

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

**DIVISION II**

In re the Marriage of

ANTHONY J. RODRIGUEZ,

Respondent,

and

DULCE CAROLINE DARDON-  
RODRIGUEZ, n/k/a CAROLINE DARDON,

Appellant.

No. 39724-2-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Caroline Dardon appeals from the trial court's refusal to award her attorney fees as part of an order finding her ex-husband, Anthony Rodriguez, in contempt of a child support order entered as part of the dissolution of their marriage. Concluding that the trial court did not err, we affirm.<sup>1</sup>

On November 12, 2008, Dardon filed a motion for an order finding Rodriguez in contempt of his child support order by not paying his share of day care expenses for May through September 2008. That motion included a request for attorney fees. Rodriguez responded that the

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<sup>1</sup> A commissioner of this court initially considered Dardon's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

amounts of day care expenses were exorbitant. The trial court held a hearing on December 19, 2008. During that hearing, the court concluded that the amounts that Dardon was requesting were reasonable. Dardon did not argue for an order of contempt or request attorney fees. The trial court did not address either contempt or attorney fees. No order was entered following the December 19, 2008 hearing.

On June 3, 2009, Dardon filed a motion for an award of attorney fees. In his declaration, Dardon's counsel averred that the trial court had found Rodriguez in contempt so she was entitled to attorney fees. Rodriguez responded that the court had not found him in contempt during the December 19, 2008 hearing, so Dardon was not entitled to an award of attorney fees. After hearing arguments and reviewing the recording of the December 19, 2008 hearing, the court concluded that because Dardon had not argued for attorney fees and had not reserved that issue, she was not entitled to an award of attorney fees. The court then signed an order that Dardon had proposed. The trial court's written order stated that "ANTHONY J. RODRIGUEZ is in contempt of court." Clerk's Papers at 49. It entered a judgment of \$4,367.72 in Dardon's favor for unpaid child support but did not award attorney fees to Dardon. Dardon appeals from the denial of attorney fees.<sup>2</sup>

Dardon argues that because she prevailed in her action regarding the unpaid day care expenses, she is entitled to an award of attorney fees under RCW 26.18.160, which provides in pertinent part,

In an action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees.

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<sup>2</sup> Rodriguez later moved to be permitted to cross-appeal the order of contempt contained in the July 24, 2009 order, but his motion was denied as untimely filed.

But while RCW 26.18.160 may entitle a prevailing party in a support enforcement action to attorney fees, it does not entitle that party to be dilatory in seeking an award of attorney fees. Other than mentioning them in her initial motion for an order of contempt, Dardon did not argue for an award of attorney fees until seven months after the trial court ruled on her motion. She did not present an order following the December 19, 2008 hearing addressing her request for an award of attorney fees. CR 54(d)(2) requires that motions for awards of attorney fees be brought within 10 days of entry of judgment. Given Dardon's dilatory conduct, we conclude that the trial court did not err in denying her request for attorney fees. We affirm. Both Dardon and Rodriguez request their attorney fees on appeal. We deny both requests.

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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QUINN-BRINTNALL, J.

We concur:

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ARMSTRONG, J.

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PENOYAR, C.J.