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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In re the Parentage of: X.T.L., Child.	)	No. 31335-2-III
STATE OF WASHINGTON, Petitioner,	)	
v.	)	
ERIC LAMPKIN, Appellant,	)	UNPUBLISHED OPINION
PAULINA CORONADO, Respondent.	)	

SIDDOWAY, C.J. — Eric Lampkin appeals decisions made by the superior court in establishing terms on which he is required to contribute to the cost of his son's postsecondary education. While the trial court erred in failing to strike portions of a declaration submitted by Paulina Coronado, any consideration of the inadmissible evidence was harmless. We affirm.

FACTS AND PROCEDURAL BACKGROUND

In January 2011, the Walla Walla County Superior Court entered a child support order providing that Eric Lampkin and Paulina Coronado would be responsible for contributing to their then almost-18-year-old son's college education, and that the terms of the postsecondary education support would "be decided by agreement or by the court." Clerk's Papers (CP) at 8. The order further stated that "[o]nce the presumptive amount of support terminates in June 2011, college support shall be determined once the college cost information is available." *Id.*

The parties' son turned 18 two months later, and graduated from high school in June. On June 27, he enrolled in a three-year bachelor's degree program in recording arts at Full Sail University, located in Winter Park, Florida. He took classes online over the summer of 2011 and moved to Florida to continue classes in the fall.

In February 2012, Ms. Coronado filed a petition to modify the existing child support order to address the postsecondary education expense, asking that Mr. Lampkin's obligation be set at one-third of the total. The total cost of attending Full Sail University, including tuition and living expenses, was $153,291, with the largest expense incurred in the first year. Ms. Coronado asked that the court order Mr. Lampkin to pay his support obligation directly to her, since she had already obtained a parent loan to cover the majority of the first year's cost. The parties' son had received a small grant and took out a student loan to cover part of the remainder. Ms. Coronado's petition also asked that

health insurance for the son, which Mr. Lampkin had been providing through his employer as required by the prior support order, continue for as long as the son was attending college and remained a dependent.

In a declaration supporting the petition to modify the child support order, Ms. Coronado attached documents providing information about the bachelor's in recording arts program at Full Sail University and documenting the loans she and her son had obtained to finance the college costs. She also attached a pay stub showing her gross earnings for the month of September 2011.

Mr. Lampkin's response to the petition stated that the "underlying facts and procedure in this matter are neither complex nor disputed." CP at 82. Elsewhere, he stated, "[T]here is no need to discuss whether [the son] is dependent or entitled to the support. Rather, the only issues are how much support is required and how the support will be paid." *Id.* at 83. He contested Ms. Coronado's request on only four grounds.

The first was his objection that the Full Sail program was too expensive, stating that neither parent had substantial financial means. In a declaration accompanying his memorandum, he stated that his current net income was approximately $2,500 per month, depending on the number of hours he worked. He argued that his contribution should be measured by an appropriate percentage of the cost of resident tuition at Washington State University (WSU).

Second, he pointed out the statutory requirements that parental support for postsecondary education is payable only for a child who is enrolled in an accredited school, is actively pursuing a course of study, and is in good academic standing, none of which had been demonstrated by Ms. Coronado's submissions.

Third, he complained that the requirement that he make payments to Ms. Coronado was not consistent with Washington statutes and pointed out that the loans she had taken out were on "deferred" status, questioning why he should make current payment when she might not be doing the same.

Finally, he complained about the lateness of Ms. Coronado's petition, claiming that the first indication he received that his son had begun college was when he was served with the petition, eight months into the three-year program. He argued that Ms. Coronado's failure to provide him with more timely information should excuse him, on equitable grounds, from having to contribute to the first-year cost.

Ms. Coronado did not file reply materials but, at the time of hearing, her lawyer addressed Mr. Lampkin's objection to the cost of the out-of-state school, stating,

> [I]t's a special university where a comparable degree could not be obtained in state. . . .
>
> . . . It's known for its entertainment degrees. And so we don't hear entertainment degrees coming out of the University of Washington or WSU.
>
> This young man is very talented. He wants to get in the music production type business. And in order to get that kind of degree, he needs to go to a university like Full Sail, as opposed to WSU. And so if he is going to pursue his dream in his chosen field, he needs to go out of state.

Report of Proceedings (RP) at 2-3. Ms. Coronado's lawyer also stated, with respect to Mr. Lampkin's desire to make payments directly to the school, that Mr. Lampkin could try to arrange to pay Full Sail University directly, but in that case would have to complete payments within the remaining two-plus years of the program, as contrasted with Ms. Coronado's offer to take out loans and be repaid over five years.

Mr. Lampkin's lawyer prefaced his argument at the hearing by stating, "There are no real factual disputes, I don't believe" and a bit later summarized his position, stating, "As I see it, there are four issues here." RP at 6, 8. The first issue was Ms. Coronado's failure to demonstrate "how [the son] is doing. We don't know if he is on pace to get done with this accelerated program. We just don't have enough information. There's no declaration from the child at all." RP at 9. He conceded that the parties' son was apparently enrolled at Full Sail University.

The remaining issues identified by Mr. Lampkin's lawyer during the hearing were, again, to whom Mr. Lampkin's payments should be made, the overall cost of the Full Sail program, and Ms. Coronado's delay in requesting the modification.

