

FILED
Court of Appeals
Division II
State of Washington
12/31/2018 2:42 PM
NO. 51885-6-II

WASHINGTON STATE COURT OF APPEALS
DIVISION II

JOSHUA A. KNOWLES,

Appellant,

v.

HEIDI K. KNOWLES,

Respondent.

APPELLANT JOSHUA KNOWLES' OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. Assignments of error.

Appellant Joshua Knowles assigns error to the following findings of fact & conclusions of law from the trial court's April 13, 2018 "Findings and Conclusions about a Marriage":

- finding / conclusion no. 14;
- finding / conclusion no. 21;

Appellant Joshua Knowles also assigns error to the following findings of fact & conclusions of law from the trial court's April 13, 2018 "Final Divorce Order":

- finding / conclusion no. 14;
- finding / conclusion no. 19;

Appellant Joshua Knowles further assigns error to the following findings of fact & conclusions of law from the trial court's April 13, 2018 Child Support Order:

- finding / conclusion no. 1;
- finding / conclusion no. 5;
- finding / conclusion no. 6;
- finding / conclusion no. 8;

- finding / conclusion no. 10;
- finding / conclusion no. 11;
- finding / conclusion no. 22.

2. Issues pertaining to assignments of error.

Whether the trial court's findings of fact and conclusions of law regarding Mr. Knowles' income for purposes of child support are supported by substantial evidence in the record.

Whether the trial court erred by imputing Mr. Knowles' salary where he is gainfully employed on a full-time basis and is not purposely underemployed to reduce his or her support.

Whether the trial court erred in awarding back support.

Whether the trial court's award of fees should be reversed because Mr. Knowles does not have the ability to pay them.

B. STATEMENT OF THE CASE

Joshua Knowles has family that has lived and served with various non-profit Christian organizations such as orphanages and schools in Africa. See, e.g., 2/28/2018 VRP at 292 (uncle); at 301 (mother). The parties met in Kenya in 2007 while Heidi Knowles was

on a mission trip. See 2/27/2018 VRP at 160. The parties married on September 14, 2008 in Yacolt, Washington. See CP 1158. The parties had two children: Kenzie and Blake, ages 4 and 2 at the time final pleadings were entered. CP 1159. The parties and their children lived in Kenya for most of the marriage, although Ms. Knowles had moved back to the United States, and Washington was the home state of the children at the time she served the Petition on Mr. Knowles in July 2016. See CP 1157; 1159-60.

While living in Kenya, the parties founded Highmark Construction Limited, a small construction company. See 2/28/2018 VRP at 375. Initially, Highmark Construction operated in the “safari” tourism industry. See 3/1/2018 VRP at 388-91. After a terrorist attack in Kenya in 2013, however, Highmark Construction was forced to move out of the tourism industry and transition into residential construction. Id. Mr. Knowles was the director of the company, oversaw financial deals, dealt with clients, was in charge of ordering, organized the building of facilities, and supervised teams. See 2/28/2018 VRP at 376. Ms. Knowles was also a director and oversaw and kept the company’s financial records. Id.

Ms. Knowles served Mr. Knowles with the Petition for Dissolution on July 21, 2016. After four days of trial, on April 13, 2018, the trial court entered a Final Parenting Plan (CP 1172-85), Final Order of Child Support (CP 1187-1204), Findings & Conclusions (CP 1157-61), and a Decree of Divorce (CP 1164-69). Regarding the Order of Child Support, the trial court did not use Mr. Knowles' actual income, which was based on various financial documents admitted at trial. Instead, the court imputed his income at \$8,000 per month, see CP 1188, which is around 3 times his actual income. The trial court also made the Final Support Order retroactive all the way back to October 1, 2016, thereby instantly making Mr. Knowles liable for back support, see id. at 1190, even though he had been fully paying his obligation under a July 2017 Temporary Child Support Order.

For the reasons described herein, Mr. Knowles asks this Court to reverse the trial court, vacate the Order of Support, vacate the award of back support, reverse the award of attorney fees, and remand for recalculation of support using Mr. Knowles' actual income.

