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

In re the Marriage of:	)	No. 28736-0-III
NUTHAVADEE SLANE,	)	
Respondent,	)	
v.	)	UNPUBLISHED OPINION
STEPHEN JAMES SLANE,	)	
Appellant.	)	

Brown, J. • Pro se, Stephen Slane appeals the trial court's denial of his motion to vacate a 2002 child support order and the court's attorney fee award to his former wife, Nuthavadee Kukes. In an unpublished opinion, this court affirmed two of the court's contempt orders against Mr. Slane. *See In re Marriage of Slane*, 2011 WL 2448998 (No. 28124-8-III, filed June 21, 2011) (*Slane* I). He contends the court lacked jurisdiction to enter the 2002 support order and alleges the court abused its discretion in awarding attorney fees under RCW 26.09.160 and CR 11. We affirm.

FACTS

Ms. Kukes and Mr. Slane were married in 1994. During the marriage they had two daughters, ES and PS. On January 27, 2000, Ms. Kukes filed a marriage dissolution in Kittitas County. Mr. Slane was served with notice of the summons and petition in February 2000. Because he did not respond, a default order was entered in April 2000. In December 2000, Mr. Slane relocated to St. Louis, Missouri. Before leaving, Mr. Slane signed as a joinder to the petition for dissolution. The joinder states, "The respondent joins in the petition. By joining in the petition, the respondent agrees to the entry of a decree in accordance with the petition, without further notice." Clerk's Papers at 44.

The children then lived with their mother. The couple's divorce was final in January 2002. The Kittitas County court entered the decree of dissolution, findings of fact and conclusions of law, parenting plan, and order of child support. Prior to presentment, Mr. Slane signed the decree, findings and conclusions, and parenting plan. Ms. Kukes was awarded custody of the parties' children; Mr. Slane was ordered to pay $878 a month in child support. Ms. Kukes mailed copies of the final dissolution orders to Mr. Slane a couple days after entry.

In August 2003, the parties agreed to reduce monthly child support to $500. From June 2005 until June 2008, ES resided with Mr. Slane in Missouri. In July 2008, Ms.

Kukes and Mr. Slane agreed PS would visit Mr. Slane in Missouri for a couple weeks. Mr. Slane promised to return PS at least two weeks prior to school starting. Mr. Slane, however, did not return PS. Therefore, in August 2008, Ms. Kukes obtained a contempt order in Grant County for Mr. Slane's violation of the parenting plan. The Grant County court found Mr. Slane in contempt of court for nonpayment of child support and ordered him to pay Ms. Kukes $26,076 for unpaid child support.

In April 2009, the Grant County court again found Mr. Slane in contempt for failure to pay child support and entered a second judgment against Mr. Slane in the amount of $9,700 for back child support. On April 17, the Grant County court entered a temporary parenting plan and temporary order of child support, which increased Mr. Slane's child support payments to $1,721 a month. He appealed the temporary orders and two of the three contempt of court findings; this court affirmed in *Slane* I.

In May 2009, the Division of Child Support began withholding Mr. Slane's wages in the amount of $2,220 a month. According to Ms. Kukes' trial brief, during July and August 2009, through various communications with Ms. Kukes and her counsel, Mr. Slane made it clear he intended to "needlessly increase" Ms. Kukes' costs of litigation in order to force her to settle the matters pending in Grant County and on appeal.

In early August 2009, Mr. Slane unsuccessfully moved for contempt in Grant County. On August 17, Mr. Slane moved for contempt in Kittitas County and moved to

vacate the 2002 decree, parenting plan, and child support order under CR 60(b). He argued all final dissolution orders were void because they did not conform to the joinder, Ms. Kukes committed fraud, he was denied notice, insufficient service of process, and lack of jurisdiction. In both the contempt and motion to vacate, Mr. Slane requested $36,796 for the overpayment of child support, $4,038.46 for vacation time lost, $3,550 for attorney fees, jail time for Ms. Kukes, appointment of special counsel to prosecute Ms. Kukes for contempt of court and perjury, and sanctions against Ms. Kukes' counsel for alleged fraud and misconduct.

The Kittitas County court denied his motions for contempt and to vacate. The court further found Mr. Slane's motions were frivolous and brought without any reasonable basis, and awarded Ms. Kukes her attorney fees and costs in the amount of $3,920.84 under RCW 26.09.160 and CR 11. He appealed.

ANALYSIS

A. Jurisdiction

The issue is whether the superior court lacked jurisdiction to enter the 2002 child support order. Mr. Slane contends because he did not receive notice prior to its entry, the order is void.

We review the denial of a motion to vacate under CR 60(b) for "clear abuse of discretion." *In re Marriage of Flannagan*, 42 Wn. App. 214, 222, 709 P.2d 1247 (1985).

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). Matters of jurisdiction, however, are questions of law we review de novo. *In re Marriage of Robinson*, 159 Wn. App. 162, 167, 248 P.3d 532 (2010).

