

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:

No. 26563-3-III

EVARISTO JAVIER SANCHEZ,

Respondent,

and

LORIE ANN SANCHEZ,

Appellant.

Division Three

UNPUBLISHED OPINION

Sweeney, J. —This appeal follows an ex-wife’s ongoing efforts to enforce her ex-husband’s support obligations. A court has discretion to sanction a party for contempt, allocate children as federal tax exemptions, and determine the amount of an attorney fees award. *In re Marriage of Crosetto*, 82 Wn. App. 545, 563, 918 P.2d 954 (1996); RCW 26.19.100; RCW 7.21.020. The court here awarded the ex-wife \$1,000 of her \$2,300 request for attorney fees, denied her request for a permanent award of the parties’ children as tax exemptions, and refused to sanction the ex-husband \$5,000 for contempt. The court acted within its discretionary authority under the decree of dissolution and

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applicable law. We, therefore, affirm the court's decisions and award the ex-husband costs as the prevailing party on appeal.

FACTS

Lorie and Evaristo Sanchez divorced in November 2003. Their decree of dissolution awarded the family business and allocated tax exemptions for two of the parties' three children to Mr. Sanchez every year that they are eligible, on the condition that he is current on child support for that year by January 20 of the following year. The decree also required that Mr. Sanchez pay Ms. Sanchez \$686 per month for child support, \$200 per month for back child support, and \$800 per month for an equalization judgment of \$32,000. A lien on Mr. Sanchez's business, real property, and personal property secured these obligations. The decree provided that Mr. Sanchez's business would be transferred to Ms. Sanchez if he failed to pay any of his monthly obligations and that he would have to pay all the fees and costs incurred by Ms. Sanchez to effect such a transfer.

Mr. Sanchez has apparently never been current on his equalization payments or child support obligation. By June 2006, he owed Ms. Sanchez \$26,300 in equalization payments plus interest and approximately \$9,400 in child support plus interest. As of September 2007, he owed more than \$9,600 in child support. By August 2008, the trial court had found Mr. Sanchez in contempt of court six times for failing to timely pay his child support obligation. And Ms. Sanchez had moved for \$2,300 in attorney fees, \$5,000 in sanctions against Mr. Sanchez for

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contempt, and a permanent award of the children as federal tax exemptions.

A judge denied Ms. Sanchez's motions for sanctions and a permanent exemption award. The judge, however, awarded Ms. Sanchez \$1,000 in attorney fees and reserved ruling on whether she would be entitled to federal tax exemptions for one or both of the children eligible for exemption in 2007.

Ms. Sanchez appeals the trial court's rulings.

DISCUSSION

\$1,000 Attorney Fees Award

Ms. Sanchez first challenges the trial court's decision to award her \$1,000 of her \$2,300 request for attorney fees. We review the decision for abuse of discretion. *Crosetto*, 82 Wn. App. at 563. A court abuses its discretion if its decision is unacceptable given the facts and the applicable legal standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

The trial court awarded Ms. Sanchez \$1,000 of her \$2,300 request for attorney fees because "her action . . . was at least in part for child support." Report of Proceedings (RP) (Oct. 5, 2007) at 107.

Ms. Sanchez contends that the parties' decree of dissolution entitles her to an award of all the attorney fees she incurs for any action to collect money that Mr. Sanchez owes her. But the decree's attorney fees provision is not so broad. It says Ms. Sanchez is entitled to all fees and costs incurred only to

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foreclose her lien on Mr. Sanchez's business property:

If Father fails to pay any of his monthly obligations to wife, then *the business shall be turned over to wife* within 15 days of default, absent further order of court. *Father shall pay all Fees & Costs wife incurs if this happens.*

Clerk's Papers (CP) at 394 (italics added); *accord* RP (Oct. 28, 2003) at 81-82; RP (Mar. 10, 2006) at 6. The provision does not say that Ms. Sanchez is entitled to all attorney fees incurred to collect child support and equalization payments. The decree then did not require that the court award the fees Ms. Sanchez requested because she did not incur them to foreclose her lien. *See* CP at 151-59 and RP (July 13, 2007) at 83-84 (showing that Ms. Sanchez incurred \$2,300 in attorney fees by moving to control the sale of Mr. Sanchez's property).

Denied Request for \$5,000 Sanction

Ms. Sanchez next challenges the trial court's refusal to sanction Mr. Sanchez \$5,000 after finding him in contempt of court for failing to pay his support obligations. A trial court has discretion to impose sanctions for contempt, and we will not disturb the court's decision on sanctions absent an abuse of that discretion. *In re Marriage of Mathews*, 70 Wn. App. 116, 126, 853 P.2d 462 (1993).

Here, the trial court found Mr. Sanchez in contempt for failing to pay child support but chose not to sanction him:

I'm not going to grant sanctions at this time. I am going to find Mr.