C. SUMMARY OF ARGUMENT

The trial court's findings of fact and conclusions of law regarding Mr. Knowles' income for purposes of child support are not supported by substantial evidence in the record. Additionally, the trial court erred by imputing Mr. Knowles' salary where he is gainfully employed on a full-time basis, and is not purposely underemployed to reduce his or her support. Moreover, the trial court erred in awarding back support. Finally, the trial court's award of fees should be reversed because Mr. Knowles does not have the ability to pay them.

D. ARGUMENT

1. Standard of review.

Where, as is the case here, “the trial court has weighed the evidence, the scope of review on appeal is limited to ascertaining whether the findings of fact are supported by substantial evidence and, if so, whether the findings support the conclusions of law and judgment.” Jones v. Best, 134 Wn.2d 232, 239-240, 950 P.2d 1 (1998). “A mere scintilla of evidence,” however, will not support the trial court's findings; it requires “believable evidence of a kind and

quantity that will persuade an unprejudiced thinking mind of the existence of the fact to which the evidence is directed.” Hewitt v. Spokane, Portland & Seattle Railway Company, 66 Wn.2d 285, 286, 402 P.2d 334 (1965). Errors of law are reviewed de novo. In re Marriage of Wehr, 165 Wn. App. 610, 613, 267 P.3d 1045 (2011).

2. The trial court’s findings of fact and conclusions of law regarding Mr. Knowles’ income for purposes of child support are not supported by substantial evidence in the record.

The child support worksheets and Order of Support (as well as the Findings and Decree which incorporate the Order) entered by the trial court are all based on the faulty premise that Mr. Knowles’ net monthly income was \$8,000. See CP 1188 (Order) and 1199 (Worksheet). This number, however, has no basis in fact. Indeed, the objective, documentary evidence in the record shows Mr. Knowles’ net monthly income to be much less: \$2,968. See 3/1/2018 VRP at 404 and Exhibit 110 (Joshua Knowles’ financial declaration).

Ms. Knowles testified she believed his net income was \$8,000 per month, but this was an invented number. It was based not on any actual tax or financial record describing wages or business income,

but instead it was based on her attempt to count up deposits into the parties' business and personal bank accounts in Kenya. For example, she testified about Exhibits 6, 7, and 8, describing deposits into the Highmark Construction Limited business account. See generally 2/27/2018 VRP at 192-96. Regarding Exhibit 8 (which was not admitted into substantive evidence, but was instead used for illustrative purposes), she described it, and went over the deposits for 2015, as well as for 2016 plus the first two months of 2017.

The problem with her testimony, however, can be seen right on the illustrative exhibit. First, the source bank statements (Exhibits 9 and 10) contain deposits for the business, and as such they are clearly not indicative of Mr. Knowles' personal income anymore than they would have been indicative of Ms. Knowles' personal income when the parties were still together and she was working for the company. Second, for some reason Ms. Knowles' testimony completely ignores the fact there are withdrawals from the business account. Indeed, on her own illustrative exhibit (again, not admitted into evidence), it would indicate that for all of 2016, Highmark Construction had a net profit of \$5,990.47 U.S. dollars.

Ms. Knowles then attempted to review deposits into what she describes as the parties' "personal" Kenyan bank account. She testified as to what she believed were non-business-related deposits from the business account into the personal account for 2015 and 2016. See generally 2/27/2018 VRP at 200-201. The problem with this testimony, however, is that Ms. Knowles admitted that these withdrawals from the business account were used for many purposes other than "personal" use:

... you can have it withdraw directly from the bank, which we had ... And then we could spend it on our discretion to anyone. It could be to casual salaries, it could be to vendors, it could be cash out of the kiosk that could be spent for personal expenses, which I personally also did at times when I was in Kenya.

Id. at 200 (note: "casual salaries" refers to salaries for their laborers, which are referred to as "casuals". See id. at 164).

In contrast to this sheer speculation, Mr. Knowles provided the following financial documents: tax returns for 2010, 2011, 2012, and 2013 (see Exhibit 116); his financial declaration (see Exhibit 110); Highmark Construction Profit & Loss statements for July 2013 - June 2014 (see Exhibit 66); and Highmark Construction Profit & Loss statements for July 2016 – December 2017 (see Exhibit 118).