A judgment is void when the issuing court lacks personal jurisdiction over the party or subject matter jurisdiction over the claim. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994). Here, the court undisputedly had jurisdiction over Mr. Slane as the result of Ms. Kukes' successful service upon him of the summons and petition. Mr. Slane did not respond and was adjudged to be in default. A defendant adjudged to be in default is not entitled to notice of subsequent proceedings, including the application for judgment. *Conner v. Universal Utils.*, 105 Wn.2d 168, 172, 712 P.2d 849 (1986).

But "[w]hen more than 1 year has elapsed after service of summons with no appearance being made, the court shall not sign an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry." CR 55(f)(1). Here, the default order was entered just 2 months after service. Mr. Slane later joined in the petition. Therefore, CR 55(f) is not applicable.

Before presentment, Mr. Slane signed the decree, findings and conclusions, and

parenting plan. This clearly triggered the court's personal jurisdiction over Mr. Slane. Indeed, even an informal appearance "acknowledges the court's jurisdiction over the matter after the summons and complaint are filed." *Sacotte Constr., Inc. v. Nat'l Fire & Marine Ins. Co.*, 143 Wn. App. 410, 415, 177 P.3d 1147 (2008).

Accordingly, because Mr. Slane joined in the petition for dissolution and later signed the decree, findings and conclusions, and parenting plan prior to presentment, he acquiesced to the court's jurisdiction. Therefore, neither the default judgment nor the 2002 child support order was void or voidable for lack of jurisdiction. The trial court did not abuse its discretion in denying Mr. Slane's motion to vacate.

B. Attorney Fees at Trial

The issue is whether the trial court erred in awarding Ms. Kukes attorney fees under RCW 26.09.160 and CR 11.

We review a trial court's decision to award attorney fees, including sanctions under CR 11, for an abuse of discretion. *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707 (2004). Absent a showing of an abuse of discretion, we will not disturb the trial court's decision. *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82 (1989). Under RCW 26.09.160(7), "Upon motion for contempt of court . . . if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party, . . . reasonable attorneys' fees." Similarly, CR 11

permits sanctions, including attorney fees, when an attorney advances litigation lacking a legal or factual basis without adequate investigation of the legal and factual bases for a case. *Roeber v. Dowty Aerospace Yakima,* 116 Wn. App. 127, 141, 64 P.3d 691 (2003).

First, Mr. Slane argues he had a reasonable basis for his contempt motion because Ms. Kukes committed perjury in her dissolution filings. Perjury does not constitute contempt of court unless two additional elements are present: "(1) the court must have judicial knowledge of the falsity and (2) the false testimony must obstruct the court in performance of a judicial function." *Moreman v. Butcher*, 126 Wn.2d 36, 41, 891 P.2d 725 (1995). Here, the Kittitas County court could not judicially know any information regarding the parties was false unless testimony was taken to establish the falsity. It was not. Therefore, it was not a direct contempt. Further, assuming Ms. Kukes' information was false; nothing shows it obstructed the court performing its duty. We note this alleged contemptuous conduct occurred nearly eight years ago, rendering it unlikely to have affected the court's recent ruling.

Second, Mr. Slane argues Ms. Kukes was in contempt of court for fraudulently claiming ES on her tax return. Ms. Kukes inadvertently claimed ES on her tax return in 2005. She never claimed ES in any other year. And, Mr. Slane did not move for contempt until more than four years later. Thus, his claim is frivolous. Moreover, because all these alleged contemptuous actions occurred several years ago, no compliance

could be compelled. *In re Marriage of Farr*, 87 Wn. App. 177, 187, 940 P.2d 679 (1997) (contempt proceedings are "for the purpose of coercing compliance with a parenting plan").

Third, Mr. Slane moved for contempt in Kittitas County only after he was found in contempt three times and his child support was increased from $500 to $1,721 by the Grant County court. Coincidentally, he requested judgment against Ms. Kukes in the exact amount entered against him in Grant County. Mr. Slane requested jail time and appointment of "special counsel" to prosecute Ms. Kukes, and sanctions against Ms. Kukes' counsel. His actions could reasonably appear intimidating and purposeful to increase her litigation costs. And, Mr. Slane filed his motion for contempt in Kittitas County only after receiving several adverse rulings in Grant County and immediately after two of his contempt motions were denied in Grant County. His motion practices suggest spiteful forum shopping.

Given all, we conclude the trial court did not abuse its discretion by finding Mr. Slane's motion for contempt of court was brought without reasonable basis and, therefore awarding attorney fees and costs to Ms. Kukes was not error.

C. Attorney Fees on Appeal

Ms. Kukes requests attorney fees on appeal under CR 11 and RCW 26.09.160(7). As discussed above, CR 11 permits sanctions, including attorney fees, when a party

advances litigation lacking a legal or factual basis. Similarly, under RCW 26.09.160(7), "Upon motion for contempt of court . . . if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party . . . reasonable attorneys' fees."

Given our circumstances, we conclude this appeal meets the tests of both CR 11 and RCW 26.09.160(7). Accordingly, we impose attorney fees reasonably incurred by Ms. Kukes to defend against Mr. Slane in this appeal in amounts to be set by our court commissioner, provided Ms. Kukes complies with RAP 18.1.

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.

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Brown, J.

We concur:

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Korsmo, C.J.

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Siddoway, J.