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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Court of Appeals No. 310256
Benton County Superior Court Cause No. 10-3-00273-2

WASHINGTON STATE COURT OF APPEALS
DIVISION III

BRANDON MUNN,

Petitioner,

vs.

AMANDA MUNN,

Appellant/Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

COMES NOW, the Appellant, Amanda Munn (“Ms. Munn”), and hereby files this Brief of Appellant.

II. ASSIGNMENTS OF ERROR

The Trial Court Erred In Denying Ms. Munn’s Request for Back Child Support.

III. STATEMENT OF THE CASE

A. Substantive History

Ms. Munn and the Petitioner, Brandon Munn (“Mr. Munn”), were married on May 18, 1993, in Victor, Idaho. CP page 17, line 12 (17:12).¹ The parties separated on March 16, 2010. CP 17:14.

At the time of trial, Mr. and Ms. Munn had five (5) children: Mackenzie, age 18; McKayla, age 15; McKell, age 11; Garrett, age 9; and Charlie, age 7. CP 18: 21-25.

B. Procedural History

Mr. Munn filed for dissolution on or about March 16, 2010. *See* CP 17: 25. A trial was held April 23, 2012, and lasted approximately four (4) days. CP 16: 16. The Honorable Vic VanderSchoor presided.

At trial, the Court was asked to establish a permanent parenting plan, enter a final order on child support, and provide an equitable

¹ “CP” refers to the Clerk’s Papers

distribution of the parties' assets and liabilities. *See* CP 27-28. As part of the final order on child support, Ms. Munn requested back child support. No temporary child support order was entered during pendency of the action. Ms. Munn was solely responsible for providing for the parties' five (5) children during that time.

The Trial Court denied Ms. Munn's request for back child support. *See* CP 41: 14-15; RP *Excerpt of Court's Decision 2: 7*. The Court held that no back child support was due and owing to Ms. Munn. CP 41: 14-15. There was no evidence from the record presented to support the Trial Court's finding. *See* CP 41. Here, the Trial Court, in a mere one line, found that back child support was not owed. CP 41: 14-15; RP *Excerpt of Court's Decision 2: 7*.

Ms. Munn now respectfully asks this Court to reverse the decision of the Trial Court, and remand this matter back for a calculation of back child support.

IV. ARGUMENT

A. Standard of Review

Child support rulings are reviewed for an abuse of discretion. *See In Re Marriage of Pollard*, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000) (Child support modification action). Such decisions are rarely disturbed on appeal. *In Re Parentage of I.A.D.*, 131 Wn. App. 207, 218, 126 P.3d 79 (2006).

A Trial Court abuses its discretion if its decision is manifestly unreasonable, or is exercised on untenable grounds or for untenable reasons. *In Re Marriage of Fiorito*, 112 Wn. App. 657, 664-65, 50 P.3d 298 (2002). A Court's decision is manifestly unreasonable if it is outside the range of acceptable choices given the facts and applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record. *Id.* at 664 (citing *In Re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997)). Here, the Trial Court's denial of back child support was made on untenable grounds.

B. The Trial Court's Denial Of Back Child Support Is Based On Untenable Grounds Because The Record Clearly Demonstrated Mr. Munn Failed To Pay Any Child Support.

The Trial Court denied Ms. Munn's request for back child support, holding "[n]o back child support is owed at this time." CP 43. This was the only factual finding relating to Ms. Munn's request and is not supported by the record.

RCW 26.09.035 requires a Trial Court to enter written findings, based on evidence in the record, to support a final child support order. *See* RCW 26.09.035(2). This simply did not occur in this case. No evidence from the record was proffered to support the finding whatsoever. In the absence of such evidence, the Court's one line factual finding is more akin to an ultimate conclusion, rather than a finding based on the evidence. Thus, this matter should be reversed and remanded, at the very least, for

proper findings.

No evidence in the record can be produced to support the denial of back child support. The record, and the evidence presented at trial, is devoid of any temporary child support worksheets or testimony that Mr. Munn paid child support. The simple truth is that temporary child support was never set in accordance with RCW 26.09.100. In fact, this issue was largely undisputed at trial. Thus, this matter should be reversed and remanded back to the Trial Court for determination of back child support. At the very least, this matter should be remanded for further factual findings on the issue.

It is anticipated that Mr. Munn will argue against an award of back support, on somewhat equitable grounds, because his business was operating at a loss. This assertion is likewise unsupported by the record. The testimony of Travis Lorton, a Certified Public Accountant (“CPA”), who previously performed tax services for Mr. Munn’s business, demonstrated that Mr. Munn’s business recorded gross sales of \$1,597,343 in 2006, \$1,398,592 in 2007, \$1,575,288 in 2008, \$1,443,666 in 2009. RP *Travis Lorton’s Testimony* 14-17. ² Mr. Munn’s spin off business, Munn Agricultural Services, reported a similar profit of \$1,650,642 in 2011. RP *Travis Lorton’s Testimony* 18: 21-25. Ultimately, Mr. Munn’s net monthly income was set at \$4,716.25. CP 43.

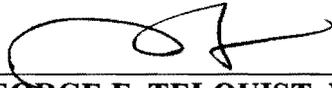
Any equitable argument against back child support should be ignored.

V. CONCLUSION

Based on the foregoing analysis, the Trial Court abused its discretion when it failed to award back child support. The Appellant respectfully requests that this matter be remanded for calculation of back child support.

SUBMITTED THIS 20 day of May, 2013.

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By: 

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² “RP” refers to the Verbatim Report of Proceeding.