Regarding the tax returns, the parties had not yet filed returns for 2014-2017. The returns for 2010-2013 showed combined joint business wages for both parties as follows: \$39,749 in 2010; \$56,226 in 2011; \$69,482 in 2012; and \$74,362 in 2013. See Exhibit 116. Mr. Knowles testified about how a terrorist attack in Kenya in 2013, along with subsequent State Department travel warnings decimated the tourism industry, forcing Highmark Construction to move completely out of the “safari” tourism industry. See 3/1/2018 VRP at 388-91. As such, the parties operated Highmark Construction at essentially a loss as they transitioned into residential construction. Id.

The Highmark Construction Profit & Loss statements reflect the difficulty the company had. Indeed, from July 2013 to June 2014, the total amount of profit the company earned was a mere \$2,130, which is just \$177 per month. See Exhibit 66. From July 2016 to December 2017, the total amount of profit the company earned was \$15,493.86, which pencils out to about \$860 per month. See Exhibit 118. This is in line with Mr. Knowles’ financial declaration, which states his monthly net income is \$2,968. See 3/1/2018 VRP at 404 and Exhibit 110.

In other words, there is not substantial evidence in the record to support the trial court assigning a net monthly income of \$8,000 to Mr. Knowles. Ms. Knowles' testimony is not even "a mere scintilla of evidence," Hewitt, 66 Wn.2d at 286; rather, it is sheer speculation built on a foundation of pretending business account deposits equvalate to wages, and it cannot support the trial court's findings in light of Mr. Knowles' financial documents in the record. Indeed, Ms. Knowles' theory, adopted by the trial court, that the deposits into the business checking should be used calculate Mr. Knowles' net income runs afoul of RCW 26.19.071(5)(h), which tells us that "normal business expenses" must be deducted when determining income. For these reasons, this Court should reverse and remand for recalculation of the Child Support Order.

3. The trial court erred by imputing Mr. Knowles' salary where he is gainfully employed on a full-time basis and is not purposely underemployed to reduce his or her support.

Generally, appellate courts review a trial court's decision regarding child support for abuse of discretion. In re Marriage of Griffin, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). Where a case turns

on interpretation of child support statutes, however, this Court must determine whether the trial court erred as a matter of law. In re Marriage of Peterson, 80 Wn. App. 148, 153, 906 P.2d 1009 (1995), review denied, 129 Wn.2d 1014, 917 P.2d 575 (1996) (citing In re Marriage of Stern, 68 Wn. App. 922, 929, 846 P.2d 1387 (1993)).

In setting child support, the trial court must take into consideration all factors bearing not only upon the needs of the children, but also the parents' ability to pay. In re Marriage of Blickenstaff, 71 Wn. App. 489, 498, 859 P.2d 646 (1993). Overall, the child support order should meet each child's basic needs and support should be commensurate with the parents' income, resources, and standard of living. See RCW 26.19.001. To facilitate these goals, the Legislature directs that the child support obligation should be "equitably apportioned between the parents." Id.

The court determines whether to impute income by evaluating the parent's work history, education, health, age and any other relevant factor. RCW 26.19.071(6); Peterson, 80 Wn. App. at 153. If the court decides the parent is "gainfully employed on a full-time basis," but also underemployed, the court makes a further determination whether

the parent is purposely underemployed to reduce his or her support obligation. Id.

Here, the trial court imputed Mr. Knowles' income. See CP 1188-89. The court found that Mr. Knowles' income was “unknown” and that “Business owned by Husband has grossed approximately \$500,000.00 per year in last three years, Husband has travelled numerous times to the United States from Kenya, and has a large line of credit on his credit cards.” Id. This was error. Aside from the lack of evidence in the record to support this, the trial court here made no finding whatsoever that Mr. Knowles was voluntarily underemployed. Indeed, there is no dispute Mr. Knowles has consistently been gainfully employed operating his business in Kenya. As such, the trial court should have used his actual income, and in fact the court was prohibited from imputing his income without making a finding that he was purposely underemployed to reduce his support obligation. RCW 26.19.071(6); Peterson, 80 Wn. App. at 153. As such, the Order of Child Support must be vacated, and this Court should remand for recalculation with Mr. Knowles' actual income.

