IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of: PAMELA G. WILSON, Respondent, v. WALTER B. WILSON, Appellant.	No. 40402-8-II PART PUBLISHED OPINION

Van Deren, J. — Walter Wilson appeals the trial court's orders from this marriage dissolution action. He alleges 14 assignments of error relating to the trial court's orders (1) setting child support, (2) setting maintenance, (3) granting moving and relocation expenses, (4) allocating the community debt, (5) awarding his former wife attorney fees, and (6) denying his reconsideration motion. We remand for (1) review of the child support order, (2) clarification of the deductions in the child support order, (3) entry of an *Arvey* worksheet, (4) modification of maintenance only to the extent as a result of any change to the ordered child support payment within the trial court's discretion, (5) determination of the amount of Pamela's attorney fees award incurred at trial; and (6) review of the propriety and amount of attorney fees incurred on appeal. We affirm the debt division and the award of relocation costs.

FACTS

Walter and Pamela Wilson[1] were married on February 27, 1982. During their marriage they had seven children. Walter and Pamela lived in Utah with their children for the majority of their marriage. In January 2007, Pamela and two of their daughters traveled to Washington so that Pam could care for her terminally-ill mother. In April 2007, the rest of the family moved to Washington to join them.

Walter and Pamela separated on August 21, 2008, 26 years after their marriage. When the marriage dissolved in January 2010, three of their children were still under age 18 and dependent. Their 14-year-old daughter and 15-year-old son lived with Pamela in Graham, Washington, while their 17-year-old son lived with his father in Provo, Utah.

Walter has a master's degree in business administration (MBA). During their marriage he was the primary provider and, until the past five years, he was the sole provider. Since 1997, he has worked at Oracle Corporation. Before working at Oracle, Walter was employed at Novell for almost ten years. At Novell, he worked as a sales analyst, an operations manager, and then as director of administration. When the trial court heard this matter at trial, Walter was a senior technical specialist at Oracle. Although he had been making "well over $100,000" per year before trial, Walter testified that available overtime had decreased and, as of June 2009, he was making approximately $6,000 to $7,000 per month. Report of Proceedings (RP) at 116. But based on his earnings during the first eight months of 2009, Walter's annual gross income appeared to be $131,802.

[1] Because the parties have the same last name, we refer to them by their given names. We mean no disrespect.

During their 26-year marriage, Pamela for the most part stayed home and took care of the house and children while Walter worked. She held a few part time jobs, including one at a photography laboratory, which paid $7.50 per hour; and, for a few months, she worked at Stouffers. Before the parties filed for divorce, Pamela began working at Vadis, a consulting firm that assisted people with disabilities find employment. Her monthly gross income from Vadis was $2,060.00; the trial court used this figure in calculating child support.

Before trial, Pamela quit her job at Vadis to work as a massage therapist in Issaquah.[2] She testified that it was her plan to enroll in a nurse practitioner's program at nearby Bellevue College and to continue working while going to school following the divorce. She testified that the nurse practitioner program would cost at least $6,000 for each semester and would take six years to complete. She estimated that she would be able to make $2,500 per month as a massage therapist while she was attending school.

On February 26, 2009, the trial court entered a temporary order that required Walter to pay $500.00 per month for maintenance and $986.48 per month for child support. The trial court ordered him to pay the mortgage on the family home and the court further ordered the parties to list the home for sale. In June 2009, Walter stopped paying the mortgage on the home. The parties unsuccessfully attempted a short sale of the home to avoid foreclosure. At trial, the parties stipulated that there was no equity in the home where Pamela was still residing with two of their children.

Based on Pamela's and Walter's testimony, and argument from each of their attorneys, the trial court entered its oral ruling on October 26. The trial court found that Walter's 2008 gross

[2] In 2005, Pamela began massage therapist training and became licensed in 2007.

income was $13,000.00 per month and his 2009 monthly gross income was $11,851.00. The court calculated his 2009 monthly net income as $8,911.52. The trial court determined that Pamela's 2009 monthly net income was $1,750.00. Combining Walter's and Pamela's individual 2009 monthly net incomes, the trial court calculated their 2009 joint net income as $10,661.00. Based on this number, the child support order required Pamela to contribute 17 percent to the support of the children and Walter to contribute 83 percent. The trial court ordered Pamela to pay the $724.00 Capital One credit card balance and Walter to pay the other debts, including the Chase VISA credit card and credit union debts totaling over $27,000.00. Although there was no equity in the family home, the trial court awarded the family home to Walter if he could avoid foreclosure.

