

FILED
Court of Appeals
Division III
State of Washington
7/3/2018 8:54 AM

Court of Appeals, Division III No. 357023

Franklin County Superior Court No. 12-3-50160-9

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SHANNON MARIE LANGFORD,

Respondent,

v.

CHAD FRANKLIN LANGFORD,

Appellant.

REPLY BRIEF OF APPELLANT

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I. REPLY

A. The trial court abused its discretion by failing to issue findings of fact or conclusions of law when exercising its discretion.

Appellate Courts review child support orders for an abuse of discretion. *In Re Marriage of Fiorito*, 112 Wn. App. 657, 663 (2002). This Court may reverse only if the trial court's decision was manifestly unreasonable or was based on untenable grounds or reasons, considering the purpose of the trial court's decision. *Fiorito*, 112 Wn. App. at 663-664. As held in *In Re Marriage of Littlefield*, 133 Wn.2d 39, 47 (1997):

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Consistently with these rules, "a trial court . . . necessarily abuse(s) its discretion if it bases its ruling on an erroneous view of the law." *Wash. State Physician's Ins. Exch. and Association v. Fisons Corp.*, 122 Wn.2d 299, 339 (1993). Evidence suffices to support a finding of fact if it is of "sufficient quantum to persuade a fair minded, rational person of the truth of the declared premise." *Hellman v. Sacred Heart Hospital*, 62 Wn.2d 136, 147 (1963).

Chapter 26.19 RCW governs the amount of child support obligations, establishing a standardized schedule that sets a presumptive support amount, or “basic support obligation”, based primarily on each parent’s share of both parents’ total net income. RCW 26.19.071, .080. The Court has described the procedure prescribed by its statute, as follows:

The Court must adhere to the following procedure in setting support; compute the total income of the parents, RCW 26.19.071; determine the standard child support level from the economic table, RCW 26.19.020; decide whether to deviate from the standard calculation based on specific statutory factors, RCW 26.19.075; and allocate the support obligation to each parent based on each parent’s share of the combined net income. RCW 26.19.080.

In Re Marriage of Maples, 78 Wn. App. 696, 700 (1995), overruled in part on other grounds by *In Re Marriage of McCostland*, 159 Wn.2d 607 (2007). The statute also indicates the following statement of legislative intent:

The legislature intends, in establishing a child support schedule, to ensure that child support orders are adequate to meet a child’s basic needs and to provide additional support commensurate with the parent’s income, resources, and standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

RCW 26.19.001.

Although Courts must calculate the basic support obligation according to this schedule, they retain some discretion to deviate from it; that is, to set one or both parent's actual support obligations at a different amount but they must have Findings of Fact and Conclusions of Law to support their reasoning. For this reason, the statute provides a non-exclusive list of reasons for which a Court may properly deviate from the basic support calculation, but also limits or prohibits deviations based on specified grounds. RCW 26.19.075(1). Courts, considering whether to deviate from the schedule must consider, and the parties must disclose, "all income and resources of the parties before the Court, new spouses or domestic partners, and other adults in the households." RCW 26.19.075(2). The statute mandates that, "when reasons exist for deviation, the Court shall exercise discretion in considering the extent to which the factors would affect the support obligation." RCW 26.19.075(4). Whether the Court grants or denies the request for deviation, it must enter written findings, supported by the evidence, and specifying the reasons for the decision. RCW 26.19.075(3). Here the trial court failed to support its inconsistent decision with appropriate findings and conclusions. On this basis, the trial court abused its discretion.

B. Facts in the *Langford* case do not mirror *In Re Marriage of Schnurman*.

Contrary to Ms. Langford's assertion, the facts of *In Re Schnurman* are not the same and have no bearing on the issues addressed in this appeal. 178 Wn.App. 634 (2013). The court *In Re Schnurman* awarded Ms. Schnurman spousal support and then imputed the support to her income for purposes of calculating support – this created a 'he earns double than she' after payment of spousal support. That did not occur in Langford. The Langford case is a modification of support action. Along these lines, Mr. Langford does not earn double the income of Ms. Langford. While that may have been the economic situation at the time of the dissolution trial, Mr. Langford lost his business partnership/employment and was seeking an adjustment of support commensurate with his new earnings, hence a modification action. The income of the Langfords' has become more comparable since the dissolution. Second, when Mr. Schnurman requested a deviation, the court properly entered findings as follows:

“While the Husband will be spending time with the children, there is no evidence this will significantly increase his costs to support the children or significantly reduce Wife's expenses to support the children. Allowing a downward deviation from the standard child support calculation will also result in insufficient funds for the Wife's household.” (Emphasis added)

In Langford, the trial court failed to offer any findings or conclusions to support the denial of a deviation. The undisputed evidence shows Ms. Langford's household receives more income than Mr. Langford's household. Yet without any findings or basis to deny Mr. Langford's proposal, the trial court summarily rejected his position. The trial court was in error.