- 4. The trial court erred by including a start date of October 1, 2016 for the April 13, 2018 Final Child Support Order, thereby instantly creating nearly two years of back support, even though Mr. Knowles had been fully paying child support under a temporary order during the entire dissolution proceeding.**

The parties filed several Motions for Temporary Orders, and on July 26, 2017, the trial court entered a Temporary Order of Child Support making Mr. Knowles the obligor. See CP 672-88. The parties operated under this Order during the pendency of the dissolution proceeding, and there was no allegation that Mr. Knowles failed to pay this obligation. See Petitioner's Closing Argument, 3/16/2018 VRP at 516-19. Instead, counsel for Petitioner argued that based on his faulty income calculation for Mr. Knowles, that this is what Mr. Knowles should have filled out in his Financial Declaration on Temporary Orders, and that therefore, this faulty income calculation must be retroactively applied. Id.

It was error for the trial court to adopt this argument. Although unpublished decisions of this Court are advisory only, this very question has been addressed by the Court of Appeals in In re Marriage of Munn, 2014 WL 4792629, 183 Wn. App. 1035 (September 25,

2014). In that case, a parent appealed the decision of the trial court declining to award temporary child support. After noting that the appellant failed to properly prepare the record, this Court held that it was legally improper to retroactively create a back-child support obligation in the context of a dissolution proceeding:

Several legal obstacles to Ms. Munn's request for back support were not addressed by her in the trial court or on appeal. Unlike the Uniform Parentage Act of 2002 (chapter 26.26 RCW) the dissolution of marriage act (chapter 26.09 RCW) does not authorize an award of back child support. 1 Wash. State Bar Ass'n, Washington Family Law Deskbook § 28.2(2)(a), at 28–8 (2d ed. & 2012 Supp.); *cf.* RCW 26.26.130(3) (under the parentage act (unlike the marriage dissolution act) the judgment and order shall contain “the extent of any liability for past support furnished to the child”). In the case of marriage dissolution, the superior court may use its equitable powers to create a child support obligation after the need for support arises, but such a result has been allowed rarely and only in cases where the decree is silent as to support. *In re Marriage of Shoemaker*, 128 Wn.2d 116, 123, 904 P.2d 1150 (1995). When it does exist, the right of equitable contribution is limited to an amount equal to one-half of actual expenditures on behalf of the child. *Id.*

Moreover, if the superior court did deny Ms. Munn's request for temporary child support as the undisputed testimony at trial suggests, then that order (or those orders) were subject to appeal but not to retroactive modification. RCW 26.09.170(1) establishes the conditions for modifying a child support order and states, in relevant part, that “[e]xcept as otherwise

provided ... the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification.” In Shoemaker, 128 Wn.2d 116, the Washington Supreme Court held that if an order has previously been entered that excuses a parent from paying child support, then RCW 26.09.170(1) bars a superior court from imposing a child support obligation retroactively, even if the facts would have supported imposing that obligation prospectively at an earlier time. Since the trial court is required by chapter 26.19 RCW to apply the same standards in its temporary and final orders for support, denial of temporary support forecloses retroactive modification.

See Marriage of Munn, 2014 WL 4792629 at *3 - *4.

This is exactly the situation here, and it was error for the Court to retroactively start the Final Child Support Order on October 1, 2016, nearly two years before the Order was entered. In doing so, the trial court instantly created nearly two years of back support, even though Mr. Knowles had been fully paying child support under the July 26, 2017 temporary child support order. As such, this Court must vacate the award of back support, and instruct the trial court on remand to award no back support.