Over the course of the pending dissolution action, Walter proposed multiple child support worksheets showing varying income and deductions. In setting child support, the trial court found that the support obligation was $1,109 per child for a three-child family. The trial court then calculated what each party owed for child support based on the number of children living with each parent and the percentage of the total income each parent would contribute. After deducting what Pamela would owe Walter for the one child in his care in Utah, the trial court determined that Walter owed Pamela $1,652 per month for child support. The child support worksheet does not show how the trial court treated deductions from income or calculated medical or other extra expenses for the children.

The trial court also ordered Walter to pay maintenance to Pamela. In doing so, it considered the statutory factors, including the length of their marriage and Pamela's need in accordance with Walter's ability to pay. The court stated:

> [T]he parties opted into a traditional marriage arrangement where [the] wife stayed at home with the children, and [the] husband went out to work; and that is, certainly, nothing that one can disparage; but it does have some costs in the event that the parties get a divorce because whoever stays at home . . . is not putting into Social Security. They don't have a chance to build up any kind of an independent retirement.

RP at 212-13. The trial court also considered the "extreme disparity in education" and "extreme disparity in income" between Walter and Pamela. RP at 213. The trial court also noted that Walter had a minimal pension account with Brigham Young University and a 401(k) plan, that Walter had cashed out the parties' community stock benefits but did not divide the proceeds equitably with Pamela, and that the tax refund "d[id] not appear to have been divided in an equitable manner." RP at 213. The trial court stated that it did not have "a great deal of faith in [Walter]" because he controlled the parties' finances and stopped paying the mortgage, put the utilities in Pamela's name without informing her, and stopped making the utility payments that he had been ordered to pay. RP at 214.

The trial court found maintenance was necessary after it "considered all of these factors" and that Pamela would now attempt to go "into the work force to try to make up for all the time that she was [at] home." RP at 213. The court awarded spousal maintenance to Pamela in the amount of $2,500 per month for three years, and then reduced maintenance to $2,000 per month for the following three years to assist with her plans to become a nurse practitioner. Spousal maintenance would then decrease to $1,500 for the next three years and to $1,000 for the last three years. After twelve years, spousal maintenance would terminate.

Walter was also ordered to contribute $2,500 toward Pamela's moving expenses since she and the two children would be moving out of the Graham home. The trial court awarded Pamela

$7,500 in attorney fees. The trial court entered written factual findings and legal conclusions on January 15, 2010, consistent with its oral ruling.

Walter unsuccessfully moved for reconsideration. Walter appeals.

ANALYSIS

Walter asserts 14 assignments of error relating to the trial court's orders (1) setting child support, (2) setting maintenance, (3) granting moving and relocation expenses, (4) allocating the community debt, (5) awarding his former wife attorney fees, and (6) denying his reconsideration motion.

We review dissolution orders for abuse of discretion. *In re Marriage of Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990); *In re Marriage of Bell*, 101 Wn. App. 366, 371–72, 4 P.3d 849 (2000). The party challenging a trial court's dissolution decision, here Walter, has the burden of demonstrating that the trial court manifestly abused its discretion. *Griffin*, 114 Wn.2d at 776. "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46–47, 940 P.2d 1362 (1997). A court's decision is manifestly unreasonable if it is based on an incorrect legal standard. *Littlefield*, 133 Wn.2d at 47.

We review the trial court's findings of fact for substantial evidence. *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986). Where the trial court has weighed the evidence, the reviewing court's role is simply to determine whether substantial evidence supports the findings of fact and, if so, whether the findings in turn support

the trial court's conclusions of law. *In re Marriage of Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). An appellate court should "not substitute [its] judgment for the trial court's, weigh the evidence, or adjudge witness credibility." *Greene*, 97 Wn. App. at 714.

Walter argues that the trial court erred in calculating child support payments because it (1) did not use required child support worksheets and, thus, violated RCW 26.19.035(3); (2) did not include the spousal maintenance awarded to Pamela as part of her income nor deduct it from Walter's income in calculating the amount child support owed; (3) made mathematical errors in the child support worksheet and failed to itemize deductions; (4) included Walter's overtime income in computing his child support obligation; (5) determined Walter's income based on his historic earnings; and (6) failed to attach the *Arvey*[3] worksheet to its child support worksheet.

