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No. 54045-2-II

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION TWO

LEWIS COUNTY SUPERIOR COURT NO. 04-3-00767-5

SCOTT T. SURMA

Appellant

v.

DANA K. SURMA

Respondent

APPELLANT'S BRIEF

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I. INTRODUCTION

Appellant, Scott Surma, appeals the Thurston County Superior Court's denial of his petition to establish postsecondary support for his daughter, Hailey Surma. The judge on revision denied the petition based upon a finding that Respondent, Dana Surma (nka Hanson), pays postsecondary support for the parties' adult daughter, Zoey Surma. Appellant seeks review of the Superior Court decision because the exercise of discretion circumvents the requirement that a petition for postsecondary support be brought prior to a child turning 18.

II. ASSIGNMENT OF ERROR

- A. Does the Superior Court have authority to consider payments for postsecondary support to an adult child when making a determination of postsecondary support for the parties' younger child?
- B. Does a single printout suggesting a loan but without identifying information suffice for the findings of facts required of the court when making a determination of an award of postsecondary support?

III. STATEMENT OF THE CASE

The parties in this case, Appellant, Scott Surma, and Respondent, Dana Surma nka Hanson, are the parents of Hailey Surma, who in May of 2019, was a senior in high school, had recently turned 18 and been accepted to attend the University of Washington in Tacoma, and resided exclusively with Appellant.¹ The parties have another daughter, Zoey Surma, who in May of 2019, had resided with her mother, Respondent, during the later years of her childhood, was 19 years old, and was finishing her freshman year at the University of Washington in Seattle.² At that time, Respondent was paying \$619.26 of child support per month to Appellant pursuant to an administrative order from the Division of Child Support.³

The last Order of Child Support signed by the Thurston County Superior Court (on July 16th, 2013) provided that child support would terminate upon the children reaching the age of 18 or as long as the children remained enrolled in high school, whichever occurs last.⁴ That

¹ CP 55.

² CP 112, 120.

³ CP 79, 109.

⁴ CP 40.

order goes on to provide that the right to request postsecondary support is reserved, provided that the right is exercised before support terminates as set forth in the preceding paragraph.⁵ Respondent never requested that the court address postsecondary support of Zoey.⁶

Appellant filed a petition to modify child support on May 16th, 2019, asking the court to order postsecondary support for Hailey.⁷ The commissioner presiding over the hearing on July 23rd, 2019, denied the petition, finding that Appellant had not sufficiently supported the children over the years.⁸ Appellant timely filed a motion for revision on August 2nd, 2019.⁹ At the revision hearing on August 23rd, 2019, the judge found that Appellant had financially supported the children, but declined to revise the commissioner's ultimate decision to deny the petition on the basis that Respondent had taken out a loan to contribute to the postsecondary expenses of Zoey, and should therefore not be ordered to contribute to the postsecondary expenses of Hailey.¹⁰ The only evidence

⁵ CP 40

⁶ RP Vol. 2 18.

⁷ CP 78-82.

⁸ CP 181-182, 195-197.

⁹ CP 186-189.

¹⁰ RP Vol. 2 21-22.

Respondent submitted in support of her assertion that she had contributed to Zoey's first year of postsecondary costs was a single page printout from the internet showing an original loan amount of \$18,000.00 and total current balance of \$11,823.08.¹¹ The document did not identify in any way that the loan was for Zoey's benefit or her postsecondary expenses.

Appellant timely filed his appeal of the Superior Court's ruling because it denies Haley necessary support on untenable grounds and in violation of RCW 26.19.090.

IV. ARGUMENT

A. Does the Superior Court have authority to consider payments for postsecondary support to an adult child when making a determination of postsecondary support for the parties' younger child?

A superior court's authority to determine matters is a question of law that is reviewed de novo. *In re Marriage of Schneider*, 173 Wash.2d 353, 268 P.3d 215, 217 (2011). The court only retains jurisdiction to address support of an adult child when a parent files a petition before the child reaches the age of majority. *In re Marriage of Kelly*, 85 Wn.App. 785, 934 P.2d 1218, 1221 (1997). Where terms of the courts orders clearly state that support terminates upon the occurrence of specific events,

¹¹ CP 252.

courts have held that the trial court lacked authority to consider a postsecondary educational support award. *In re Marriage of Cota*, 177 Wn.App. 527, 312 P.3d 695, 698, (2013), citing *In re Marriage of Gillespie*, 77 Wash.App. 342, 347-48, 890 P.2d 1083 (1995). (See *Balch v. Balch*, 75 Wn.App. 776, 880 P.2d 78 (1994) (The trial court declined to consider an award for postsecondary support because the child had reached the age of majority at the time the modification petition was filed).

The last order of child support filed in the instant case reserved postsecondary support, provided that the request is made prior to support terminating. The court therefore did not have jurisdiction to order postsecondary support to Zoey pursuant to the last Order of Child Support filed in this case since Zoey was 19 years old and had already graduated high school when Appellant filed his petition to modify child support.

That being said, the Order of Child Support in place at the time Appellant filed his petition to modify child support for an award of postsecondary support for Hailey, was an administrative order, which is governed by the Washington Administrative Code. Washington Administrative Code 388.14A.3810(1)(c) provides in pertinent part, “A noncustodial parent’s obligation to pay support under an administrative

order continues until... the child reaches eighteen years of age...” The statute does not mention graduation from high school, however it goes on in subsection (2) to state, “as an exception to the above rule, a noncustodial parent’s obligation to ay support under an administrative order continues for a dependent child over the age of eighteen if the child is under age nineteen, and participating full-time in a secondary school program...”. Because Zoey was 19 years old and attending school at the University of Washington in May of 2019, any obligation to support Zoey had terminated by the time Appellant filed the petition to modify child support. The court lacked authority to order postsecondary support for Zoey.