At the conclusion of the hearing, the trial court rejected Mr. Lampkin's arguments and orally ruled that Mr. Lampkin would be responsible for one-third of the cost of all three academic years at Full Sail University, making his payments either directly to the school or to Ms. Coronado.

Following the hearing, Ms. Coronado's lawyer prepared a detailed proposed order that he sent to Mr. Lampkin's lawyer for comment. Receiving no response, he mailed the order to the court, under a cover letter reporting that he had transmitted the order to Mr. Lampkin's lawyer more than 15 days earlier but received no response. A local court rule permits submission of orders on that basis, and the court signed the order.

Mr. Lampkin filed a timely motion for reconsideration and to amend the findings in the order. The motion for reconsideration raised the following objections to the order entered:

> The order stated that the child support worksheet was "not applicable," contrary to Washington law requiring completion of a worksheet.
>
> It stated that Mr. Lampkin's monthly net income is "'$3,000 (approximately),'" contrary to the only evidence before the court, and stated that Ms. Coronado's monthly net income is $2,200, which was unsupported by evidence before the court.
>
> It provided for payments directly to the mother and also through the Division of Child Support, contrary to RCW 26.19.090(6) which requires that parents make payments directly to the educational institution, if feasible.
>
> It addressed income tax exemptions despite the court having taken no evidence and made no findings concerning exemptions.
>
> It included determinations as to the parties' responsibilities for health insurance and unpaid medical expenses despite the absence of information before the court on which those determinations could be made.
>
> With respect to findings on the factors the court was required to consider in ordering support for postsecondary education expenses under RCW 26.19.090, Mr. Lampkin argued that Ms. Coronado's information was insufficient to support a number of the findings. He also objected to the order's failure to include limitations and conditions on the parent's obligations provided by RCW

> 26.19.090, including the child's responsibility to be in good academic standing and to make available all academic records and grades.

CP at 126-32.

The court called for a response from Ms. Coronado. She submitted a memorandum and a declaration, to which she attached documents, including a certification of Full Sail's accreditation and her son's good standing, and a September 17, 2012 transcript for her son, reflecting a 2.96 GPA (grade point average). The attachments also included a letter from the son explaining why he had chosen Full Sail University.

Ms. Coronado expressed no objection to some of the concerns raised by Mr. Lampkin's motion for reconsideration, such as requiring in the order that the parties' son continue to actively pursue the course of study, remain in good standing, and make his academic record and grades available to both parents. She also prepared a child support worksheet so that "if the court concludes the information [in the order] should be repeated with an attached worksheet, one has been presently provided." CP at 137.

Mr. Lampkin moved to strike her declaration and its attachments on various grounds.

On October 15, the court issued a letter ruling stating that Ms. Coronado had "adequately and sufficiently responded to the father's memorandum" and indicating that

it was denying Mr. Lampkin's motion to strike and motion for reconsideration and to amend pleadings. CP at 182.

A disagreement arose over Mr. Lampkin's proposed order unqualifiedly denying his motions. Ms. Coronado—evidently recognizing shortcomings in the original order—preferred that the court grant Mr. Lampkin relief to the extent she conceded it was appropriate. Mr. Lampkin would not agree.

Mr. Lampkin submitted his proposed order that denied his motions without qualification, which the court entered on November 8. Ms. Coronado submitted her own proposed order "partially granting father's motion for reconsideration and to amend findings and denying other relief," which the court also entered, on November 16, with a notation to the file that "[t]he Court does not find [Ms. Coronado's] Order inconsistent with [Mr. Lampkin's] Order signed and filed 11/8/12." CP at 190-91. Ms. Coronado's order, to which a child support worksheet was attached, included three provisions to which the "mother has no objection": (1) that the child remain enrolled in an accredited school and in good academic standing, in accordance with RCW 26.19.090(3); (2) that the child make available all academic records and grades to both parties, as provided in RCW 26.19.090(4); and (3) "[t]hat while the child support schedule is advisory and not mandatory for post secondary educational support as per RCW 26.19.090(1), the Court adopts the attached Child Support Worksheet." CP at 192.

Mr. Lampkin appeals.

ANALYSIS

Mr. Lampkin argues that the court erred by (1) inadequately considering the required factors set forth in RCW 26.19.090, (2) failing to complete a child support worksheet before entering the support order, (3) refusing to order a pro rata apportionment between the parties, (4) entering findings not supported by substantial evidence, (5) ordering Mr. Lampkin to make payments directly to Ms. Coronado, (6) holding that he was not prejudiced by Ms. Coronado's delay between the child support order and her petition to modify, and (7) denying his motion to strike Ms. Coronado's declaration.

We address Mr. Lampkin's assignments of error in turn.

I. Consideration of the factors set forth in RCW 26.19.090

Mr. Lampkin's first assignment of error is a two-pronged challenge: he claims that the trial court failed to obtain the information needed to consider factors that RCW 26.19.090(2) provides "shall" be a part of the court's exercise of discretion in determining postsecondary education support, and that the trial court failed to consider each factor.

Where a child is dependent and a request for postsecondary education support is properly before the court—neither of which is in dispute here—RCW 26.19.090(2) sets forth seven nonexclusive factors to be considered in determining whether and for how long to award postsecondary support. "As long as the court considers all the relevant

factors set forth in RCW 26.19.090 for determining postsecondary support, it does not abuse its discretion." *In re Parentage of Goude*, 152 Wn. App. 784, 791, 219 P.3d 717 (2009).