We disagree with Walter's first argument that the trial court erred because it did not utilize the required child support worksheet. On January 15, 2010, the trial court entered signed Washington State child support schedule worksheets. RCW 26.19.035(3) requires that "[w]orksheets 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." Thus, using child support worksheets, based on statewide guidelines, is mandatory. RCW 26.19.035(3), (4); *see In re Marriage of Sacco*, 114 Wn.2d 1, 3-4, 784 P.2d 1266 (1990). Walter has not alleged that the form the trial court entered deviated from the form the Washington administrative office of the courts requires. But he is correct that the trial court, taking into consideration the split custody of their three children and doing the *Arvey* calculation to allocate

[3] *In re Marriage of Arvey*, 77 Wn. App. 817, 825-26, 894 P.2d 1346 (1995) (establishing the appropriate method for calculating child support under a "split-custody" arrangement).

the child support obligation, did not attach a separate worksheet showing its calculation. But the trial court's oral decision explains this calculation. Thus, this argument fails.

Walter also argues that the trial court erred by not deducting the spousal maintenance payments that the court ordered him to pay Pamela from his income and by not including it as her income. Under former RCW 26.19.071(3)(q) (2008),[4] spousal "[m]aintenance actually received" is included in gross income and, under former RCW 26.19.071(5)(f), "[c]ourt-ordered [spousal] maintenance to the extent actually paid" is deducted from a parent's gross income. Chapter 26.19 RCW requires that only maintenance "actually received" or "actually paid" be included in or deducted from a parent's gross income. Former RCW 26.19.071(3)(q), (5)(f).

Although former RCW 26.19.071's plain language requires a trial court to consider spousal maintenance "actually paid" and "actually received" in calculating a parent's income for purposes of determining child support obligations, the statute is silent as to whether a trial court must consider spousal maintenance that has been ordered but has not yet been paid or received. Reading former RCW 26.19.071 in harmony with the spousal maintenance statute, RCW 26.09.090, we hold that the trial court did not abuse its discretion by calculating Walter's child support obligation without first deducting his ordered spousal maintenance obligation. *See Alpine Lakes Prot. Soc'y v. Wash. State Dep't of Ecology*, 135 Wn. App. 376, 390, 144 P.3d 385 (2006) (We harmonize the provisions of an act to ensure its proper construction.).

RCW 26.09.090 states in part:

> (1) In a proceeding for dissolution of marriage[,] . . . the court may grant a maintenance order for either spouse. . . . The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

[4] Former RCW 26.19.071 (2008) was in effect on August 21, 2008, the date the parties separated. *See* Laws of 2008, ch. 6, § 1038.

> (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, *including the extent to which a provision for support of a child living with the party includes a sum for that party*.

(Emphasis added.)

RCW 26.09.090(1)(a) thus directs a trial court to calculate the need for spousal maintenance only *after* it has determined the parties' child support obligations. This statutory directive requires the trial court to consider the impact of child support on the ability of the payor to pay maintenance, before ordering maintenance. It does not require that the trial court, after already taking child support into consideration, recalculate child support after a maintenance amount is determined.

Walter provides no authority supporting his contention that maintenance awarded contemporaneously with child support must be included in each parent's income calculation.[5] We note that the legislature articulates its intent to ensure that child support orders "provide additional child support *commensurate with the parents' income*." RCW 26.19.001 (emphasis added). And the legislature also included the language "[m]aintenance actually received" and "maintenance to the extent actually paid" in the calculation of the parents' income for purposes of child support. Former RCW 26.19.071(3)(q), (5)(f). The conflict between RCW 26.09.090(1)(a)'s direction and RCW 26.19.001, the purpose statement of the child support statute, creates an ambiguity that confronts the trial court in complying with worksheet directions when setting child support.[6] In this instance, we resolve the ambiguity to hold that the trial court

[5] *See* 1 Wash. State Bar Ass'n, Washington Family Law Deskbook § 28.5(4)(e) at 28-29 (2d ed. & Supp. 2006).

[6] The legislature should resolve this ambiguity at its earliest opportunity to guide the trial courts and parents in reaching a just result when child support and maintenance are both ordered.

did not abuse its discretion in not including the maintenance in the child support worksheets.[7] Accordingly, Walter's argument fails.