5. The trial court erred by awarding attorney fees to Ms. Knowles where Mr. Knowles does not have the ability to pay.

The trial court here awarded attorney fees to Ms. Knowles on

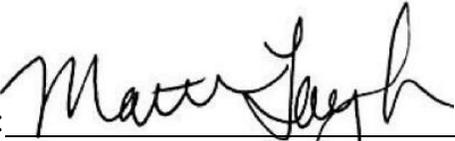
grounds that Mr. Knowles has the ability to pay them. See CP 1159. To the extent the trial court erred in setting Mr. Knowles' income at \$8,000 per month, it also erred in concluding he has the ability to pay Ms. Knowles' fees. The Court should reverse the trial court on this issue as well.

E. CONCLUSION

In sum, the trial court's findings of fact and conclusions of law regarding Mr. Knowles' income for purposes of child support are not supported by substantial evidence in the record. Additionally, the trial court erred by imputing Mr. Knowles' salary where he is gainfully employed on a full-time basis and is not purposely underemployed to reduce his or her support. Moreover, the trial court erred in awarding back support. Finally, the trial court's award of fees should be reversed because Mr. Knowles does not have the ability to pay them. For all of these reasons, we respectfully request that this Court reverse the trial court and remand for further proceedings.

RESPECTFULLY SUBMITTED this 31st day of December,
2018.

MCKINLEY IRVIN, PLLC

By: 
Matthew D. Taylor, WSBA No. 31938
Attorney for Appellant.

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2018, I caused to be served a true and correct copy of:

APPELLANTS OPENING BRIEF

on the parties listed below via electronic service and US mail:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Seattle, Washington this 31st day of December, 2018.



Becca Ebert
Paralegal



McKINLEY IRVIN

Unpublished Opinion:
In re the Marriage of Munn, 2014
WL 4792626, 183 Wn. App. 1035
(September 25, 2014)

183 Wash.App. 1035

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington,
Division 3.

In re the MARRIAGE OF
Brandon MUNN, Respondent,
and
Amanda Munn, Appellant.

No. 31025–6–II.

|
Sept. 25, 2014.

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UNPUBLISHED OPINION

[SIDDOWAY](#), C.J.

*1 Amanda Munn appeals the findings, conclusions, and orders entered at the conclusion of her marriage dissolution trial, arguing that the trial court abused its discretion in failing to award her back child support and in entering inadequate findings explaining why it withheld that award. The record reveals that Ms. Munn failed to present a sufficient request, supporting evidence, and argument in support of such an award at trial. Under the circumstances, the trial court's finding that no back support was owed was supported by the fact that Ms. Munn's requests for temporary support had all been denied. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Brandon and Amanda Munn were divorced in June 2012, following 17 years of marriage and a 2-year separation.

At the time of trial, they had 5 children together, ranging from ages 7 to 18.

Most of Mr. Munn's working life had been spent working on his parents' central Washington farm. He moved to Idaho to attend college and on his return to Benton County, Washington, began helping his parents with what was then their 3,000-acre farming operation. Over the years, Mr. Munn and his brother assumed greater responsibility for a vastly larger operation. By 2009, Mr. Munn was a partner in several limited liability companies formed to carry on what had become the Munn family's farming, packing, and trucking operations.

In 2009, problems that Mr. and Ms. Munn were having in their marriage began to affect the larger family's business operations and eventually Mr. Munn was told by his father that other family members insisted on buying out Mr. and Ms. Munn's interests. On terms that were agreed in the summer of 2010, Mr. Munn received the semitrucks and other equipment owned by Munn Ag Services LLC, the family's over-the-road trucking operation, and the right to use the Munn Ag Services name. Ms. Munn received a promise of a payment of \$350,000 in installments, bearing interest, which, at the time of the dissolution trial, she had been drawing on at the rate of \$5,000 per month or more, as needed.

Although Ms. Munn apparently raised the issue of temporary child support more than once between the 2010 commencement of the dissolution action and the April 2012 trial, Mr. Munn was never ordered to pay temporary child support. Mr. Munn's own lawyer raised that fact in his direct examination of his client at trial, without objection:

Q Were you in a position to pay child support in 2011?

A No.

Q That issued [sic] had been brought before the Court on several occasions by your wife; is that right?

A That's correct.

Q And in spite of those motions being filed, there was no court order entered either, one, obligating you to pay child support or, two, to pay spousal maintenance; is that correct?

A That's correct.