In its ruling, the judge acknowledged the court did not have authority to order postsecondary support for Zoey. However, in denying Appellants petition for postsecondary support for Hailey, the court determined that the Respondent paying support for Zoey justified not obligating support for Hailey. The end result is exactly the outcome the court acknowledged it did not have authority to do: order support for both children by denying Hailey support because her mother failed to petition for support or Zoey. If the Respondent wanted to ensure Zoey was

adequately supported in her postsecondary expenses, she should have petitioned the court prior Zoey's support terminating. The Respondent did not do this and she should not be rewarded for her failure to act. The court lacked authority to order support for Zoey and in denying the petition for support for Hailey, effectively reaches around the requirement that a petition for postsecondary be filed prior to support terminating.

In *In re Marriage of Jess*, 136 Wash.App. 922, 151 P.3d 240 (2007), Division III determined that the court is not going to require proof that mother is actually paying support to trigger the father's obligation to support his child's postsecondary education. The court there held that the mother's voluntary payments and the father's legal obligation to support his child "are not interdependent or conditioned one upon the other. Thus, whether [the mother] paid support is irrelevant to [the father's] obligation." *In re Marriage of Jess*, 136 Wash.App. 922, 151 P.3d 240, 243 (2007). Likewise, here, too, the Appellant's voluntary payments to one child should not be interdependent or conditioned on her support of her other child, particularly in a circumstance where she failed to avail herself of the ability to seek court assistance in ordering support for one of her children.

Support for Hailey should have been determined without consideration of Zoey, over whom the court had previously lost jurisdiction. The ruling of the court was without jurisdiction to consider support for Zoey and unfairly denies Hailey of postsecondary support she would otherwise be entitled to. “A child should not suffer because her parents are divorced.” *Marriage of Kelly* at 1223, citing *Childers v. Childers*, 89 Wash.2d 592, 575 P.2d 201 (1978). Yet that is exactly the outcome for Hailey in this instant. The court’s ruling was in error and the Respondent should be ordered to contribute to Hailey’s postsecondary support.

B. Does a single printout suggesting a loan but without identifying information suffice for the findings of facts required of the court when making a determination of an award of postsecondary support?

If, however, the trial court did have jurisdiction to make a determination of postsecondary support that effectively awards support to an adult child, the question becomes whether the courts findings were supported by the evidence. A trial court’s modification of an order for child support for an abuse of discretion. *Schumacher v. Watson*, 100 Wash.App. 208, 211 997 P.2d 399 (2000). The court abuses its discretion where it is exercised on untenable grounds or for untenable reasons. *In re*

Marriage of Tang, 57 Wash.App. 648, 653, 789 P.2d 118 (1990). The trial court's findings of fact must be supported by substantial evidence. *In re Parentage of Goude*, 152 Wn.App. 784, 219 P.3d 717, 720 (2009), citing *Schumacher*, 100 Wash.App. at 21. Substantial evidence is that which is sufficient to persuade a fair-minded person fo the declared premise. *Id.*

An award of postsecondary support is governed by RCW 26.19.090(2), which provides,

“When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.”

RCW 26.19.090(2). In the instant case, the trial court did not make a single determination other than the determination that the Appellant is contributing to Zoey's postsecondary education. The evidence the court

relied upon to make this determination is a single page print out from the internet that contains no identifying information. There is no reference to Zoey or the University of Washington. The loan could have been taken out for any purpose. Furthermore, even if the loan was for the first year Zoey's postsecondary education, there is no guarantee that the Respondent will continue to contribute in similar fashion for the remaining duration off Zoey's schooling. This would certainly free up substantial sums that could have, and should be, used for support of Hailey.

The evidence relied upon in denying the Appellant's petition for postsecondary support for Hailey was insufficient to support the finding that the Respondent is paying for Zoey's postsecondary education, or that the Respondent will continue to do so for the remainder of Zoey's postsecondary education. The findings made by the court are not Because the court relied on insufficient evidence in deciding to deny the Appellant's modification petition, the court abused its discretion and the Respondent should be ordered to contribute to Hailey's postsecondary educational costs.

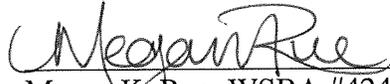
V. CONCLUSION

The court lost jurisdiction over Zoey's postsecondary support prior

to the Appellant's filing of his petition for modification, seeking postsecondary support of Hailey. The trial court's reliance on the Respondent supporting Zoey is an improper consideration of postsecondary support for Zoey that has no bearing on whether and how support for Hailey should be paid. Furthermore, the court, in determining that the Respondent is supporting Zoey, relied on scant evidence that is insufficient to support the findings of fact necessary when determining an award of postsecondary support.

DATED this 15th day of May 2020

Respectfully submitted,


Megan K. Rue, WSBA #42425
Of Attorneys for Appellant

MORGAN HILL P.C.

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DATED this 15th day of May, 2020, at Olympia, Washington.

Traci Amundson

Name: Traci Amundson of
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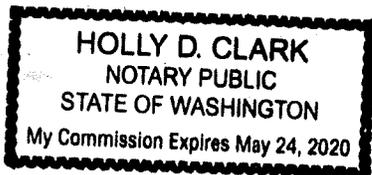
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