Next, Walter alleges that "none of the numbers actually used [in the child support worksheet] are mathematically correct, nor is there any evidence to support items included in the worksheets." Br. of Appellant at 13. Specifically, Walter states that (1) his and Pamela's gross incomes are incorrect; (2) the trial court failed to itemize his deductions; and (3) the amount listed on line 13 as total health care, day care, and special expenses was incorrect and, because the amount on line 13 was incorrect, correspondingly, the amounts listed on the calculation of each parent's health care obligation on line 14 were incorrect. Walter also contends that the trial court erred by including his overtime income in its income calculation, and that it computed his income based on his "historic earnings." Br. of Appellant at 15. Walter did not submit with his brief on appeal a copy of any proposed child support worksheet that he submitted to the trial court or suggest to us what the numbers should have been based on the record below.

Here, the trial court's oral ruling detailed its calculation of Walter's annual income based on the most recent pay information that he had submitted to the court. Substantial evidence supports the trial court's determination of the parties' respective incomes. Walter's contention that it was based on historical earnings lacks merit. Also, the trial court correctly included Walter's overtime pay in its income calculation, as former RCW 26.19.071(3)(e) requires.

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[7] Although we hold that here the trial court did not abuse its discretion in light of the ambiguity created by the conflicting provisions of RCW 26.19.001 and RCW 26.090(1)(a), we note that, given RCW 26.09.090(1)(a)'s explicit requirement that a trial court consider child support obligations when determining the need for spousal maintenance, accepting Walter's contention could lead to the possible result of a cycle of calculating and recalculating obligations under the child support and spousal maintenance statutes.

But Walter is correct that the trial court did not itemize its deductions on the child support worksheet. First, the trial court failed to itemize deductions from Walter's and Pamela's gross income. The trial court's oral ruling indicated a deduction of $2,072 for taxes, but it is unclear if that includes federal insurance contributions act tax and other applicable deductions. Also, the trial court did not itemize the health care and other child rearing expenses on the worksheet's third page. The trial court listed Walter's $400 health care expense but then, without listing any other expenses, the trial court indicated that the total cost for health care, day care, and special expenses was $547.[8] Line 14 of the worksheet should list each parent's financial obligation for health care, day care, and special expenses by multiplying the total expense by the percentage—Walter 83 percent and Pamela 17 percent—each parent is obligated to pay. But, the trial court did not do this calculation and it is unclear how the court determined that Walter was obligated to pay $235 of the health expenses and Pamela was obligated to pay $46. These amounts do not appear to be based on the trial court's total expense calculation of $547. Thus, substantial evidence does not support these findings in the child support worksheet.

We remand for review of the child support order, correction of any mathematical errors, and itemization of all deductions. Moreover, although the trial court's oral ruling indicates it was using *Arvey* calculations to determine each parent's child support obligation to the other parent, it did not attach an *Arvey* worksheet to its order. On remand, we order the trial court to attach a completed *Arvey* worksheet with its child support worksheet order.

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[8] We note that Walter's proposed child support worksheet submitted with his reconsideration motion proposed expenses totaling $547. His itemization showed $522 for health insurance expenses and $25 for education expenses. Although not clear from the record before us, it is possible that this is the correct calculation.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Spousal Maintenance

Walter contends that in awarding maintenance, the trial court abused its discretion because (1) awarding Pamela maintenance for 12 years "was not fair or equitable in light of the economic status of the parties and was unsupported by the evidence" and (2) the evidence did not support the trial court's finding that Pamela "presented a meaningful educational plan, requiring extensive higher education attendance followed by training time." Br. of Appellant at 21; Clerk's Papers (CP) at 178.

It is within the trial court's discretion to award maintenance based on the factors enumerated in RCW 26.09.090.[9] *In re Marriage of Bulicek*, 59 Wn. App. 630, 633, 800 P.2d394

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[9] RCW 26.09.090 provides, in full:

> (1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:
>
> (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
>
> (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
>
> (c) The standard of living established during the marriage or domestic partnership;
>
> (d) The duration of the marriage or domestic partnership;
>
> (e) The age, physical and emotional condition, and financial obligations of

(1990). A maintenance award is "a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time." *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). "The trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property." *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997). The spouse alleging error bears the burden of showing that the trial court abused its discretion. *In re Marriage of Sheffer*, 60 Wn. App. 51, 56, 802 P.2d 817 (1990). Moreover, "[i]n making an equitable property division or awarding maintenance, the trial court exercises broad discretionary powers. Its disposition will not be overturned on appeal absent a showing of manifest abuse of discretion." *Washburn*, 101 Wn.2d at 179.

