IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	**No. 27259-1-III**
	)	**consolidated with**
RYAN R. ROGERS,	)	**No. 27452-7-III**
	)	
Respondant,	)	**Division Three**
	)	
v.	)	
	)	**UNPUBLISHED OPINION**
LAURA D. ROGERS,	)	
	)	
Appellant.	)	
	)	
	)	
In re the Marriage of:	)	
	)	
RYAN R. ROGERS,	)	
	)	
Appellant,	)	
v.	)	
	)	
LAURA D. ROGERS,	)	
	)	
Respondent.	)	
	)	

Brown, J. — We consider the consolidated appeals from Ryan R. Rogers' and Laura D. Rogers' marriage dissolution. Mr. Rogers contends the trial court erred in

ordering child support based upon an estimated monthly income from his family business by not discounting for taxes paid on business profits. Ms. Rogers contends the court erred in deciding the couple's postnuptial agreement was valid. We affirm.

FACTS

The parties married in October 1999 and separated in July 2007. They have three minor children. Mr. Rogers owns 45 percent of Rogers Motors, Inc., a business started by his father. Mr. Rogers' base salary was $6,500 per month plus bonuses. Rogers Motors is a subchapter S corporation where profits or losses are distributed to the shareholders who claim the profits or losses on their income tax forms. 26 U.S.C. § 1366(a). Mr. Rogers, however, elected instead to use profits to run the company. The trial judge noted that the subchapter S profit was "not available to pay child support." Report of Proceedings (RP) (Sept. 10, 2008) at 50.

The trial court found Mr. Rogers' net income was $16,666 per month. The child support order notes, "income averaged $400,000 gross the last 4 years and the court assigned 50% to taxes and other fed/state withholdings." Clerk's Papers (CP) at 195. $400,000 was derived from Mr. Rogers' total income on his last four tax returns that included undistributed subchapter S income. The court ordered Mr. Rogers to pay $4,500 per month in child support for the parties' three children.

In December 2001, Mr. Rogers proposed a postnuptial agreement to Ms. Rogers. Mr. Rogers' father wanted to gift 45 percent of Rogers Motors' shares to Mr.

Rogers. However, he conditioned the gift on Ms. Rogers signing a postnuptial agreement, characterizing the shares as Mr. Rogers' separate property. The agreement provided that in the event of divorce, neither party would be required to pay spousal support and each party would pay their own attorney fees. At the time, Ms. Rogers was pregnant, had a toddler, and was in the middle of building a house.

Mr. Rogers advised Ms. Rogers to consult an attorney, which she did in January 2002. She advised the attorney that she felt she needed to sign the agreement because it was Mr. Rogers' dream to own the dealership and if she did not, "my marriage is over." RP (March 25, 2008) at 28. Ms. Rogers' attorney proposed changes that were incorporated into the postnuptial agreement. Ms. Rogers signed it on February 20, 2002, twelve days after Mr. Rogers signed it. The agreement states it shall be "governed in all respects (including validity and enforcement) by the laws of the State of Idaho." CP at 54. The agreement was not recorded.

Entering findings of fact and conclusions of law, the court concluded the agreement was valid.

Mr. Rogers appeals the child support order and Ms. Rogers appeals the validity of the postnuptial agreement.

ANALYSIS

A. Imputed Income

The issue is whether the trial court erred by abusing its discretion in setting child

support at $4,500 per month for the parties' three children. Mr. Rogers contends the court abused its discretion by imputing too much income.

We review child support orders for abuse of discretion. *In re Marriage of Griffin,* 114 Wn.2d 772, 776, 791 P.2d 519 (1990). A court abuses its discretion if its decision is "based on an incorrect standard or the facts do not meet the requirements of the correct standard." *In re Marriage of Fiorito,* 112 Wn. App. 657, 664, 50 P.3d 298 (2002). We do not substitute our judgment for trial court judgments if the record shows the court considered all relevant factors and the award is not unreasonable under the circumstances. *Marriage of Griffin,* 114 Wn.2d at 776.

In setting child support, the court must consider all factors bearing upon the needs of the children and the parents' ability to pay. *In re Marriage of Pollard,* 99 Wn. App. 48, 52, 991 P.2d 1201 (2000). The court applies the uniform child support schedule, basing the support obligation on the combined monthly incomes of both parents. *Id.* (citing former RCW 26.19.020 (1998), .035(1)(c), .071(1)).

