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NO.51885-6 -II

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

In re the Marriage of:

JOSHUA A. KNOWLES

Appellant,

and

HEIDI K. KNOWLES

Respondent.

AMENDED REPLY BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

Heidi Knowles met her husband Joshua while she was on a church missionary trip in Kenya (VRP) (September 11, 2018) at 13. The couple married in September of 2008. (VRP) (September 11, 2018) at 14. The couple ran a business called Highmark Construction Limited. It dealt with high end investors, built safari camps, all inclusive beautiful safari camps, luxury homes for international investors and some schools. (VRP) (September 11, 2018) at 15. The business had employees, a staff of 13 to 15 permanent workers. The company would also hire sometimes 30 to 40 camp workers at a time. (VRP) (September 11, 2018) at 16. In April of 2016 Heidi Knowles decided to leave her husband and move back to Clark County Washington, where she originally resided. (VRP) (September 11, 2018) at 17. The couple had two children, the youngest being born in January of 2016. Heidi Knowles alleged that she suffered emotional abuse by her husband and she left Kenya when she was well enough to travel after the birth of their second child. (VRP) (September 11, 2018) at 18. Joshua Knowles traveled with her and stayed a few nights. (VRP) (September 11, 2018) at 19. At the time of the trial Heidi Matson had moved to Nampa, Idaho. She was working for her brother doing office

management, books, pretty much managing the office and doing secretarial work. (VRP) (September 11, 2018) at 41. She testified that she was paid salary of $3,000.00 per month. (VRP) (September 11, 2018) at 41. CP Conf. at 764. Joshua Knowles provided his Financial statement which indicated he reported earnings of $10,800.00 per year. CP Vol 1 at 348. Heidi Knowles disputed that was his true income and produced bank statements of the couple's personal bank account for June of 2014 in the amount of $51,644.26 in U.S. Dollars. CP Conf at 202. Heidi Knowles also provided to the court Joshua Knowles credit card statement for American Express for the period 12/16/2014 to 1/6/2017. These statements showed discretionary spending charges in the amount of $50,471.38, of which $38,771.44 had been paid during that period. CP Exhibit at 323. This showed payment on the card of an average of $1619.67 per month. Between January 1, 2015 and December 31, 2015, the Highmark Construction Limited Bank Account showed balances of between $20,000 and $73,000 U.S. Dollars at the end of each month. CP Conf 1040-1148. Between January 2016 and October 2016, Highmark Construction averaged $37,900.00 in the account balances over that time period. CP Conf 527-560. Joshua Knowles personal bank account had a balance of $48,000.00 as of May 3, 2016 CP Conf at 585. His IM Bank

Account had a balance of $69,185.73 on January 2, 2017. CP Conf at 601. Based on the deposits to his personal bank account a total of $98,867 was deposited as personal income to Joshua Knowles in 2015. CP Conf at 666. The profit and loss statement for Highmark Construction Limited indicated that it grossed $92,271.43 for 2017. CP Conf at 1002. It also listed the director's salary at $33,400.00. CP Conf at 1002. Joshua Knowles was the director of the company. While only admitted for illustrative purposes, an itemized list of cash withdrawals from the I&M Bank showed a total of $136,352.72 was removed in 2015. CP Exhibit P11 at 217. In 2016, a total of $115,060.59 was removed. Id. Based on the amount of deposits, discretionary spending and cash withdrawals from the business Heidi Knowles placed her husband's income at a minimum of $8,000.00 per month. CP Pap Exhibit 20 at 331-335. The temporary order of child support entered on July 26, 2017 set Respondent's Child support at $1275.20 after imputing him at $6,000.00 per month. CP Vol 1 at 673, 683-687. It also reserved back support for determination by the trial court. Id. On July 12, 2017 the Commissioner found that based upon the revenue the company made each year, the amount of money deposited into the personal checking account of Joshua Knowles and the credit card payments he had made coupled with the travel back and forth to Kenya

several times a year, his income should be imputed at $6,000.00 per month pursuant to RCW 25.19.071 (6). Joshua Knowles moved for revision and on August 11, 2017, the motion for revision was denied. CP Vol II at 731. The decision was not appealed. Respondent Joshua Knowles did not dispute that his company Highmark Construction Limited received the gross receipts alleged by his wife; he argued that deductions for ordinary business expenses had not been deducted. CP Vol. 2 at 789. At the end of the trial the court set the father's net income at $8,000.00 in income per month. CP Vol II 1187-1194; the language of the Court could be perceived as finding that as his actual income. "So looking at this and all the bank statements, and really running through it, I think the wife has established the husband's net income at $8,000.00 per month. VRP (March 28, 2018) Vol. 6 at 89. The court in its findings stated that this amount should be used because the business solely owned by the husband grossed approximately $500,000 per year in the last three years, Husband has traveled numerous times to the United States from Kenya, and had a large line of credit on his own credit cards. CP Vol II at 1189.

