

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:)	No. 28516-2-III
)	
DAVID B. UNDERWOOD, JR.,)	
)	
Respondent,)	
)	Division Three
and)	
)	
CYNTHIA D. UNDERWOOD,)	
)	
Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — Cynthia Underwood appeals a ruling denying her request for attorney fees in responding to an action for modification of child support. She contends the trial court failed to properly balance her need with her ex-husband’s ability to pay. We find no abuse of discretion and affirm.

FACTS

Cynthia and David Underwood¹ divorced prior to 2005. As part of the dissolution, David was ordered to make monthly payments of \$500 for maintenance to Cynthia (ending in May 2006), \$1,700 for the home mortgage, and \$1,600 in monthly child support. Clerk's Papers at 97, 104. David's 2008 tax return showed income of \$143,087. Cynthia's reported income for the same period was \$9,396.

In May 2009, David lost his job, and he petitioned for modification of his child support obligation. He filed a financial declaration at the same time. The declaration indicates that he spent \$700 for attorney fees preparing the petition. On August 13, 2009, David was offered a job paying \$92,000 per year. On September 8, 2009, Cynthia filed a financial declaration in response to David's petition. This declaration indicates Cynthia incurred \$2,500 in attorney fees in responding to the petition. On September 10, 2009, the trial court heard argument and granted the requested modification. The court found that David had income of \$2,290 per month from June 1, 2009 to September 15, 2009. It estimated his net income from September 15, 2009 forward to be \$6,604 per month. The court imputed net income of \$1,957 per month to Cynthia because she was voluntarily underemployed. The court ordered David to pay Cynthia child support payments of \$1,456 per month from September to December 2009, and \$1,614 per month from

¹ For consistency and brevity, we use the parties' first names.

January 1, 2010 forward. The court declined Cynthia's request for attorney fees. In response to the fee request, the court stated:

It seems to me that if Ms. Underwood doesn't have money for attorney fees it is through her own choice. I mean as a college educated person who has gone through life in a state of semiretirement at her age, it seems a self inflicted problem.

And also in the back of my mind I keep thinking that all of these years, Mr. Underwood has been paying all of her household, separate from the child support, the mortgage started out at \$1,700 a month, I don't know if it's changed since then.

Report of Proceedings at 12. The court made no findings of fact in its order denying the fee request. This appeal followed.

ANALYSIS

RCW 26.09.140 provides in relevant part:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The key word in the statute for the purposes of this appeal is *may*. Parties are not entitled to fees as a matter of right. *In re Marriage of Harrington*, 85 Wn. App. 613, 635-

636, 935 P.2d 1357 (1997). Decisions whether to award fees under this statute are reviewed for abuse of discretion. *See In re Marriage of Nelson*, 62 Wn. App. 515, 521, 814 P.2d 1208 (1991). A court abuses its discretion if its decision is “manifestly unreasonable or rests upon untenable grounds or reasons.” *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 497, 183 P.3d 283 (2008).

While the statute requires the needs of the requesting party be balanced against the other party’s ability to pay, *see In re Marriage of Moody*, 137 Wn.2d 979, 994, 976 P.2d 1240 (1999), our courts have not specified what precisely this balancing must look like. Provided there is some evidence in the record suggesting a balancing took place and no other evidence of abuse of discretion, we will not disturb a trial court’s fee ruling.

The present case meets this test. It is clear that the trial court had the parties’ financial information before it. And while not a model of clarity, the court’s comments regarding the relative financial positions of the parties indicates it considered and balanced their need and ability to pay.² We find no abuse of discretion on this record.

Because Cynthia failed to comply with RAP 18.1(c)’s requirement to file an affidavit of financial need in this court, we decline her request for attorney fees on

² If a party wanted clarification of the trial court’s reasoning process, it was incumbent to ask. We are not inclined to believe that a veteran family law commissioner provided with the necessary financial information and relevant case law failed to perform the statutory duty to balance the interests of the parties.

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appeal. *See In re Marriage of Holmes*, 128 Wn. App. 727, 742, 117 P.3d 370 (2005).

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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:

Kulik, C.J.

Sweeney, J.