Walter specifically contends that there is no evidence to support the trial court's finding that he held an executive position at his company. But Walter testified that at Novell he was initially "a sales analyst and, then, an operations manager and [then the] director of administration." RP at 114. He also testified that at Oracle his "formal title is senior tech specialist, something like that." RP at 114. Based on this testimony it is clear that he was promoted at Novell. Although his testimony regarding his position at Oracle is unclear, based on a totality of the evidence, a finding that he was in a high level position is supported. But even without this statement about Walter's holding an executive position, the trial court's detailed analysis of Walter and Pamela's financial resources supports its maintenance determination.

Walter also disputes the trial court's finding that Pamela "presented a meaningful

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the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

education plan, requiring extensive higher education attendance followed by training time." CP at 178. He argues that (1) there was no evidence of an actual nurse practitioner program offered by an institution, (2) it was unclear whether Pamela had the prerequisites to be admitted into a nurse practitioner program, (3) the program's time and cost were not proven, and (4) there is no evidence that a nurse practitioner program requires training after schooling.

Pamela testified that she quit her job at Vadis to work as a massage therapist in Issaquah so she could be closer to Bellevue College, a school that offers a nurse practitioner's program. She discussed her plan to enroll in the program and continue working while going to school. She testified that the nurse practitioner program would cost at least $6,000 for each semester and would take six years to complete. She estimated that, while attending school, she would be able to make $2,500 per month as a massage therapist. Walter did not offer any evidence to refute Pamela's testimony. And, even if he had, credibility determinations are for the trial court. *Greene*, 97 Wn. App. at 714. Based on Pamela's testimony, there is substantial evidence to support the trial court's finding that Pamela "presented a meaningful education plan, requiring extensive higher education attendance followed by training time."[10] CP at 178.

At oral argument, Walter's counsel also asserted that sufficient evidence did not support the trial court's total maintenance award because, based on Pamela's testimony, the amount and duration of maintenance ordered exceeded Pamela's educational need. But in determining an order for spousal maintenance, the trial court must consider *all* the statutory factors of RCW 26.09.090, not just "[t]he time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of

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[10] If Pamela does not enroll in a nurse practitioner's program as represented to the trial court, Walter may consider filing for modification of the maintenance award.

life, and other attendant circumstances." RCW 26.09.090(b).

As RCW 26.09.090 requires, the trial court considered Walter and Pamela's 26-year marriage, in which they maintained an upper middle class standard of living and raised seven children together with Pamela serving as the primary caregiver and stay-at-home parent; and it compared Walter's MBA degree and executive experience with Pamela's more limited education and income potential. The trial court also took into account Walter's violation of the trial court's 2009 temporary order requiring him to make payments on the family home's mortgage. Notwithstanding Walter's concern that Pamela was already employed and his assertion that she could make sufficient income as a massage therapist, his argument does not show that the trial court's decision constitutes a manifest abuse of discretion. The trial court found that "[b]ased on [Pamela's] income, and earning potential absent schooling or retraining, she would be financially limited in obtaining housing, utilities and other necessities without an award of spousal maintenance." CP at 179.

Walter also argues that the total monthly amount he must pay to Pamela is "more than half of his salary." Br. of Appellant at 33. But this statement is based on his speculation about his future income, not on the salary information before the trial court. The trial court's award of maintenance, including the duration of the maintenance payments, was made with appropriate reference to the controlling statute, RCW 26.09.090, and was within the range of acceptable choices, and, thus, did not constitute an abuse of discretion. "The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be just." *Bulicek*, 59 Wn. App. at 633.

Because the trial court properly considered the statutory factors in determining its spousal

maintenance order, Walter has not met his burden to show that the trial court abused its discretion. But on remand for recalculation of the child support, the trial court may address any portion of the maintenance ordered that was based on the amount of child support Walter was to pay Pamela under its original order.

Community Debt

Walter also argues that the trial court erred in its community debt allocation. Walter states that he "was ordered to pay virtually all of the community debt" but cites no legal authority to support his argument that such a debt division under the evidence produced in the trial court shows an abuse of discretion. Br. of Appellant at 43. "'Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.'" *State v. Logan*, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

Moreover, the trial court did not abuse its discretion in its division of the parties' community debts. Here, the trial court ordered Pamela to pay the $724 Capital One credit card balance and Walter to pay the other debts, including the Chase VISA credit card and the credit union debts. The trial court noted that there was conflicting testimony regarding who used the charge cards. The court noted that some of the debt continued to grow even though Pamela could not access the account. Walter had numerous check overdrafts associated with an account that "contine[d] to hemorrhage money, even though it [wa]s, totally, under his sole control in Utah." RP at 211. We do not substitute our judgment for the trial court's, weigh the evidence, or judge witness credibility. *See Greene*, 97 Wn. App. at 714. The court did not abuse its discretion in allocating the community debts.