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Sanchez in contempt for not paying child support; however, I will not indicate any sanctions if any. I will address those at the next hearing depending on if he follows through with his obligations for this month. And I would suggest that we set a date early in November to hopefully wrap up the issues of what if any sanctions should be imposed.

RP (Oct. 5, 2007) at 112-13.

A court may sanction a party in contempt up to \$2,000 a day for every day the contempt continues. RCW 7.21.030(2)(b). Ms. Sanchez, however, does not show that the \$5,000 sanction was required here. A court is not required to impose a sanction for contempt of court; it “*may* impose a sanction for contempt of court.” RCW 7.21.020 (emphasis added). And the trial court here chose not to impose a sanction at the hearing in question. It, instead, decided to revisit the issue of sanctions at a future hearing. The court, then, acted within the bounds of its discretion by not imposing sanctions. RCW 7.21.020 (“A judge . . . may impose a sanction for contempt of court”). We affirm the court’s decision and, accordingly, decline Ms. Sanchez’s request that this court sanction Mr. Sanchez \$5,000.

Denied Request For Permanent Income Tax Exemptions

Ms. Sanchez next challenges the trial court’s refusal to grant her the children as permanent income tax exemptions. A trial court has discretion to determine how to allocate children as federal tax exemptions. RCW 26.19.100. Again, we review the decision for abuse of that discretion. *In re Marriage of Buchanan*, 150 Wn. App. 730,

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735, 207 P.3d 478 (2009).

The trial court here denied Ms. Sanchez's request for a permanent award of tax exemptions for the parties' children:

[A]t this point in time I'm not going to grant the permanent tax exemption. I think the chances are good she will probably get the exemption for 2007, and there is also a chance that Mr. Sanchez . . . will be able to come current and make payments regularly toward the arrearage.

RP (Oct. 5, 2007) at 112; *accord*, CP at 21.

A court must "make provision for the allocation of the children as federal tax exemptions" in a decree of dissolution. RCW 26.09.050(1). In doing so, "[t]he court may divide the exemptions between the parties, alternate the exemptions between the parties, or both." RCW 26.19.100. The court cannot award all exemptions to one party permanently. *See id.* The court, then, properly exercised its discretion under RCW 26.19.100 when it denied Ms. Sanchez's request for a permanent allocation of exemptions.

Recusal/Removal of Family Court Judge

Ms. Sanchez wants the trial judge removed from future hearings because she says he is biased. A trial judge has discretion to and should recuse himself where his impartiality might reasonably be questioned. *In re Parentage of J.H.*, 112 Wn. App. 486, 496, 49 P.3d 154 (2002). We review a trial judge's decision on whether to recuse for

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abuse of discretion. *Wolfkill Feed & Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 840, 14 P.3d 877 (2000).

But a party must move to have a judge recuse himself and that motion must specify the grounds for recusal. *J.H.*, 112 Wn. App. at 496. Ms. Sanchez never asked the judge to recuse himself. And, of course, she did not spell out the grounds for recusal in the trial court. So it is difficult to fault the judge for not recusing himself. Moreover, we presume that the judge is not biased. “The party seeking to overcome that presumption must provide specific facts establishing bias. Judicial rulings alone almost never constitute a valid showing of bias.” *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004) (footnote omitted). Ms. Sanchez’s concerns are based on discretionary decisions made by the judge as far back as 2003. Those decisions are either unchallenged or were well within the bounds of the judge’s discretionary authority. We, therefore, see no reason for the trial judge to recuse himself.

Requests for Attorney Fees on Appeal

Ms. Sanchez requests an award of costs in her opening brief but cites no authority for the award. In her reply brief, she says RAP 14 and the dissolution decree permit the award. RAP 14.2 does not apply because Ms. Sanchez did not substantially prevail on appeal. And the decree does not authorize costs because her appeal is not based on an action foreclosing her lien on Mr. Sanchez’s property. She, therefore, is not entitled to

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costs on appeal.

Mr. Sanchez also asks for an award of fees and costs under RAP 14.2 and RCW 26.09.140. RCW 26.09.140 authorizes this court to “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.” It requires us to consider Mr. Sanchez’s need, Ms. Sanchez’s ability to pay, and the merit of the issues on appeal. *In re Marriage of Shellenberger*, 80 Wn. App. 71, 87, 906 P.2d 968 (1995); *In re Marriage of Booth*, 114 Wn.2d 772, 779-80, 791 P.2d 519 (1990). Both parties appear financially able to pay an attorney because each earns a net income of roughly \$2,500 per month. *See id.* at 780. They should, therefore, bear their own fees on appeal. *Id.* We do award Mr. Sanchez costs as the prevailing party. RAP 14.2.

We affirm the trial court’s decisions and award Mr. Sanchez costs for this appeal.

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.

Sweeney, J.

WE CONCUR:

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Korsmo, A.C.J.

Brown, J.