ARGUMENT

A. **Standard of review**. The Appellate Court reviews child support orders on an Abuse of Discretion Standard. *In Re Marriage of Griffin,* 114 Wn.2d. 772, 791 P.2d. 519 (1990). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *In Re Marriage of Littlefiled*, 133 Wn. 2d 39, (1997). Discretion is also abused when the court uses ad incorrect legal standard. *State v. Rundquist* 79 Wn. App 786 (1995). Substantial evidence must support the trial court's factual findings. *In Re Parentage of Goude*, 152 Wn. App 784, 219 P. 3d 317 (2009). Child support is set by statute with the support obligation divided proportionately to the parent's respective incomes. RCW 26.19.01.080(1). A parent's duty to support their children is defined in RCW 26.18. "Duty of Support: means the duty to provide for the needs of a dependent child, which may include necessary food, clothing, shelter, education and health care. The duty includes any obligation to make monetary payments, to pay expenses, including maintenance in cases where there is a dependent child, or to reimburse another person or an agency for the cost of necessary

support furnished to a dependent child. The duty may be imposed by court order, by operation of law, or otherwise. RCW 26.18.020(3). The statue sets a broad duty of supporting dependent children.

B. **The amount of child support awarded to the mother is supported by substantial evidence**. Substantial evidence is evidence in sufficient quantum to persuade a reasonable person of the truth of the premise. *Holland v. Boeing Co*. 90 Wn. 2d 384, 390-91, 583 P.2d 621 (1978). Mother testified as to the deposits of over $500,000.00 to the husband's company in 2015, (VRP) (September 11, 2018) Vol. 3 at 48. She also testified that in 2016, the company grossed over $480,000.00 Id. While deposits are made in Kenyan Shillings, the exchange rate is commonly referred to as 100 to 1. 2015, (VRP) (September 11, 2018) Vol. 3 at 49. Heidi's testimony was supported by the actual bank statements for the company which showed the various deposits into both the business and personal accounts. They showed that in 2015, cash withdrawals were taken in the amount of $136,352, and $115, 060 was taken in

2016. 2015, (VRP) (September 11, 2018) Vol. 3 at 54. Between February 2015 and December of 2016, Joshua Knowles paid out on his American Express card $38,771.44. 2015, (VRP) (September 11, 2018) Vol. 3 at 59. Between January and June 2017 he paid another $27,995.51 2015, (VRP) (September 11, 2018) Vol. 3 at 60. Heidi Knowles also testified that she was familiar with the contracts and payments for services while she worked for the company in 2015, (VRP) (September 11, 2018) Vol. 3 at 68. She testified that on one of the contracts with Brett Sievwright, her husband received $6000 per month and additional fees.
2015, (VRP) (September 11, 2018) Vol. 3 at 68. Heidi Knowles had personal knowledge of her husband's income. Joshua Knowles also testified that in addition to his company income he would travel back and forth to the United States and buy items on Amazon, bring them back with him to Africa and sell them at a profit of 10% mark up. 2015, (VRP) (September 11, 2018) Vol. 5 at 22. The consistent amount of deposits, withdrawals and spending of the husband provided substantial evidence that his income was much greater than he indicated on

his profit and loss statements or his income taxes. The calculations were based upon factors supported in the record and included factors agreed upon by Joshua Knowles. Therefore the amount of child support ordered was reasonable and supported by substantial evidence.

C. **The Trial Court did not err by imputing Mr. Knowle's income**. RCW 26.19.071 states: (6) Imputation of Income. The Court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed….in the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full time earnings at the current rate of pay;

(b) Full time earnings at the historical rate of pay based on reliable information such as employment security department data;

(c) Full time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of

minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly income of year round full time workers.