Moving and Relocation Expenses

Walter argues that "[t]he record contains no evidence of a need for moving expenses." Br. of Appellant at 42. But there was substantial evidence that the house where Pamela and the two children lived was going to be foreclosed if Walter did not pay the arrears. Walter testified that he stopped making mortgage payments on the home in June 2009, although he was ordered to continue making those payments during the pendency of the dissolution proceeding. The parties even attempted a short sale of the home to avoid foreclosure.

Additionally, the trial court awarded the family home to Walter if he could keep the mortgage from being foreclosed. Pamela testified that she was searching for an apartment to rent but could not find one that she could afford. The evidence is sufficient to show that Pamela would have to move out of the family home. Given her minimal financial resources, substantial evidence supports the trial court's finding that she would need help with moving expenses. We hold that the trial court did not abuse its discretion in awarding Pamela $2,500 in moving and relocation expenses.

Reconsideration Motion

Walter argues that the trial court erred when it denied his reconsideration motion. We review a trial court's denial of a motion for reconsideration for abuse of discretion. *Brinnon Grp. v. Jefferson County*, 159 Wn. App. 446, 485, 245 P.3d 789 (2011). We do not address this argument because we remand for explanation of the child support worksheet, use of the *Arvey* worksheet, and recalculation of maintenance, if necessary, resulting from any change in ordered child support payments.

Attorney Fees

Walter argues that the trial court abused its discretion by awarding Pamela $7,500 in attorney fees in its initial dissolution order and then by awarding her an additional $500 in attorney fees in its order denying his reconsideration motion.

RCW 26.09.140 provides for an award of reasonable attorney fees "after considering the financial resources of both parties." A trial court's decision to award fees under this provision is reviewed for abuse of discretion. *In re Marriage of Crosetto*, 82 Wn. App. 545, 563, 918 P.2d 954 (1996). In considering the parties' financial resources, a court must balance the needs of one party against the other party's ability to pay. *In re Marriage of Trichak*, 72 Wn. App. 21, 26, 863 P.2d 585 (1993).

Here, the trial court awarded Pamela $7,500 in attorney fees and noted that she was responsible for the balance in excess of $7,500. When Walter requested clarification because there had been no affidavit that stated Pamela's actual attorney fees, the court indicated that the parties could file affidavits if they chose to, but, the trial court warned that "[Walter]'s going to be contributing to her attorney's fees," and that returning to court on a separate motions calendar would only increase attorney fees of both parties. RP at 215. Pamela's attorney then stated his fees were "going to be far in excess of $7,500 and maybe just by [my] saying [the amount of Pamela's attorneys fees], as an officer of the court, [it] will prevent us from having to come down here." RP at 216.

Although substantial evidence of the parties' relative financial resources supported the trial court's decision to award attorney fees to Pamela, the trial court did not appear to calculate the amount of its attorney fees award on any evidence before it. Because the trial court awarded $7,500 in attorney fees without any supporting evidence as to that amount, the trial court abused

its discretion. Accordingly, we vacate the trial court's attorney fees order and remand for a determination of the proper sum, based on evidence in the record.

Both Pamela and Walter seek costs and attorney fees on appeal. *See* RCW 26.09.140; RAP 18.1; *In re Marriage of Burch*, 81 Wn. App. 756, 762, 916 P.2d 443 (1996). Determining whether a fee award is appropriate requires this court to consider the parties' relative ability to pay. *See Trichak*, 72 Wn. App. at 26. We also examine the arguable merit of the issues raised on appeal. *See State ex rel. Stout v. Stout*, 89 Wn. App. 118, 127, 948 P.2d 851, (1997) (citing *Griffin*, 114 Wn.2d at 779-80). Because we remand for further review, we also remand to the trial court the issue of the propriety and amount of attorney fees incurred on appeal. *Burch*, 81 Wn. App. at 762.

We remand for (1) review of the child support order, (2) clarification of the deductions in the child support order, (3) entry of an *Arvey* worksheet, (4) modification of maintenance only to the extent as a result of any change to the ordered child support payment within the trial court's discretion, (5) determination of the amount of Pamela's attorney fees award incurred at trial; and (6) review of the propriety and amount of attorney fees incurred on appeal. We affirm the debt division and the award of relocation costs of $2,500.

Van Deren, J.

We concur:

Hunt, J.

Johanson, J.