Report of Proceedings (Apr. 23, 2012) (RP) at 42. Ms. Munn's lawyer made no effort through cross-examination to contradict or clarify the testimony that his client had made requests for temporary support that had been denied.

*2 Mr. Munn testified at the dissolution trial that Munn Ag Services' financial performance had changed “drastically” after he began operating the business as a standalone. RP at 19. He attributed the demise in its fortunes to two factors: first, he was no longer hauling for the Munn family farms, which had formerly accounted for most of Munn Ag Service's revenue; and second, neither Munn Ag Services nor he had ever borrowed money directly for its operations, as a result of which the business had no credit history and was unable to obtain needed financing. His personal tax returns were admitted into evidence and showed an adjusted gross income of < \$5,919> for 2010 and < \$266,362> for 2011.

Although he had paid no temporary child support during the two years the divorce was pending, Mr. Munn testified that while the divorce was pending, he had covered the cost of health insurance (medical, dental, and vision) for his wife and their children; that he covered his wife's auto insurance; and that he made payments through March 2011 on the mortgage to the marital home in which Ms. Munn and four of the children were living. He also paid expenses for the parties' oldest daughter, who moved in with him in October 2010, and he paid the expenses associated with his younger children's visitation, which was every other Thursday through Monday, and then Thursday evenings every other week.

In late June 2012, the court entered findings, conclusions, and a decree, dividing the parties' property and dissolving their marriage. In a final child support order entered several months later, it ordered Mr. Munn to pay \$932.56 a month in child support for the parties' four youngest children, basing the support obligation on its finding that Mr. Munn's actual monthly net income was \$4,716 and that a reasonable imputed monthly net income for Ms. Munn, who it found was voluntarily unemployed, was \$1,567. The trial court awarded no back child support, stating in section 3.20 of the standard order of child support form, “No back child support is owed at this time.” Clerk's Papers at 41.

Ms. Munn timely appealed from the trial court's findings, conclusions, and decree.

ANALYSIS

Ms. Munn raises only one issue on appeal: she argues that the trial court abused its discretion in denying her request for back child support. She points out that it was uncontested in the trial court that no order for temporary child support was ever entered and that at no time before trial had Mr. Munn ever made any child support payment directly to her. She also argues that the trial court's one sentence finding—that “[n]o back child support is owed at this time”—was insufficient and insufficiently supported by the record.

“A trial court's setting of child support will not be disturbed on appeal unless the spouse challenging the decision demonstrates a manifest abuse of discretion.” *In re Marriage of Crosetto*, 82 Wn.App. 545, 560, 918 P.2d 954 (1996). A court abuses its discretion if its decision is “manifestly unreasonable or based on untenable grounds.”  *In re Marriage of Scanlon*, 109 Wn.App. 167, 174, 34 P.3d 877 (2001).

*3 An award of temporary child support is not automatic; a parent who believes there is a factual basis for being awarded such support “may move for ... temporary support of children.” RCW 26.09.060(1)(b) (emphasis added). By comparison, chapter 26.09 RCW provides that as part of a court's ultimate disposition of a proceeding to dissolve a marriage, the court “*s hall* order either or both parents owing a duty of support to any child of the marriage ... to pay an amount determined under chapter 26.19.” RCW 26.09.100(1) (emphasis added). Significantly, whether the issue of child support is addressed pendente lite or in connection with the decree, the court is required to apply the child support schedule provided by chapter 26.19 RCW. *See* RCW 26.19.035(l)(d) (providing that the child support schedule is to be applied “[i]n setting temporary and permanent support”).

The record presents more questions for Ms. Munn's appeal than it provides answers—and since she bears the burden of demonstrating an abuse of discretion by the trial court, this proves fatal to her appeal. Although the uncontested testimony was that Ms. Munn had raised the

issue of temporary child support with the court “on several occasions,” Mr. Munn was never ordered to pay it. We have not been provided on appeal with any record of these requests, their disposition, or the reason for their disposition. Ms. Munn has not appealed any order that denied her temporary child support nor does she argue whether, or why, the trial court abused its discretion in denying temporary support.