A court's decision on imputation of income due to voluntary underemployment is reviewed for an abuse of discretion. *In Re Marriage of Wright*, 78 Wn. App. 230, 896 P. 2d 735 (1995). The statute sets a priority order for the court to apply when imputing income to a parent. Current rate of pay, historic rate of pay based on reliable information, historic rate of pay based on incomplete information, minimum wage and median monthly income. When calculating the child support obligation, the court begins by considering all "income and resources of each parent's household." RCW 26.19.071 (1). "Income" is not defined in the statute, but the statute does explain various sources of gross income that either must be considered (RCW 26.19.071(3) or not considered (RCW

26.19.071(4). Important in this action is the requirement that gross income include: Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation. RCW 26.l9.071(3)(u). In 2015 and 2016, the gross receipts of the company indicated revenue of over $500,000 and $480,000. Only after the wife filed for divorce did the reported earnings of the company plummet. As the Court reasoned:, "As a family law judge, it seems like the biggest way to have a business fail is for people to file for divorce. Previously productive businesses all of a sudden are worth nothing when people get into divorce court, at least the party who operates the business comes in and tells me that, and that's not just being cynical." VRP (March 28, 2018) Vol. 6 at 87. The court found that the husband's lowered reported income was not an accurate reporting of his income. The parties ran both business and personal finances through the same accounts. That fact complicates the analytical challenge facing the trial court. However, wife argues, and the record supports the contention, that approximately $500,000 or more each year passed through the checking accounts. Money in a checking account is not necessarily "income," but it may reflect income or an existing asset. All assets must be reported to the

court. RCW 26.19.071(1). A trial court must first determine the income of each parent, considering monthly gross income from all sources. RCW 26.19.071(1) (3). From the monthly gross incomes, the court makes deductions to arrive at each parent's monthly net income. RCW 26.19.071(5). A court may impute income to someone whose deceptions or concealment have made their true income impossible to determine. *In re Marriage of Dodd*, 120 Wn. App. 638, 644-45, 86 P.3d 801 (2004). In this case, the trial court had historical information that there was unrefuted evidence that the husband's company of which he was 100% owner, generated approximately $500,000 per year in 2015 and $480,000 in 2016. There was unrefuted evidence that $105,074.71 had been deposited into the couple's personal bank account in 2015; the only source of income that could have caused the deposits were the company owned by Joshua Knowles. Joshua Knowles also paid over $50,000.00 on his credit cards in 2017. (VRP) (September 11, 2018) Vol. 3 at 67. Whether the court imputed the income to Joshua Knowles because at the time of trial he had artificially reduced his income, or the court found that his actual income was $8,000.00 net, it was proper for the court to reach this figure based upon the evidence presented and the court did not abuse its discretion.

D. **The Trial Court did not Err in awarding back support**. The final decree established the support obligations of the parties. CP Vol II at 278-296. The court had previously reserved the period October 2016 to June 2017 in its prior temporary order. The court specifically reserved the amount of back support which was to be awarded. CP Vol. 1 At 678. Joshua Knowles completely disregards this fact in his opening brief. It was anticipated by the court and the parties that the actual amount of income to be used for the calculation of child support, back to the beginning of the filing was anticipated. This was not a modification action and the Court had the right to backdate the amount of support to the date of the Petition for dissolution. Appellant appears to argue as if this was a modification of support post decree. When seeking to avoid past-due child support, the obligor typically relies on the twin doctrines of laches and equitable estoppel. The Appellate Court does not review issues not argued, briefed, or supported with citation to authority. RAP 10.3(a)(6); *Valente v. Bailey*, 74 Wn.2d 857, 858,447 P.2d 589 (1968); *Avellaneda v. State*, 167 Wn. App. 474,485 n.5, 273 P.3d 477 (2012) (quoting *Escude v. King County Pub. Hasp. Dist. No.2*, 117 Wn. App. 183, 190 n.4, 69 P.3d 895 (2003). Appellant made neither legal argument to this court. RCW 26.09.170 states: Modification of decree for

maintenance or support, property disposition-Termination of maintenance obligation and child support-Grounds

(1) Except as otherwise provided in RCW 26.09.070(7), the provisions of <u>any decree</u> respecting maintenance or support may be modified:

