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WA State Court of Appeals, Division III

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

BECKY J. MYERS, Respondent, v. RICHARD C. ATZROTT, Appellant.	)	No. 34456-8-III UNPUBLISHED OPINION

KORSMO, J. — Richard Atzrott appeals from an order requiring him to continue child support payments until age 21 in accordance with New York law. We affirm and grant respondent her request for attorney fees.

FACTS

Mr. Atzrott and Ms. Becky Myers had a son born in November 1997. A New York order of support was entered December 16, 1998, requiring Mr. Atzrott to pay weekly support for the child to Ms. Myers. Ms. Myers and the boy soon moved to Asotin County, Washington. A New York court adjusted the support amount upwards in 2005.

Mr. Atzrott continued to pay support over the years. The child turned 18 in November 2015. The following month, Mr. Atzrott filed a request for support order registration in the Asotin County Superior Court in accordance with the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW. At the same time, he sought to modify the order under Washington law to end the support obligation since the child had turned 18 and, he alleged, no longer attended high school.

Ms. Myers answered the petition and provided school records indicating that her son was still attending high school. Clerk's Papers (CP) at 24-28. The matter proceeded to hearing on April 5, 2016, with Mr. Atzrott appearing pro se by telephone from Maryland. Ms. Myers did not object to the registration request and the court granted Mr. Atzrott's motion to change the registration from New York to Washington. The hearing then turned to the question of modifying the child support payment.

The school records showed that the child used the last name of Myers at school, a fact that apparently was unknown to Mr. Atzrott. He argued that the enrollment records must refer to a different child and became upset that the child did not use his last name. Mr. Atzrott then orally requested a DNA paternity test. Ms. Myers responded to a question from the court by stating that the enrollment records referred to the same child named in the order of support. The court then asked Mr. Atzrott if he had any evidence to refute the enrollment records, but Mr. Atzrott did not provide any evidence to contradict the mother's assertion. The court then denied this request, finding Ms. Myers'

statement credible and comparing the first name and date of birth on both the order of support and the enrollment records. Report of Proceedings (RP) at 6-7. However, after twelve interruptions and a lack of legal argument or production of any evidence disproving paternity, the court told Mr. Atzrott, "if you don't shut up, I'm going to hang up on you. I don't mean to be rude, sir, but I don't feel that I'm being given any respect in return. So—." Mr. Atzrott interrupted, stating "I feel the same way." RP at 10. The court then concluded the hearing by denying the motion to modify and hanging up the phone. RP at 10. A written order was entered on April 28, 2016, denying the motion to modify the New York order of support. CP at 29-32.

Still representing himself, Mr. Atzrott appealed to this court from the order denying his motion to modify support. A panel considered the case without argument.

ANALYSIS

The appeal presents quite a few assignments of error and several arguments, but many of them are not properly presented by the record in this case.[1] Accordingly, we group and characterize them in a different manner than the appellant. In order, we address his contentions that his due process right to a fair hearing was violated, the court

[1] It is for this reason that we do not separately consider his claim of judicial bias since it is either based on matters outside the record of the case or was subsumed by the trial judge's courtroom management prerogative.

erred in considering the school records, erred by denying his request for DNA testing, and erred in entering the written order denying his motion. Ms. Myers asks that we award her attorney fees for Mr. Atzrott's intransigence. We address the questions in the order listed.

Due Process

Mr. Atzrott complains that he did not receive a fair hearing because the court eventually told him to "shut up" and ended the hearing. The trial court, however, put up with a good deal of irrelevant argument despite its best efforts to steer Mr. Atzrott toward presenting evidence in support of his position. There was no error.

Due process affords a party to notice and an opportunity to be heard. *In re Marriage of Wherley*, 34 Wn. App. 344, 347, 661 P.2d 155 (1983) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). Trial courts, however, have wide discretion in courtroom management and procedures in order to "conduct trials fairly, expeditiously, and impartially." *In re Marriage of Zigler*, 154 Wn. App. 803, 815, 226 P.3d 202 (2010). Mr. Atzrott was given an opportunity to be heard at the hearing held on April 5. The trial court was well within its discretion to limit that opportunity when it was being abused. *Id.*.