Ms. Coronado contends that because Mr. Lampkin did not dispute that he should pay postsecondary education support, the trial court was not required to consider the statutory factors. According to Ms. Coronado, the factors require consideration only when the court is deciding whether to order support at all.

We agree that the language of the January 2011 support order—which was entered only months before the parties' son would graduate from high school and provided that the parents would contribute to the cost of his college education on terms that would "be decided by agreement or by the court"—makes clear that the court had already considered and weighed the factors once.[1] But her argument fails to consider the

[1] Because the factors had been considered once and the trial court had ordered that support would be paid, we question whether the proceeding commenced by Ms. Coronado's February 2012 summons and petition was properly characterized as a support modification proceeding. A full modification action is significant in nature and anticipates making substantial changes and/or additions to the original order of support. *In re Marriage of Scanlon*, 109 Wn. App. 167, 173, 34 P.3d 877 (2001). Here, by contrast, much had already been decided. Other characterizations of what Ms. Coronado was requesting appear more apt. The proceedings could be viewed as a continuation of the earlier modification proceeding, with the court having deferred a decision on the amount and duration of postsecondary education support until the parties' son selected a school and it could be seen whether the parents might agree on their contribution to the cost. *Cf. In re Marriage of Little*, 96 Wn.2d 183, 190, 634 P.2d 498 (1981) (discussing long-standing recognition of an equitable power in the court to defer certain final determinations in dissolution proceedings where the welfare of the child made deferment

language in RCW 26.19.090(2) that the court "shall exercise its discretion when determining whether *and for how long* to award postsecondary educational support based upon consideration" of the factors, thereby providing that the factors are relevant to the extent of the support. (Emphasis added.) And because several of the factors necessarily relate to the college cost the parents can afford, a commonsense reading of the statute requires the court to consider the factors not only in determining whether to award support, but also in determining the amount and duration of the support.

The statute does not require that the court make explicit findings on each of the statutory factors, however; it requires only that its consideration of those factors be reflected in the record. In *In re Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004), a case involving parental relocation under RCW 26.09.520, the Supreme Court

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desirable); *accord In re Marriage of Possinger*, 105 Wn. App. 326, 336, 19 P.3d 1109 (2001) ("It would be strange indeed to construe an act designed to serve the best interests of the children . . . in such a manner as to require trial courts to rush to judgment on insufficient evidence with respect to the children's best interests."). It might be fairly characterized as a "court-ordered adjustment" under RCW 26.09.170(1), but for the fact that the proceeding was brought within 13 months of the prior support order. It might also be characterized as a clarification rather than a modification. *See Rivard v. Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677 (1969) (recognizing a distinction between a clarification, which "is merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary," and a modification, which occurs where "rights given to one of the parties is either extended beyond the scope originally intended or where those rights are reduced, giving the party less rights than those he originally received").

Because it was styled as a petition for modification and the issues on appeal are presented on that basis, we analyze it accordingly. RAP 12.1(a); *Wilkinson v. Chiwawa Communities Ass'n*, 180 Wn.2d 241, 245 n.1, 327 P.3d 614 (2014).

recognized that there are two ways a trial court can make a sufficient record that it has complied with a legislative mandate to consider specific factors: either by entering specific findings of fact on each factor, or—where substantial evidence has been presented on each factor—by demonstrating in its findings and its oral decision that it considered that evidence.

In *In re Marriage of Kelly*, 85 Wn. App. 785, 792-93, 934 P.2d 1218 (1997) the court upheld a postsecondary education support determination absent clear findings on the seven factors, emphasizing that consideration of a factor is presumed where relevant evidence is before the court. While stating that "[i]deally, the court should have been more explicit in its consideration of RCW 26.19.090's factors," it concluded that "because [the father] has not shown that the trial court failed to consider them, we affirm the postsecondary support order." *Id.* at 793-94.

In the trial court, Mr. Lampkin's opposition to Ms. Coronado's petition was limited to only some of the factors, with his lawyer assuring the court that "[t]here are no real factual disputes, I don't believe." RP at 6. Where a parent opposing a request for court ordered support essentially concedes that some factors do not weigh against ordering the support—and here, Mr. Lampkin raised only four issues as weighing against Ms. Coronado's request—the court is entitled to rely on the absence of an objection or dispute. *Cf. In re Marriage of Morris*, 176 Wn. App. 893, 906, 309 P.3d 767 (2013)

(examining the record for adequate consideration of only those factors that were disputed in the trial court).

In opposing the petition, Mr. Lampkin did not identify any of the following factors as weighing against the postsecondary education support being requested: "[a]ge of the child; the child's needs; the expectations of the parties for their children when the parents were together; [or] the child's prospects, desires, aptitudes, abilities or disabilities."[2] RCW 26.19.090(2). We will not review the record for consideration of factors that Mr. Lampkin never suggested weighed against the support being requested by Ms. Coronado.

We turn, then, to the factors that Mr. Lampkin did identify below as weighing against the order of support, which he contends were not adequately considered.