(a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and,

(b) except as otherwise provided in this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state. Here the court was issuing a final decree and was free to establish support back to the date of the Petition. RCW 26.09.060 (10) states: A temporary order, temporary restraining order, or preliminary injunction: (a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding; (b) May be revoked or modified; (c) Terminates when the final decree is entered, except as provided under subsection (11) of this section, or when the

petition for dissolution, legal separation, or declaration of invalidity is dismissed. Here the Superior Court was within its right to use its equitable powers to create a back support obligation to the date of the Petition. *In re Marriage of Shoemaker* 128 Wn. 2d 116, 904 P.2d 1150 (1995) spoke to the trial court's vacation of a final decree wherein the result was to establish a back support order and the trial court's modification of a final decree. In this case, there was no final decree which was being modified. The temporary order was pendent lite and in fact vacated and replaced by the final order which changed the effective date of child support payments owed by Mr. Knowles. The temporary order properly preserved this issue for final determination at trial. Ms. Knowles presented sufficient evidence and argument that the amount of child support to be paid for that period should be revisited and reallocated in the final order. A judgment vacated by a valid order is entirely destroyed and the rights of the parties are left as though no such judgment had ever been entered. *Weber v. Biddle* 72 Wash 2d.22, 28, 431 P.2d 705 (1967). The final order of child support vacated the temporary order, in effect replacing it and the trial court was within its discretion and equitable powers to do so. The trial court made sufficient findings to support its award on equitable principles and should be undisturbed.

E. **<u>The trial court did not err in awarding some attorney fees to the wife</u>**. A trial court's award of attorney fees and costs is reviewed for an abuse of discretion. *In re Marriage of Obaidi*, 154 Wn. App. 609, 617, 226 P.3d 787 (2010). The party challenging the award of fees has the burden of proving that the trial court exercised its discretion in a clearly unreasonable or manifestly untenable way. *In re Custody of Smith*, 137 Wn.2d 1, 22, 969 P.2d 21 (1998). When awarding attorney fees, the trial court must make a record sufficient to permit meaningful review by articulating its grounds for the award. *White v. Clark County*, 188 Wn. App. 622, 639, 354 P.3d 38 (2015). The trial court's unchallenged findings of fact are verities on appeal. *In re Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041 (2017). The Appellate court reviews conclusions of law to determine whether they are legally correct and whether they are supported by the findings. *State Farm Fire & Casualty Co. v. Justus*, 199 Wn. App. 435, 448, 398 P.3d 1258 (2017). In this case the Court took into consideration the relative financial positions of the parties (which at time of trial evidenced $3000.00 gross income to the wife and $8,000.00 net for the husband) The protracted discovery because

of intransigence on the part of the husband, and the increased earning potential of the husband going forward. VRP (March 28, 2018) Vol. 6 at 91. Even in doing so, the court did not award the full amount requested by the wife but ordered that the husband pay $6,000.00 of her fees. Id. The court may consider "the extent to which one spouse's intransigence caused the spouse seeking a fee award to require additional legal services." *In re Marriage of Crosetto*, 82 Wn. App. 545 (1996). Due to the distance between the banking institutions and the fact that it was located in a different country, obtaining accurate financial records was very difficult in the case. Noncompliance with discovery requests to produce recent and relevant financial documents is a reason to award additional fees. *In Re Marriage of Wixom*, 190 Wn. App 719 (2015). Joshua Knowles failed to provide any tax returns after 2013. VRP (September 11, 2018) Vol. 3 at 45. Joshua Knowles misrepresented his income to the court which required Heidi Knowles to conduct additional discovery VRP (September 11, 2018) Vol. 3 at 109; Responding to motions filed by Joshua Knowles that were denied, Id; as well as delay in the trial proceedings. Id. Heidi Knowles had incurred approximately $19,000.00 in attorney fees to her trial counsel prior to trial. VRP (September 11, 2018) Vol. 3 at 109. She incurred an additional $8,700 to her prior attorney for a total of

approximately $27,000.00 in legal fees prior to trial. VRP (September 11, 2018) Vol. 3 at 110. The court's award of only $6,000.00 was meager in terms of the fees and costs incurred by Heidi Knowles and was not an abuse of discretion.

CONCLUSION

This Court should deny father's appeal of the trial court's rulings on child support and income of the father; find that the support award was based on substantial evidence. The court committed no errors in awarding back support and attorney fees to the wife. This Court should also order that Mr. Knowles pay his ex-wife all fees and costs associated with responding to this appeal. RCW 26.09.140; RAP 18.1(a); *Marriage of Leslie*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998) (awarding attorney fees to the wife "[g]iven the disparity in income and assets between the two" parties, and the husband's ability to pay), rev. denied, 137 Wn.2d 1003 (1999).

Respectfully submitted this March 31, 2019
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CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing Reply Brief postage prepaid, via email and U.S. mail on the 31st Day of March 2019 to the following counsel of record at the following addresses:

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