Here, Mr. Atzrott apparently ran out of arguments to make when his effort to turn a support order governed by New York law into one governed by Washington law failed. After putting up with a series of attacks on the character of the respondent, the trial court

was able to discern that Mr. Atzrott had nothing more to say even if he was not done venting his frustrations.[2] His due process opportunity to be heard had been satisfied. He did not have a right to continue talking until he had exhausted himself.

No due process right was violated.

School Records

Mr. Atzrott also contends that the court erred in admitting the school records. The trial court did not abuse its discretion in admitting the evidence.

Although a relaxed practice exists in family law cases where pro se litigants are common, the trial court still exercises considerable discretion over the admission of evidence. Thus, trial court evidentiary rulings are reviewed for manifest abuse of discretion. *State v. Luvene*, 127 Wn.2d 690, 706-707, 903 P.2d 960 (1995). In a bench trial, judges are presumed to follow the law and to consider evidence solely for proper purposes. *State v. Adams*, 91 Wn.2d 86, 93, 586 P.2d 1168 (1978); *State v. Miles*, 77 Wn.2d 593, 601, 464 P.2d 723 (1970); *State v. Bell*, 59 Wn.2d 338, 360, 368 P.2d 177

[2] Mr. Atzrott also considers the trial court's conduct toward him as evidence of judicial bias. We disagree. Mr. Atzrott was rude to the court and Ms. Myers, as well as defamatory toward the respondent. The trial court tried to direct appellant toward a proper argument, but was under no compulsion to continue to allow appellant to vent his anger when those efforts failed.

(1962). Discretion is abused if it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The governing rules on this issue involve relevancy and authentication. "All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible." ER 402. In turn, ER 901(a) states: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." ER 901(b)(1) provides illustrative methods for authenticating evidence, including: "Testimony that a matter is what it is claimed to be." The trial judge is the finder of fact in nonjury trials and hearings. On appeal from a bench trial, an appellate court's review is to determine whether substantial evidence supports the trial court's findings of fact. *In re Tr. 's Sale of Real Prop. of Brown*, 161 Wn. App. 412, 415, 250 P.3d 134 (2011). Substantial evidence is evidence sufficient to persuade a rational fair-minded person that the premise is true. *Sunnyside Valley Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

Mr. Atzrott argues that the court erred in admitting the school records showing that his son is still attending high school. This is a curious claim since he is the one who raised the issue in the trial court by alleging, apparently without any basis of knowledge for the assertion, that his son no longer was attending school. The evidence clearly was

relevant since Mr. Atzrott raised the issue himself. The remaining issue was one of authentication—i.e., were these records related to the child in question? Ms. Myers provided that information by advising the court that they referred to the same child that the support order referred to. Seeing that the child in the school records had the same first name and date of birth as the child in the support order, the trial judge was satisfied that the record referred to the same child.

The trial court, thus, had a tenable basis for admitting the evidence. There was no abuse of the court's considerable discretion in this area.

DNA Testing

Mr. Atzrott also alleges that the trial court erred in denying his oral request that DNA testing be performed to determine if he was the father of the child. This contention fails for so many reasons that we need not discuss the matter at any length.

The trial judge accurately noted "that ship has sailed" when the issue was raised during Mr. Atzrott's argument. The statute of limitations for bringing a paternity action is normally four years. RCW 26.26.530. This was not a paternity action, nor could one have been timely brought.[3]

[3] Washington also was required to give full faith and credit to New York's original determination of paternity. RCW 26.26.350.

In addition, even if a motion for paternity testing could be brought in a support modification hearing, the motion was never properly noted so that the court and opposing party would be able to address it. This proceeding was initiated by Mr. Atzrott, but he never included the issue in his initial petition to the court. Respondent was therefore unable to brief the issue and present any opposing argument. Finally, Mr. Atzrott never made any foundational arguments, nor presented any evidence, that would have provided a basis for ordering testing.