Nature of the Education Sought. In his declaration opposing the petition, Mr. Lampkin claimed that "[a]ll I know about the University is what I reviewed in [Ms. Coronado's] declaration." CP at 91. Ms. Coronado's declaration had included the university's marketing materials describing Full Sail and its recording arts program, along with the son's enrollment agreement and financial aid award letter. Ms. Coronado was not required to provide exhaustive information on the university and program of

[2] At most (and arguably related to the parties' son's aptitudes) Mr. Lampkin pointed out that Ms. Coronado failed to demonstrate that their son was actively pursuing the recording arts program and was in good academic standing. But active pursuit and good standing are *conditions of continuing to receive support* once it is ordered by the court; they are not factors considered by the court in determining whether to order support. *Compare* RCW 26.19.090(3) *with* RCW 26.19.090(2).

study. Given the information she provided and the time Mr. Lampkin was permitted to respond, he had ample opportunity to further investigate the school if he so desired. His only specific complaint was that the Full Sail program was expensive.

The trial court found that "the child is enrolled in an accredited college, Full Sail University, located in Winter Park[,] Florida. Full Sail University is a well known university in the entertainment industry." CP at 106. The documents submitted to the court as attachments to Ms. Coronado's declaration are sufficient to support the court's consideration of this factor.

Parents' Education, Standard of Living, and Resources. Whether the support being requested from Mr. Lampkin was reasonable given the parents' education, standard of living, and resources was the next factor that Mr. Lampkin argued weighed against ordering the magnitude of support being requested by Ms. Coronado.

The court's findings as to the monthly net income of the parties in its August 2012 order were those proposed by Ms. Coronado's lawyer. Her lawyer later explained that he arrived at the figures by reconciling the monthly net income figures from the January 2011 support order with the parties' representations in their most recent declarations. The figures relied on and the lawyer's reconciliation were as follows:

	Ms. Coronado	Mr. Lampkin
January 2011 finding regarding net monthly income. CP at 5.	$2,232	$3,457
More recent representation	Gross monthly income had decreased to $1,971 "because of county budgetary restraints and work furloughs." CP at 26. Ms. Coronado submitted a September 2011 pay stub showing $1,967 gross monthly income. CP at 53.	Net monthly income "is approximately $2,500 per month, depending on the number of hours I work." CP at 92.
August 2012 finding regarding net monthly income. CP at 99.	$2,200	$3,000 (approximately)

Ms. Coronado's lawyer explained to the court that he relied for Ms. Coronado's net monthly income figure largely on the January 2011 support order, because the county cutbacks and furloughs that had caused her income to drop thereafter would not necessarily continue. He averaged Mr. Lampkin's figure from the January 2011 order with Mr. Lampkin's more recent representation because the recent representation was not supported by any documentation. *Cf. In re Marriage of Sievers*, 78 Wn. App. 287, 305-06, 897 P.2d 388 (1995) (where a parent fails to provide the trial court with credible information as to net monthly income, the court is justified in relying on the last credible

information or "devis[ing] some other rational means" of determining income "based on the records available to the court as of the time of trial").

The court had available both the figures in the January 2011 order and the more recent declarations. We presume that it relied upon that information. Importantly, Ms. Coronado's proposal was that the parents collectively contribute only two-thirds of the total cost of their son's education, which she was willing to split evenly with the higher-earning Mr. Lampkin—in other words, she was not asking that Mr. Lampkin's higher net income figure increase the percentage he was required to pay. It was therefore less important for the court to have documentation of an exact net monthly income figure for the parties, since it had general information from which it could determine that the support being requested from Mr. Lampkin was fair (or arguably more than fair) to him. Mr. Lampkin's lawyer had agreed in responding to the petition that "[i]t does not appear that either [party's] income has substantially changed since the child support order was entered in January 2011." CP at 83. The court had sufficient information to weigh this factor.

Support Likely Afforded Absent Dissolution. The trial court stated during the hearing:

> [I]f parents are together and their child wants to go to a school that the parents simply can't afford, then often times that choice isn't made.
>
> But when parents are no longer together and the Court has to get involved in these types of cases, I think it has to give some credibility to the young student's desires and talents and aptitude. And although this school

> obviously is more costly than another type of school, I don't think there is anything repulsive about the choice he made or unreasonable about it.

RP at 15. This is substantially similar to the consideration given this factor in *Kelly*, 85 Wn. App. at 793-94, which the court found adequate.

Because the trial court's oral and written findings indicate that it considered all of the factors that Mr. Lampkin argued weighed against the requested support, the trial court did not abuse its discretion.

II. Child support worksheet and pro rata apportionment

Mr. Lampkin next claims that the trial court committed reversible error by failing to complete and consider a child support worksheet before entering its order establishing postsecondary education support. He also argues that the trial court erred by failing to order a pro rata apportionment between the parties.

Addressing the second argument first, Ms. Coronado correctly points out in her response brief in this court (to which Mr. Lampkin did not reply) that all of the evidence in the record suggests that her decision *not* to ask for pro rata apportionment operated in Mr. Lampkin's favor. Whichever set of income figures we look at, Mr. Lampkin had the higher net monthly income.

Only an aggrieved party may seek review by the appellate court. RAP 3.1. For a party to be aggrieved, the decision must adversely affect that party's property or pecuniary rights, or a personal right, or impose on a party a burden or obligation. *Sheets*

v. Benevolent & Protective Order of Keglers, 34 Wn.2d 851, 210 P.2d 690 (1949). Generally, a party is not aggrieved by a decision in his favor, and cannot properly appeal from such a decision. *Paich v. N. Pac. Ry. Co.*, 88 Wash. 163, 152 P. 719 (1915). Since Mr. Lampkin was not aggrieved by Ms. Coronado's suggested 50-50 sharing of the parties' contribution toward their son's education, we will not consider his argument that the court was required to make a pro rata allocation.

