motions as early as 2006. The CR 60(b) motion was before the Mason County Superior Court because other matters pertaining to the dissolution had already been transferred to Mason County.

had notice of his child support obligation.

Jesse appeals the denial of his motion to vacate the child support order for lack of personal jurisdiction.

#### Analysis

Motions to vacate a judgment as void under CR 60(b)(5) may be brought at any time after entry of judgment.<sup>3</sup> *In re Marriage of Markowski*, 50 Wn. App. 633, 635, 749 P.2d 754 (1988). We generally review a decision regarding a motion to vacate de novo. *In re Marriage of Wilson*, 117 Wn. App. 40, 45, 68 P.3d 1121 (2003). Where the trial court proceeding turns on credibility and a review of documentary evidence alone, however, the appropriate standard of review is substantial evidence. *In re Marriage of Rideout*, 150 Wn.2d 337, 351-52, 77 P.3d 1174 (2003). Evidence is substantial if it is sufficient to persuade a rational, fair-minded person of the factual finding. *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008).

A child support order is a personal obligation and enforceable only if entered when the court has personal jurisdiction over the obligor. *In re Marriage of Tsarbopoulos*, 125 Wn. App. 273, 278, 104 P.3d 692 (2004); 20 Kenneth W. Weber, *Washington Practice: Family and Community Property Law*, § 37.5 at 425 (1997). Personal jurisdiction exists if the obligor has at least minimum contacts with Washington and, through service of process, is given notice and an opportunity to be heard. 20 *Washington Practice*, §§ 30.4 and 30.5 at 15, 20; *Markowski*, 50 Wn. App. at 637 n.2. Actual notice without proper service is not sufficient to confer jurisdiction. *In*

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<sup>3</sup> The same is true of motions under CR 60(b)(11), which Jesse also cited in his motion to vacate. Relief is granted “sparingly” under this subsection, and only based on extraordinary circumstances not otherwise covered by the rules. *In re Marriage of Knutson*, 114 Wn. App. 866, 872, 60 P.3d 681 (2003).

*re Marriage of Logg*, 74 Wn. App. 781, 784, 875 P.2d 647 (1994).

Jesse admits that he lived in Washington for at least part of his marriage, thus satisfying the minimum contacts requirement. *See also Tsarbopoulos*, 125 Wn. App. at 286 (citing RCW 4.28.185 in stating that a person submits to jurisdiction of Washington court when living in a marital relationship within the state notwithstanding subsequent departure from state). He contends, however, that he was living in Montana at the time of the dissolution and that Jean never properly served him with any of the documents relating to that proceeding. He points out that Jean admitted below to never serving him, an admission that she attempts to remedy on appeal by stating that she personally delivered documents to him at his Washington address and mailed documents to his father in Montana and to his brother. *But see Logg*, 74 Wn. App. at 784 (party cannot serve process on opponent).

Whether Jean properly served Jesse is irrelevant, however, if we agree with the trial court that he signed the joinder provision in the petition for dissolution. When both parties join in a dissolution action, there is no need for a summons, service of process, or a response because there are no contested issues. CR 4.1(a); *In re Marriage of Wherley*, 34 Wn. App. 344, 347, 661 P.2d 155 (1983). Where there is a valid joinder, the decree is obtained by consent. *Wherley*, 34 Wn. App. at 348.

Jesse argues that the joinder is invalid because his signature was forged. He argues in the alternative that even if he did sign the petition, the joinder is ineffective because he did not check the box requesting joinder next to his signature. Jesse offered no proof below to substantiate his claim of a forgery and, as noted, the record contains other documents containing his signature as

well as evidence that he was in Washington when the dissolution petition was filed. We conclude that substantial evidence supports the trial court's finding that the joinder was valid because Jesse signed it. In the absence of any authority stating that the failure to check a box invalidates an otherwise valid signature, we decline to accept that proposition.<sup>4</sup>

Jesse argues further that even if he did sign the joinder provision, it applies only to the dissolution decree and not to the child support order. We reject this argument as well. The petition clearly requested a child support determination, and the joinder language stated that with his signature, Jesse agreed to the entry of a decree in accordance with the petition. The resulting decree, in turn, incorporated the order of child support, and Jesse was bound thereby. *See* RCW 26.09.050(1) (in entering dissolution decree, court shall make provision for child support); *In re Marriage of Little*, 96 Wn.2d 183, 194, 634 P.2d 498 (1981) (superior court has duty to rule on child support when it enters decree).

Furthermore, although this is not determinative, we observe that Jesse's claim that he did not know about the child support order until 2005 strains credulity. He filed a certificate of completion concerning a class relating to the dissolution in 2002, wrote a letter to his father in 2003 that discussed sending money directly to the children instead of Jean, and made a few payments on his obligations between 2002 and 2006. Thus, even without the joinder provision, it is arguable that Jesse waived his right to assert the defense of lack of jurisdiction based on insufficient service of process. *See Tsarbopoulos*, 125 Wn. App. at 288 (if defendant's assertion of defense is inconsistent with his previous behavior, insufficient service may be considered

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<sup>4</sup> Jesse impermissibly cites an unpublished Washington appellate opinion that, in any event, does not support his position. *See* GR 14.1.

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waived as a matter of law).

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.

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Armstrong, J.

We concur:

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Van Deren, J.

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Worswick, A.C.J.