The trial court correctly rejected the request for DNA testing.

Denial of Support Modification

Mr. Atzrott also challenges the denial of his motion to end the support obligation, complaining that the court acted "ex parte" by including New York law in its decision and by not stating findings on the record before issuing the written ruling. The contentions are without merit.

As to the last matter first, appellant has presented no authority suggesting that trial judges must resolve all matters on the record before leaving the bench. In fact, our constitution requires only that superior court judges act within 90 days of a matter being submitted to them. Const. art. IV, § 20 ("Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof.") It is common for judges to take evidence and hear argument in court and issue rulings in writing at a later date. This approach permits thoughtful consideration of the

law and the facts, as well as allowing the court to conduct research as necessary to correctly resolve the case. There simply was nothing wrong with the court issuing its written[4] ruling 23 days after hearing, and deciding, the motion.[5]

With respect to the merits of the case, the trial judge clearly was correct in applying the New York statute to govern the effect of the New York support order.[6] Washington's adoption of the UIFSAct is located in chapter 26.21A RCW. Mr. Atzrott invoked that statute to transfer the support order to Washington. CP at 1. The act allows Washington to modify support orders originally entered in another state. RCW 26.21A.540-.565. However, the modification authority is not unlimited:

> In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfilment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

RCW 26.21A.550(4).

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[4] The court was expected to enter a written order, although findings of fact were not required. CR 52(a)(1); CR 52(a)(5)(B).

[5] Nor could the practice have harmed the appellant in the least since the court did announce its resolution of the motion before concluding the hearing.

[6] Appellant repeatedly characterizes various actions of the trial court as "ex parte," a term to which he appears to give a fluid reading, but does not provide any Washington authority suggesting the trial court erred in some manner. Labeling an action "ex parte" is not itself a basis for establishing error.

The very statute that he invoked to register the New York order and used to attempt to modify the order, simply did not allow the action appellant sought. The Washington court had no authority to change the duration of the New York order. Appellant should have known that fact and can hardly be surprised that a Washington court would reference the statute in denying his motion. Similarly, appellant was well aware that New York law set a child support obligation until age 21, since that was the obligation he sought to change. The fact that the trial court referred to the governing New York support statute in its written findings could not prejudice Mr. Atzrott in the least. It most certainly was not error for the trial court to cite the statute.

Whatever subjective meaning he may ascribe to the term "ex parte," Mr. Atzrott simply has not established that the trial court committed error in denying his motion to modify or in putting that ruling in writing. There simply is no basis for overturning the trial court's decision.

Attorney Fees

Lastly, Ms. Myers asks for her attorney fees in defending this appeal, citing Mr. Atzrott's intransigence. We agree that she is entitled to recover her costs, including reasonable attorney fees, for the defense of this appeal.

Attorney fees imposed for intransigence are an equitable remedy. *Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 197 (1989). Among the remediable instances of intransigence is "when one party made the trial unduly difficult and increased legal costs by his or her actions." *Id.* We conclude that is the circumstance with this appeal.

We do not lightly take this step. However, even allowing for Mr. Atzrott's self-representation, we conclude that he pursued this appeal for improper purposes. His primary arguments about the denial of his motion to end support and for DNA testing were without merit for the reasons discussed. He initiated this action to get relieved from his on-going support obligation. Despite the clear statutory command that prohibited Washington courts from granting that request, he both filed the motion in Washington and then pursued it on appeal to this court. Even if he was unaware of the barrier when he filed his action in the trial court, he was aware of that fact by the time he took this appeal. Given the tone of his pleadings and continued pursuit of the frivolous request for DNA testing, we agree with respondent that Mr. Atzrott pursued this appeal for the improper purpose of running up respondent's costs.

Accordingly, we grant respondent her costs and attorney fees upon timely compliance with RAP 14.4 and RAP 18.1(d). Our commissioner will consider any dispute related to this award.

Affirmed.

A majority of the panel has determined 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.

Korsmo, J.

WE CONCUR:

Siddoway, J.

Pennell, J.