A chapter S corporation is not separately taxed at the ordinary corporate rates, but is generally treated as a pass through entity under which income and losses flow directly to the shareholders. *Fehlhaber v. C.I.R.*, 954 F.2d, 653, 654 (11th Cir. 1992). "The shareholders then include their share of the S corporation's income, gain, losses, deductions, and credits on their own personal returns." *Id.* Here, the court used the reported income from Mr. Rogers' tax reports to calculate his average monthly income.

The tax return amount included undistributed subchapter S income that was included for tax purposes, but not actually distributed to Mr. Rogers. The court then reduced the income by 50 percent for "taxes and other fed/state withholdings." CP at 195. And, the court expressed its intent that subchapter S profit not be included for child support purposes when the court stated the profit was "not available to pay child support." RP (Sept. 10, 2008) at 50. Since the court had tenable grounds to set child support at $4,500 for the parties' three children, we find no abuse of trial court discretion.

B. Postnuptial Agreement

Ms. Rogers' appeal issue is whether the trial court erred in concluding the postnuptial agreement was valid. She contends she was coerced into signing an overreaching agreement, the agreement lacked consideration, and it was abandoned because it was not recorded.

While the validity of the agreement is governed by Idaho law, our review of the trial court's findings of fact and conclusions of law is guided by Washington law. We review whether the findings of fact are supported by substantial evidence. *In re Marriage of Bernard*, 165 Wn.2d 895, 903, 204 P.3d 907 (2009). "'Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise.'" *Id.* (quoting *In re Marriage of Hall,* 103 Wn.2d 236, 246, 692 P.2d 175 (1984)). But, unchallenged findings are verities on appeal. *In re Marriage of Knight*, 75 Wn. App. 721, 732, 880 P.2d 71 (1994). Further, we require, "A separate

assignment of error for each finding of fact a party contends was improperly made . . . with reference to the finding by number." RAP 10.3(g). Because none of the trial court's findings of fact have been assigned error, they are verities on appeal.

The trial court found Ms. Rogers "was fully aware of the consequences and effect of signing [the] agreement." CP at 127. Further, "There was pressure felt by Laura Rogers when she was making the decision to sign, but the pressure was not illegal." CP at 127. The court further found, "The conditions of the agreement . . . were not over-reaching when considered as an attempt on the part of the drafter to not allow Laura Rogers to avoid the separate property character of the stock by getting maintenance and more than half of the community property." CP at 127. Also, the court found Ms. Rogers benefitted from signing the agreement by the "immediate increase in income" to the family by Mr. Rogers owning the shares and this provided "plenty of consideration for the signing of the agreement." *Id.* at 127-28. Further, the court found, "The parties followed through with the terms of the agreement[,]" thus the agreement was not void for lack of recording. CP at 128.

In Idaho, a postnuptial agreement is valid based on "ordinary contract principles unless otherwise noted by statute or case precedent." *Liebelt v. Liebelt*, 118 Idaho 845, 848, 801 P.2d 52 (1990). A valid contract, "takes the form of an offer followed by an acceptance." *Justad v. Ward*, 147 Idaho 509, 512, 211 P.3d 118 (2009). Consideration must also be present for a valid contract. *Shore v. Peterson*, 146 Idaho

903, 909, 204 P.3d 1114 (2009). For a contract to be voidable, "an agreement must not only be obtained by means of pressure brought to bear, but the agreement itself must be unjust, unconscionable, or illegal." *Liebelt,* 118 Idaho at 848.

The unchallenged findings support the trial court's conclusion that the agreement was valid; the record shows offer, acceptance, and consideration; and the contract was not illegal or based on duress or overreaching. *See Saviano v. Westport Amusements, Inc.,* 144 Wn. App. 72, 78, 180 P.3d 874 (2008) (review is limited to whether unchallenged findings support conclusion of law). The parties never abandoned the agreement. Considering our conclusions, we do not address Ms. Rogers' contingent arguments surrounding the property distribution, failure to award spousal support, and attorney fees below.

C. Attorney Fees on Appeal

Both parties request attorney fees on appeal. We may grant attorney fees "[i]f applicable law grants to a party the right to recover reasonable attorney fees." RAP 18.1(a). Neither party cites applicable law to support their requests; thus, attorney fees should be denied. Further, the parties agreed in their postnuptial agreement to pay their own attorney fees.

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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Kulik, A.C.J.

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Korsmo, J.