IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, on behalf of K.J.C., child, Petitioner, S.M.W., Respondent, v. J.L.C., Appellant.	No. 42641-2-II UNPUBLISHED OPINION

Johanson, J. — J.L.C.[1] appeals the trial court's grant of S.M.W.'s motion to correct a clerical error in a 2003 order pursuant to CR 60(a). He contends that the error was not a mere scrivener's error and, therefore, the trial court had no power to change the previous order more than one year after it entered the disputed order. We affirm.[2]

FACTS

K.J.C. is a minor child of J.L.C. and S.M.W. On January 30, 2003, the Pierce County Superior Court held a trial on J.L.C.'s objection to S.M.W.'s relocation of K.J.C. to Africa with S.M.W., a missionary. On February 28, 2003, a second hearing was held to review the proposed relocation order. J.L.C. did not attend this hearing. On this date, the court entered a written

[1] This appeal is filed under seal and therefore we refer to the parties by their initials.

[2] A commissioner of this court initially considered this appeal as a motion on the merits under RAP 18.14 and then referred it to a panel of judges.

relocation order that allowed the relocation and the related modifications to the custody decree, parenting plan, and residential schedule necessitated by S.M.W.'s move.

Although child support was not the subject of the trial, the court's 2003 relocation order stated "[t]he Order of Child Support signed by the court and entered on July 5, 1995, in Pierce County shall remain in effect." Clerk's Papers (CP) at 12. The 1995 child support order set J.L.C.'s child support payment at $25.00 per month.

In 2011, the Division of Child Support (Division) reviewed the 2003 relocation order and contacted S.M.W. about an error. The Division determined that the 1995 child support order referenced in the 2003 relocation order was modified on February 2, 2000, before the entry of the 2003 relocation order. This 2000 child support order set J.L.C.'s support payment at $308.00 per month. Thus, the division requested S.M.W. to bring a motion to correct the 2003 relocation order to reflect the appropriate child support order.[3]

At the hearing on the motion to correct, S.M.W. noted that "[f]or the past eight years" everyone was operating under the terms of the 2000 child support order. Verbatim Report of Proceedings (VRP) (Sept. 2, 2011) at 3. J.L.C. responded that the incorrect date was not merely a "scrivener['s] error" because "a scrivener's error is something minor, like if someone was just to transcribe for him or whatever. But if [S.M.W.'s counsel] is the one [who] did it, [t]hat did the drafting of that, you know, it's not minor. He just referenced the wrong order." VRP (Sept.

[3] The Division's letter to S.M.W. explaining the issue references a November 2002 child support order. S.M.W.'s motion to correct the 2003 order, however, labels the 2000 child support order as the governing order. During the hearing on the motion to correct, the trial court explained that it entered an order before the 2003 relocation trial temporarily terminating support until after the trial.

2, 2011) at 4.

The trial court recognized that the "most recent order" was the 2000 child support order and it was the only time "where the State was represented, and the income information was presented to the Court." VRP (Sept. 2, 2011) at 6. It concluded that it "[m]akes no sense to use" the 1995 child support order. VRP (Sept. 2, 2011) at 6. Pursuant to CR 60(a),[4] the court corrected the 2003 relocation order to reference the 2000 child support order. J.L.C. objected that the trial court's action was untimely because it only had one year to correct the error under CR 60(b).[5] The court overruled this objection.

[4] This rule states:

> (a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

[5] Unlike CR 60(a), which has no time limit, corrections under CR 60(b) must be made within one year. CR 60(b) provides, in part:

> (b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order; [or]
>
> . . . .
>
> (11) Any other reason justifying relief from the operation of the judgment.
>
> The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken.

DISCUSSION

J.L.C. appeals the correction order, arguing that the reference to the 1995 child support order was not a scrivener's error. Consequently, the trial court did not have the authority to change the 2003 relocation order more than one year after the alleged error occurred. CR 60(b). J.L.C. contends that because he could no longer see his child after she moved to Africa, "[i]t makes sense, then, to find that there was a countervailing reduction in child support." App. Br. at 8. S.M.W. responds that J.L.C.'s actions, in paying $308.00 per month in support, over the past eight years demonstrate that he understood that the 2000 child support order was the controlling order, not the 1995 child support order. She adds that there is nothing in the record to demonstrate that the judge intended to reinstate an older support order and replace the more recent order.

We review a trial court's decision to amend judgment under CR 60(a) for abuse of discretion. *Presidential Estates Apartment Assocs. v. Barrett*, 129 Wn.2d 320, 325-26, 917 P.2d 100 (1996). A trial court abuses its discretion when its decision is based on untenable grounds or untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). CR 60(a) only allows for the correction of "[c]lerical" errors. A clerical error exists if, based on the record, the judgment does not embody the trial court's intention. *Shaw v. City of Des Moines*, 109 Wn. App. 896, 901, 37 P.3d 1255 (2002). Our review of the trial court's intention is complicated by the fact that the January 30, 2003 relocation trial was not transcribed; the record consists of minute entries.

Based on the available record, however, we conclude that the court and the parties did not revisit the governing terms of the 2000 child support order in the 2003 relocation trial. The

court's 2003 relocation order from this trial, for example, is captioned "Order on Objection to Relocation/Modification of Custody Decree/Parenting Plan/Residential Schedule;" it does not purport to address or modify child support. CP at 8 (some capitalization omitted). More importantly, however, is the trial court's written intent that what it mistakenly considered the then-present child support order "shall *remain* in effect." CP at 12 (emphasis added.) Although the trial court incorrectly identified the governing order as the 1995 order, the use of the term "remain in effect" demonstrates that the court did not intend to disturb the status quo of the 2000 child support order's then-governing terms by reverting to the 1995 child support order.

Because we conclude that the trial court did not abuse its discretion in correcting the clerical error in the 2003 relocation order, we reject J.L.C.'s argument that the trial court waited too long to make the correction. CR 60(a) allows the trial court to act "at any time."

Accordingly, we affirm.

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 in accordance with RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Armstrong, J.

Worswick, C.J.