C. The trial court was not aware of implicit bias.

The strong language used in opposition of Mr. Langford's suggestion that implicit gender bias may have played a role in the trial court's decision underscores the potential such bias did in fact influence the court. Before a decision maker can appreciate such hidden biases, one must acknowledge the possibility of existence. In other words, be open minded rather than 'offended'. During the last two decades, new assessment methods and technologies in the fields of social science and neuroscience have advanced research on brain functions, providing a glimpse into what National Public Radio science correspondent Shankar Vedantam refers to as the 'hidden brain'. *Addressing Implicit Bias in the Courts*, Pamela M. Casey et. al, Court Review, Vol. 49, p. 64.¹ Although

¹ The Open Society Institute, the State Justice Institute, and the National Center for State Courts funded the preparation of this article. For the full report of the project, see Pamela M. Casey, Roger K. Warren, Fred L. Cheesman II & Jennifer K. Elek, *Helping Courts Address Implicit Bias: Resources for Education* (2012) available at

in its early stages, this research is helping scientists understand how the brain takes in, sorts, synthesizes, and responds to the enormous amount of information an individual faces on a daily basis. *Id.* It also is providing intriguing insights into how and why individuals develop stereotypes and biases, often without even knowing they exist. *Id.* The research indicates that an individual's brain learns over time how to distinguish different objects (*e.g.*, a chair or desk) based on features of the objects that coalesce into patterns. *Id.* These patterns or schemas help the brain efficiently recognize objects encountered in the environment. *Id.* What is interesting is that these patterns also operate at the social level. *Id.* Over time, the brain learns to sort people into certain groups (*e.g.*, male or female, young or old) based on combinations of characteristics as well. *Id.* The problem is when the brain automatically associates certain characteristics with specific groups that are not accurate for all the individuals in the group (*e.g.*, "elderly individuals are frail"). *Id.* Scientists refer to these automatic associations as implicit – they operate behind-the-scenes without the individual's awareness. *Id.*

Hence, it is quite likely that the court, as a woman, felt that Ms. Langford was entitled to child support from Mr. Langford and would rule in her favor regardless. Indeed, had the incomes been reversed so that the

http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20Fairness/IB_report_033012.ashx.

mother earned a higher income, the court would have likely granted a full deviation, again in favor of Ms. Langford. Awarding child support in a joint residential situation from the mother to the father, simply because she earned more would go against social norm. For this reason, there are no mothers/women seeking review for the court's failure to grant a deviation. Still, the lack of lawful statutorily based findings here are fatal in allowing this Court to know for certain. Remedying the dilemma is likewise troublesome.

D. There is no basis to award attorney's fees.

Attorney fees are not appropriate. Such fees were not requested nor awarded below and should not be awarded because Mr. Langford chose to exercise his right to appeal the trial court's ruling. Moreover, Ms. Langford has not shown financial need. Said fact has become and continues to be the basis for Mr. Langford's appeal. Below, the evidence was Ms. Langford has no mortgage or housing payments to make, earns more than her expenses alone, and has a residential partner who contributes an additional \$4,000/month into their household. For all intents and purposes, Ms. Langford is able to afford a greater lifestyle for the boys without any financial contribution from Mr. Langford.

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II. CONCLUSION

Based on the foregoing, the Petitioner respectfully asks this Court to find that the lower Court abused its discretion and offer instructions to the same.

RESPECTFULLY SUBMITTED, this 3rd day of July, 2018.

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on July 3, 2018, I electronically filed this Reply Brief of Appellant with the Court of Appeals, Division III, and forwarded a copy to the attorney for Respondent as follows:

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DATED this 3rd day of July, 2018, at Richland, Washington.

TELQUIST McMILLEN CLARE, PLLC



By: _____
KRISTI FLYG, *Legal Assistant*

TELQUIST MCMILLEN CLARE, PLLC

July 03, 2018 - 8:54 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35702-3
Appellate Court Case Title: In re Marriage of: Shannon M. Langford and Chad F. Langford
Superior Court Case Number: 12-3-50160-9

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