The aggrieved party issue does not dispose of the need for the court to include a support worksheet, however, because the net monthly income figures reflected on the worksheet do more than provide the basis for a pro rata allocation—they inform the superior court on the amount of the parties' resources in order to determine what amount the parents can reasonably afford to pay toward a child's postsecondary education.

Child support worksheets, in the form developed by the administrative office of the courts, are required to be filed "in every proceeding in which child support is determined." RCW 26.19.035(3); *see also Sievers*, 78 Wn. App. at 305 (stating that "[t]here are no exceptions" to the requirement to file worksheets in proceedings in which child support is determined). A separate statute requires that "[a]ll income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent," with "[t]ax returns for the preceding two years and current paystubs" provided to verify income. RCW 26.19.071(1), (2).

When it comes to decisions on postsecondary support, however, RCW 26.19.090(1) provides that such schedules "shall be advisory and not mandatory." In *In re Marriage of Newell*, 117 Wn. App. 711, 720, 72 P.3d 1130 (2003), the court construed the statute to reflect a legislative intent "that the standards of the child support schedule . . . be used to accurately determine the parents' income and the presumptive proportionate share of the combined income for each parent before the court determines, based on the other factors listed in RCW 26.19.090(2), what the percentage allocation should be." In other words, while not determinative of the superior court's ultimate allocation, the worksheets provide the information needed for the court to be "properly advised [and] informed under RCW 26.19.090(1)." *Id.*

In this case, the superior court did not file a child support worksheet with its August 2012 order, although the order included findings as to the parties' net monthly income. If nothing more had happened, then—given the clear requirements of the statute—we would be constrained to remand for the trial court to file a worksheet unless we determined it was harmless error.

Here, however, Mr. Lampkin's motion for reconsideration led Ms. Coronado to prepare and submit a support worksheet that the trial court *did* enter. While Mr. Lampkin has a right to attack the court's later-filed support worksheet as unsupported by the evidence (which he does, as addressed hereafter), he can no longer complain that the trial court did not file one.

The court ultimately complied with the requirement to file a worksheet that reflected the net monthly income figures for the parties on which it based its August 2012 order. No error is shown.

III. Direct payments to Ms. Coronado

Mr. Lampkin next argues the trial court erred in ordering him to make payments directly to Ms. Coronado.

RCW 26.19.090(6) provides that "[t]he court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible." At the close of the hearing on the petition, the trial court stated that Mr. Lampkin could make payments directly to Full Sail University. Its final order, however, directed Mr. Lampkin to pay his share of the college cost directly to Ms. Coronado. It provided the following rationale for its decision:

> Mother has obtained loans for the majority of the college cost. Son has received Pell Grants and some student loans. Mother has agreed that Father may pay his proportionate share of college cost over 60 months to make it more affordable to him. Mother's loan payment terms will allow her to make monthly payments over a period of years. *The college demands payment each school term and that cost for school year 2011/2012 has been paid already by mother and son.* Father to date has contributed zero. *It is not practical to expect the Father to be able to pay directly to the college his full share for three years in the remaining two years of school.*

CP at 107 (emphasis added).

Mr. Lampkin argues that even if we accept the trial court's concern about feasibility, its order violates RCW 26.19.090 because the parties' son does not reside with Ms. Coronado. The statute provides that *if* direct payments are not feasible *then*

> the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

RCW 26.19.090(6). Evidently anticipating this issue, Ms. Coronado proposed an order, entered by the court, that included the son's signed agreement that Mr. Lampkin should make payments to Ms. Coronado.

Payment to Ms. Coronado is not the procedure contemplated by the statute but the parties and the court were faced with an anomalous situation. Given Ms. Coronado's action in advancing most of the cost of the first academic year, part of what needed to be accomplished financially was not getting payment to the school, but getting reimbursement to Ms. Coronado. The court adopted the only practical proposal with which it was presented for getting Mr. Lampkin's contributions to Ms. Coronado. We "will not reverse the trial court's decision absent a manifest abuse of discretion." *State ex rel. M.M.G. v. Graham*, 159 Wn.2d 623, 633, 152 P.3d 1005 (2007).

Mr. Lampkin protested in moving for reconsideration that Ms. Coronado's argument that it was not practical for him to pay the college is "made entirely without factual or evidentiary support." CP at 131. But Ms. Coronado explained why she

believed there was no feasible alternative. At no point in the process has Mr. Lampkin demonstrated a feasible option that Ms. Coronado failed to consider. Based on the record, we believe the trial court would have gone along with any proposal for direct payment to the university that Mr. Lampkin could demonstrate would work—after all, it said as much in its oral ruling. Mr. Lampkin simply never presented the court with a workable alternative.

Since the court's discretion included directing Mr. Lampkin to make payments to the son, and the son—an adult— authorized payment to his mother, the court did not abuse its discretion.

