IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	**No. 27440-3-III**
VICTOR RANDOLPH,	)	
	)	**Division Three**
Appellant,	)	
	)	
and	)	**UNPUBLISHED OPINION**
	)	
BOBBI-JO LAWRENCE,	)	
	)	
Respondent.	)	
	)	

Brown, J. – Dr. Victor Randolph appeals the trial court's post-marriage child support modification order requiring him to pay $1,959 per month to his former spouse, Bobbi-Jo Lawrence, for their four children. Dr. Randolph contends the court erred in calculating Ms. Lawrence's income, not deducting North Carolina state income tax from his income, and not crediting him for travel expenses incurred for visitation. He also contends he was denied due process of law by not being permitted to present oral argument. We affirm.

FACTS

The parties were married in October 1997. They have four children, ages 17, 12, and twin 10-year-olds. Dr. Randolph and Ms. Lawrence's marriage was dissolved in 2002 in Oregon with Ms. Lawrence being named the residential parent. At the time of dissolution, Dr. Randolph resided in North Carolina and Ms. Lawrence resided in Oregon. In 2006, Ms. Lawrence and the children relocated to Washington.

In 2007, Dr. Randolph requested modification of the parties' parenting plan and to establish Washington's jurisdiction. Ms. Lawrence, in turn, requested recalculation of child support based on the Washington State Support Schedule. She listed her monthly income as $1,700 based on three pay stubs from her employer, Walla Walla County. Ms. Lawrence later quit this position to be at home with the parties' twin boys, who she claims have autism (the parties dispute this fact). Dr. Randolph's monthly income was listed as $20,262 with a $6,578.62 deduction for federal and state income taxes.

The court made several temporary rulings. And, on August 25, 2008, the court entered a final order, ordering Dr. Randolph to pay $1,959 per month for the parties' four children. This amount was based on an imputed income for Dr. Randolph at $20,000. The court reduced that amount by $5,000 for federal and state income taxes. The court originally reduced the $20,000 by an additional $1,700 for North Carolina state income tax, but before the final order was entered the court withdrew that deduction after determining the $1,700 deduction from Dr. Randolph's pay check was a

garnishment for unpaid state taxes. The court reduced its original amount for Ms. Lawrence's income from $1,800 to $1,309. The court removed a previously included travel credit to Dr. Randolph for visitation. Long distance transportation is now divided as an additional expense, with Dr. Randolph paying 91.41 percent and Ms. Lawrence paying 8.59 percent of transportation costs. Dr. Randolph appealed.

ANALYSIS

A. Child Support Calculation

The issue is whether the trial court erred by abusing its discretion in setting child support at $1,959 per month for the parties' four children. Dr. Randolph contends the court abused its discretion by imputing too little income for Ms. Lawrence, not deducting North Carolina income tax from his income and not crediting him for travel expenses for visitation.

Initially, Ms. Lawrence claims none of Dr. Randolph's issues have been preserved for appeal because they were not raised below. The crux of Dr. Randolph's appeal is the child support amount; an issue extensively litigated by the parties based on this court's record. As such, the issues have been sufficiently preserved for review under RAP 2.5(a).

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.

1. Ms. Lawrence's Income. "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 trial court applies the uniform child support schedule, basing the support obligation on the combined monthly incomes of both parents." *Id.* (citing RCW 26.19.020, .035(1)(c), .071(1)).

RCW 26.19.020 provides the economic table for determining the support obligation; the table is "presumptive for a combined monthly net income of $5,000 or less and advisory but not presumptive for a combined monthly net income of more than $5,000." *In re Marriage of McCausland,* 159 Wn.2d 607, 611, 152 P.3d 1013 (2007) (citing former RCW 26.19.020 (1998)).[1] The table provides support obligations up to a combined monthly net income of $7,000. Former RCW 26.19.020. Here, the trial court chose to set an amount within the economic table.

A court must impute income to a parent who is voluntarily unemployed or underemployed in order to prevent a parent from avoiding his or her child support obligation. RCW 26.19.071(6).

[1] The amount has now been increased to $12,000. *See* Laws of 2009, ch. 84 § 1 (effective Oct. 1, 2009).

Ms. Lawrence presented pay stubs showing she averaged approximately $1,800 per month. But, she testified the parties' twins have special needs that require her to stay home with them. The trial court recognized and balanced Ms. Lawrence's employability with the needs of the twins by imputing her income at $1,309. This amount was within the court's discretion. And, this income in combination with Dr. Randolph's income is still considerably higher than the $7,000 set forth in former RCW 26.19.020. Dr. Randolph has failed to identify an abuse of discretion. While Dr. Randolph argues insufficient proof establishes Ms. Lawrence's income, the record supports the trial court's exercise of discretion.

2. North Carolina State Income Tax. RCW 26.19.071(5) sets forth expenses that shall be deducted from gross monthly income to calculate net monthly income for child support purposes. While federal and state income taxes are to be deducted, garnishments for delinquent taxes are not listed. During the hearing before the final order was entered, the court asked Dr. Randolph about a $1,700 deduction on the income statement form he submitted. Dr. Randolph stated, "The North Carolina garnishment income tax I'm behind on." Report of Proceedings (RP) at 62. The court then stated, "Okay, right. But we don't garnish and then take it as a deduction." *Id.* Dr. Randolph's counsel replied, "Okay." *Id*. Based on RCW 26.19.071(5) and the colloquy between the trial judge, Dr. Randolph, and his attorney, there was no error in excluding the $1,700 from Dr. Randolph's gross income.

3. Travel Expense Credit. RCW 26.19.080(4) authorizes the court to exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation. RCW 26.19.080(3) provides that other special child-rearing expenses, such as travel expenses, are to be shared by the parties in the same proportion as the basic child support obligation.

Here, the proportional calculation for reimbursement at the time the expense is incurred is the same proportional calculation that would be used if a monthly credit was placed on the child support worksheet. It was within the trial court's discretion to order a proportional share as incurred rather than as a credit to reduce Dr. Randolph's child support obligation. Dr. Randolph has failed to demonstrate an abuse of discretion.

B. Due Process Argument

The next issue is whether Dr. Randolph was denied due process of law by the trial court's limit on hearing times and argument.

Due process requires that a person have an opportunity to be heard. *Post v. City of Tacoma,* 167 Wn.2d 300, 313, 217 P.3d 1179 (2009) (citing *Mathews v. Eldridge,* 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). After a lengthy December 2007 hearing regarding custody and temporary child support, the trial court stated, "I understand. It is after 12:00. I have got to leave. So, okay." RP at 34. Dr. Randolph's counsel then agreed to prepare an order and the court reminded the parties they had five days to object. At a June 2008 hearing, the court stated, "I've got four

other things I have to get done here in the next less than 20 minutes." RP at 49-50. At an August 25, 2008 hearing, the trial court began the hearing by stating, "And we're at the end of the docket. I've got about seven minutes to 12:00." RP at 56. The trial court later indicated that it would treat the matter as cross-motions for reconsideration and mentioned that under the local rules, there would be no argument regarding its final decision.

While the trial court was mindful of the time and other cases on the docket, the court did not deny Dr. Randolph an opportunity to present his written reconsideration motion and permitted him to answer clarifying questions in the same manner permitted to Ms. Lawrence. The parties have a lengthy litigation history. The record shows the court took under advisement the parties' arguments over the years and crafted a child support amount that was within its discretion. Accordingly, Dr. Randolph has failed to show he was denied due process.

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, C.J.

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Korsmo, J.