Even more puzzling is the absence from the pretrial and trial record before us of any request to the trial court that as part of the court's final orders Ms. Munn be awarded child support for the period from March 2010 through June 2012. Opening statements and closing arguments were not transcribed, so we have been presented with no argument by Ms. Munn during trial that she was entitled to child support for those two years. The clerk's papers contain no response to the petition, no trial management report, and no other pleading indicating that Ms. Munn was asking the court to award child support for the pretrial period. The trial testimony was transcribed and includes undisputed testimony that Mr. Munn paid no child support directly and that his wife requested such support but it was not ordered—yet this testimony was elicited in the first instance by Mr. Munn, who evidently believed that it advanced his position. There is no trial testimony suggesting why, although temporary support was denied, it should be ordered after-the-fact as back support. The record includes no evidence, testimonial or otherwise, as to the parties' relevant net monthly earnings or an amount that Ms. Munn sought to have awarded for the two-year period.

Several legal obstacles to Ms. Munn's request for back support were not addressed by her in the trial court or on appeal. Unlike the Uniform Parentage Act of 2002 (chapter 26.26 RCW) the dissolution of marriage act (chapter 26.09 RCW) does not authorize an award of back child support. 1 Wash. State Bar Ass'n, Washington Family Law Deskbook § 28.2(2)(a), at 28–8 (2d ed. & 2012 Supp.); *cf.* RCW 26.26.130(3) (under the parentage act (unlike the marriage dissolution act) the judgment and order shall contain “the extent of any liability for past support furnished to the child”). In the case of marriage dissolution, the superior court may use its equitable powers to create a child support obligation after the need for support arises, but such a result has been allowed rarely and only in cases where the decree is silent as to support.  *In re Marriage of Shoemaker*, 128 Wn.2d 116,

123, 904 P.2d 1150 (1995). When it does exist, the right of equitable contribution is limited to an amount equal to one-half of actual expenditures on behalf of the child. *Id.*

*4 Moreover, if the superior court *did* deny Ms. Munn's request for temporary child support as the undisputed testimony at trial suggests, then that order (or those orders) were subject to appeal but not to retroactive modification. RCW 26.09.170(1) establishes the conditions for modifying a child support order and states, in relevant part, that “[e]xcept as otherwise provided ... the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification.”  *In Shoemaker*, 128 Wn.2d 116, the Washington Supreme Court held that if an order has previously been entered that excuses a parent from paying child support, then RCW 26.09.170(1) bars a superior court from imposing a child support obligation retroactively, even if the facts would have supported imposing that obligation prospectively at an earlier time. Since the trial court is required by chapter 26.19 RCW to apply the same standards in its temporary and final orders for support, denial of temporary support forecloses retroactive modification.

Ms. Munn contends the trial court entered insufficient findings in support of its decision not to award back child support. Under RCW 26.19.035(2), a child support order must “be supported by written findings of fact upon which the support determination is based” and must “include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation.” The trial court entered extensive and sufficient findings on the basis for the parties' *prospective* child support obligations. While the court entered only one finding with respect to back child support, we conclude that, while sparse, it was sufficient.

We do not know why temporary support was not ordered—whether it was because the trial court concluded that Mr. Munn was temporarily in a negative earning situation, whether it concluded that the amounts he was paying toward expenses of the children and Ms. Munn were a reasonable substitute for support, or whether it was for some other reason. What *is* clear is that temporary support was not ordered *pendente lite* when requested, and that at trial, Ms. Munn never presented any request, evidence, or argument as to why child support for that

period should or could be revisited. On the record before the court, its finding that “[n]o back child support is owed at this time” was supported by the only evidence in the record that was relevant: child support for the period prior to trial had been requested and denied. There is nothing more the court could have been expected to say.

Affirmed.

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](#).

WE CONCUR: [FEARING, J.](#), and [LAWRENCE-BERREY, J.](#)

All Citations

Not Reported in P.3d, 183 Wash.App. 1035, 2014 WL 4792629

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Appellate Court Case Number: 51885-6
Appellate Court Case Title: Marriage of Joshua Knowles v. Heidi Knowles
Superior Court Case Number: 16-3-01273-3

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