IV. Evidence sufficiency

Mr. Lampkin challenges several of the findings contained in the trial court's August 2012 postsecondary education support order. He did not timely raise these objections during the original presentment process and the trial court was under no obligation to entertain the motion for reconsideration. The trial court's letter to counsel denying the motion arguably implies that the court considered the arguments on the merits, however, thereby preserving the issues for appeal.[3]

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[3] "CR 59 provides that on the motion of an aggrieved party the court 'may' vacate an interlocutory order and grant reconsideration. The trial court's discretion extends to refusing to consider an argument raised for the first time on reconsideration absent a good excuse." *River House Dev. Inc. v. Integrus Architecture, PS*, 167 Wn. App. 221, 231, 272 P.3d 289 (2012) (citing *Rosenfeld v. U.S. Dep't of Justice*, 57 F.3d 803, 811 (9th Cir. 1995) (applying parallel federal rule)). If it can persuade the trial court to consider a

We review a court's findings supporting an order modifying child support for substantial evidence. *Goude*, 152 Wn. App. at 790. "'Substantial evidence' is that which is sufficient to persuade a fair-minded person of the declared premise." *Id.*

Net Monthly Income Figures. Mr. Lampkin first claims that the net monthly income figures reflected in the worksheet adopted and filed by the court were inconsistent with the parties' declarations submitted in connection with the petition for modification. As earlier discussed, however, Ms. Coronado's lawyer regarded the parties' most recent testimony as to their income as relatively unreliable and therefore averaged the recent figures with older but better documented figures from the superior court's January 2011 order. This was a reasonable approach. Mr. Lampkin failed to support his more recent representation of his income with a current pay record and prior year's tax returns as required by statute, so he cannot be heard to complain. *Cf. Sievers*, 78 Wn. App. at 305; RCW 26.19.071(2) (providing that "[t]ax returns for the preceding two years and current paystubs shall be provided to verify income and deductions").

The net monthly income figures set forth in the trial court's worksheet are supported by substantial evidence.

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motion for reconsideration, a party may preserve an issue for appeal that is closely related to a position previously asserted and that does not depend on new facts. *Id.* (citing *Newcomer v. Masini*, 45 Wn. App. 284, 287, 724 P.2d 1122 (1986); *Reitz v. Knight*, 62 Wn. App. 575, 581 n.4, 814 P.2d 1212 (1991)).

Term of Payment. Mr. Lampkin next argues that language that the court's order "shall be in effect for the cost of college education for the accelerated three year degree program" is inconsistent with its finding, elsewhere, that "Mother has agreed that Father may pay his proportionate share of college cost over 60 months to make it more affordable to him." CP at 102 (§ 3.16) (capitalization omitted), 107 (§ 3.23(5)). Substantial evidence supports the finding at section 3.23(5); Ms. Coronado offered a five-year repayment option by declaration, in her memorandum, and in her lawyer's argument.

Section 3.16 is not a finding and cannot present a substantial evidence issue. Nor is it inconsistent with the court's finding of a five-year repayment option. Section 3.16 simply recognizes that the support order will continue to dictate Mr. Lampkin's liability for payment toward the cost of the three-year program (whether his payment toward that cost takes place over three years, or more) absent a substantial change of circumstances.

Income Tax Exemptions. Mr. Lampkin complains that the support order makes provision for income tax exemptions, yet "the trial court made no findings and took no evidence concerning income tax exemptions." Br. of Appellant at 20.

Ms. Coronado's proposed August 2012 order, entered by the court, was prepared using a standard court form, WPF PS 01.0500,[4] that is used statewide in Washington

[4] *Available at* https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=8.

courts. *See* RCW 26.18.220(1) (directing the administrative office of the courts to develop standard court forms "for mandatory use by litigants in all actions commenced under chapters 26.09, 26.10, and 26.26 RCW"). The form, used for support modification orders, includes a section 3.17, captioned "Income Tax Exemptions," that can be completed in four ways. Ms. Coronado's lawyer completed section 3.17 in the same way it had been completed in the January 2011 order, since neither party asked that the income tax exemption treatment be modified.

Section 3.17, like section 3.16, is not a finding and is not subject to a substantial evidence challenge. We would also point out that while Ms. Coronado might have completed section 3.17 to indicate that "no change is requested from the prior support order," we see no error in simply carrying forward the tax exemption provision as it existed in the prior support order.

Health Insurance. Mr. Lampkin similarly challenges the support order's findings at section 3.18 that medical coverage for the parties' son was available and accessible to him at no incremental cost, that he should provide medical coverage through his employment, and that Ms. Coronado should be excused from providing medical coverage. He again argues that no information or documentation was presented to support the court's findings.

The January 2011 support order included substantially similar findings. The only change to the health insurance provisions of the January 2011 order requested by Ms.

Coronado was "[t]hat the father be required to maintain the child's health insurance." CP at 24. In responding to the petition, Mr. Lampkin neither responded to this request for modification nor did he request any changes of his own to the medical insurance provisions of the prior support order. Here again, since no modification was requested by Mr. Lampkin, the order proposed by Ms. Coronado in August 2012 (unsurprisingly) carried forward the health insurance provisions of the prior order.

Uninsured Medical Expenses. Finally, Mr. Lampkin complains that there was no basis for the allocation of uninsured medical expenses—58 percent to him, 42 percent to Ms. Coronado— reflected in the August 2012 order. Ms. Coronado's proposed August 2012 order, entered by the trial court, reflected that new 58 percent/42 percent allocation, which was based on her proposed updated, averaged net monthly income figures for both parties. The allocation of uninsured medical expenses under the January 2011 order had been 61 percent to Mr. Lampkin and 39 percent to Ms. Coronado.

We have already found the averaging of the net monthly income figures was reasonable and supported by substantial evidence. We have also already observed that Mr. Lampkin benefits when these updated figures are used. He is not an aggrieved party. Had the modification not been made, he would be paying more under the prior order.[5]

[5] Mr. Lampkin devotes several paragraphs of his brief to the alleged insufficiency of evidence to support the trial court's "additional findings" set forth in section 3.23 of the August 2012 order. Our disagreement with these challenges has been explained in addressing related issues. For that reason, and because Mr. Lampkin must show that an

V. "Retrospective" child support for first academic year

Mr. Lampkin next argues that as a matter of equity he should not be required to contribute toward the cost of his son's first year of college, since it was completed before the August 2012 order establishing his support obligation. He relies on theories of waiver, equitable estoppel, and laches.

Waiver is the voluntary and intentional relinquishment of a known right. *River House Dev., Inc. v. Integrus Architecture, PS*, 167 Wn. App. 221, 237, 272 P.3d 289 (2012). Mr. Lampkin presents no evidence that Ms. Coronado or the parties' son intended to relinquish their right under the court's January 2011 support order to have Mr. Lampkin contribute a fair share of the college cost. The order belies any such intent, stating that both parents would be responsible for contributing and that this postsecondary education support would "be decided by agreement or by the court." CP at 8. By Mr. Lampkin's own admission, he had no communication with Ms. Coronado or his son about the support issue between the time of the January 2011 order and the filing of the petition to modify. Moreover,

> [i]t is well settled that parents cannot agree to waive child support obligations. Such agreements are against public policy and do not affect subsequent requests for child support. Courts have found such agreements unenforceable even if in a final order agreed upon by the parties and not appealed. This is based on the principle that child support is held in trust

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unsupported finding of fact resulted in an unsupported conclusion of law—something he does not do—we will not address the "additional findings" further.

> by the parents for the children and, hence, parents have no right to waive their children's right to that support.

In re Marriage of Hammack, 114 Wn. App. 805, 808, 60 P.3d 663 (2003) (citations omitted).

Mr. Lampkin next argues that Ms. Coronado should be equitably estopped to receive a contribution reimbursing the postsecondary education costs she advanced before obtaining the August 2012 order. The doctrine of equitable estoppel may apply "where one party makes an admission, statement, or act, which another party justifiably relies on to its detriment." *Schoonover v. State*, 116 Wn. App. 171, 179, 64 P.3d 677 (2003). Equitable estoppel is not favored, and the party asserting it must establish by clear, cogent, and convincing evidence (1) an admission, act, or statement inconsistent with a later claim; (2) another party's reasonable reliance on the admission, act, or statement; and (3) injury to the relying party if the court allows the first party to repudiate the earlier admission, statement, or act. *Howard v. Dimaggio*, 70 Wn. App. 734, 739, 855 P.2d 335 (1993).

Mr. Lampkin fails to establish any of these elements. There was no admission, statement, or act by Ms. Coronado that was inconsistent with her February 2012 petition to establish the amount of Mr. Lampkin's support obligation. Mere silence will not give rise to estoppel unless the silent party had a duty to speak; even then, it is necessary that the party claiming to have relied either lacked knowledge of the true facts or could not

acquire them. *Id.* at 741. Particularly in light of Ms. Coronado's clear communication through the January 2011 order that she expected Mr. Lampkin to contribute toward their son's college costs, she had no duty to speak further during the months she and her lawyer prepared to file the petition. Under the circumstances, Mr. Lampkin could not reasonably rely on silence alone.

Mr. Lampkin also fails to present evidence (let alone clear and convincing evidence) of injury. He complains that he was not given an opportunity to provide input into his son's selection of a college. But by his own admission, Mr. Lampkin never took the initiative to reach out and share thoughts with his son about the son's impending college choice. Mr. Lampkin does not explain why it was his son's or Ms. Coronado's responsibility to consult him on an issue as to which he had demonstrated no interest.

Mr. Lampkin nonetheless relies on *Hartman v. Smith*, 100 Wn.2d 766, 768-69, 674 P.2d 176 (1984), which recognized that equitable principles can mitigate the harshness of claims for retrospective support when they do not work an injustice to the custodial parent or a child. The father in *Hartman* consented to his child being adopted by the mother's new husband with the understanding that he was thereby relieved of any support obligation. He also relinquished all parental rights save that of reasonable visitation and for a significant period was denied even that. When, seven years later, the adoption was vacated as void, the mother sought back child support for the seven-year period. *Hartman* is clearly distinguishable from the present facts. Not only did *Hartman*

involve affirmative representations on which the father relied, but a tangible personal injury of having relinquished parental rights for seven years.

Finally, Mr. Lampkin argues that Ms. Coronado is barred from seeking reimbursement for the first year by the doctrine of laches. On the proper facts, laches applies to claims for past-due child support. *In re Marriage of Watkins*, 42 Wn. App. 371, 710 P.2d 819 (1985) (laches applied where mother waited five and one-half years to seek past-due child support, during which father did not seek visitation and incurred financial obligations he would have forsaken had he anticipated enforcement of the child support obligation). To establish laches, Mr. Lampkin must prove that "(1) the plaintiff had knowledge of the facts constituting a cause of action or a reasonable opportunity to discover such facts; (2) there was an unreasonable delay in commencing the action; and (3) there is damage to the defendant resulting from the delay." *Id.* at 374. "Absent unusual circumstances, the doctrine of laches should not be invoked to bar an action short of the applicable statute of limitation." *In re Marriage of Hunter*, 52 Wn. App. 265, 270, 758 P.2d 1019 (1988).

Ms. Coronado filed her petition within eight months of the time her son graduated from high school and commenced on-line courses at Full Sail University. And as discussed earlier, Mr. Lampkin has demonstrated no injury from the eight-month delay. Since the delay was not unreasonable nor was Mr. Lampkin damaged, laches is not a bar

to Ms. Coronado's request that the amount and duration of Mr. Lampkin's contribution be set by the court.

VI. Motion to strike

Finally, Mr. Lampkin challenges the trial court's November 2012 order denying his motion to strike the declaration that Ms. Coronado filed in response to his motion for reconsideration. The declaration consisted of a one-page attestation from Ms. Coronado that "the attached Declaration signed by me is true and correct," CP at 151; a single-spaced, two-page attached letter from her to the trial judge; a two-page attached letter to the judge with a signature block for her son but which was not signed; and additional documentation from Full Sail University, including the academic transcript and certificate of good standing. Mr. Lampkin argues, first, that because he had not raised new evidence or material in moving for reconsideration, CR 59(a)(4) barred Ms. Coronado from offering new information; second, that her declaration was filled with hearsay and speculation and failed to adequately authenticate its attachments; and third, that one attachment—the letter from the parties' son—was an unsworn letter that did not comply with GR 13 and itself contained speculation and hearsay.

"A ruling on a motion to strike is within the trial court's discretion." *Burmeister v. State Farm Ins. Co.*, 92 Wn. App. 359, 365, 966 P.2d 921 (1998). "[A] trial judge is presumed to know the rules of evidence and is presumed to have considered only admissible evidence." *In re Marriage of Morrison*, 26 Wn. App. 571, 575 n.2, 613 P.2d

557 (1980). A trial court may nonetheless abuse its discretion if it denies a motion to strike by applying the wrong legal standard and considers evidence for a purpose for which the evidence is not admissible. *See Orion Corp. v. State*, 109 Wn.2d 621, 638, 747 P.2d 1062 (1987) (court did not err in refusing to strike affidavit as long as it considered it for a limited purpose).

Unless a motion under CR 59 is based on affidavits or declarations, the rule does not contemplate the submission of opposing affidavits. *See* CR 59(c); *Awana v. Port of Seattle*, 121 Wn. App. 429, 432, 89 P.3d 291 (2004) (holding response declarations "improper under the rule governing submissions in connection with a motion for reconsideration"). Mr. Lampkin correctly characterizes some portions of the letters from Ms. Coronado and her son as containing inadmissible hearsay and speculation. He also identifies shortcomings in Ms. Coronado's authentication of the declaration's attachments and the unsworn, uncertified character of the son's letter.

There is some indication in the record that the trial court considered Ms. Coronado's declaration and its attachments in denying the motion for reconsideration; its letter informing the parties of its decision on the motion stated that "[t]he Respondent mother . . . has adequately and sufficiently responded to the father's memorandum." CP at 182. Insofar as the court was referring to Ms. Coronado's submission of her son's academic transcript and certificate of good standing, we find no error. We have already observed that the failure to provide those earlier was not a shortcoming in Ms.

Coronado's petition for modification; Mr. Lampkin was simply entitled to have the provision of that information included as a condition to his continuing payment, as it ultimately was.

To the extent that the trial court might have erred in reviewing other information provided by Ms. Coronado's September declaration, the error was harmless. We have already concluded that the trial court's factual findings were supported by sufficient evidence provided by Ms. Coronado's original submissions. We see no respect in which any error by the trial court in considering inadmissible evidence could have changed the result. *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 452, 191 P.3d 879 (2008). ("The error [of admitting improper hearsay] is harmless unless it was reasonably probable that it changed the outcome of the trial.").

VII. Attorney fees

Ms. Coronado requests an award of attorney fees and costs under RCW 26.18.160, RCW 26.09.140, RAP 18.1, and other applicable law.

RCW 26.18.160 applies to actions to enforce existing support obligations, not to actions brought to establish, modify, adjust, or clarify a support obligation. *In re Marriage of Bell*, 101 Wn. App. 366, 379, 4 P.3d 849 (2000); *In re Marriage of Oblizalo*, 54 Wn. App. 800, 805-06, 776 P.2d 166 (1989). Because this was not an enforcement action, fees are not available under RCW 26.18.160.

We may award attorney fees under RCW 26.09.140, but only "after considering the financial resources of both parties." RCW 26.09.140; *In re Marriage of Leslie*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998). RAP 18.1(c) requires that each party file an affidavit of financial need "[i]n any action where applicable law mandates consideration of the financial resources of one or more parties regarding an award of attorney fees and expenses." Because Ms. Coronado did not file the affidavit required by RAP 18.1(c), we will not consider her request for fees on a financial need basis.

Fees are denied; the trial court's August 21, November 8, and November 16, 2012 orders are affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, C.J.

WE CONCUR:

Korsmo, J.

Price, J.P.T.