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Court of Appeals
Division I
State of Washington

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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| In the Matter of the Marriage of<br>DARA KHOSROWSHAHI,<br>Respondent,<br>and<br>KATHLEEN S. KHOSROWSHAHI,<br>Appellant. | No. 79493-1-I<br>DIVISION ONE<br>UNPUBLISHED OPINION |

APPELWICK, J. — Kathleen Khosrowshahi appeals from the order granting her request to modify child support. Both parents have monthly incomes in excess of the top of the economic schedule that is presumptive for child support. The father's income is much larger than the mother's. Kathleen contends that the transfer payment was so low it contravenes the legislative intent stated in the child support statute. She also argues that a "child's helper" is a special child-rearing expense under RCW 26.19.080, the cost of which should be apportioned between the parents. Last, she argues that the trial court erred in allowing the father to revoke his agreement to pay certain expenses for the children above and beyond those covered in the child support order. We affirm.

FACTS

Kathleen Khosrowshahi and Dara Khosrowshahi legally separated in 2008 and dissolved their marriage in 2009. They have two children, C.K. (now age 19), and A.K. (now age 15). A.K. lives with Kathleen[1] for a majority of the time at her home in Sun Valley, Idaho. At the time of this appeal, C.K. planned to attend college at Brown University in Rhode Island starting in August 2018.

Kathleen has a monthly net income of $22,186 from interest and dividends. Kathleen is unemployed. Dara has a monthly net income of $1,083,102. He works as a chief executive officer of a large company. Both parents are wealthy and enjoy a high standard of living.

Kathleen claims the children have some medical and psychological issues. She claims that C.K. suffers from anxiety but has not submitted evidence of a clinical diagnosis to the court. A.K. has a nonverbal learning disorder that impacts his executive functioning. He has particular difficulty with cognitive shifting in changing his routine or tasks.

The original agreed child support order was signed on April 23, 2008. At that time, both parties were represented by experienced family law attorneys. Dara's monthly net income was $215,451. Kathleen's monthly net income was $21,437. Their combined net monthly incomes exceeded the maximum amounts on the statutory economic table. RCW 26.19.020. Under the agreement, Dara paid Kathleen $1,250 per child per month, or $2,500. The agreed upon amount

[1] The party's first names are used to avoid confusion. No disrespect is intended.

was above the top of the table. RCW 26.19.020. Dara also agreed to pay other expenses for the children as follows:

> The father shall pay 100% of the following expenses incurred on behalf of the children listed in Paragraph 3.1:
>
> > Agreed upon Educational expenses (private school tuition, books, fees, uniforms); and
> >
> > The children's health insurance premium payments.
>
> The father shall pay 80% and the mother 20% of the following expenses incurred on behalf of the children listed in Paragraph 3.1:
>
> > The children's agreed upon extra-curricular expenses;
> >
> > Up to 30 hours per week of a nanny's salary until [A.K.] enters 1st grade.
> >
> > Work or school-related daycare.

The day after the order was entered, Dara sent Kathleen the following e-mail:

> KK – I just got another bill from [the bookkeeper] and we are definitely not on the same page on kid's expenses. Here is where I am:
>
> - I will not pay for your grocery bills – that should be taken care of in the $2500 you get every month for the kids.
> - I will not pay for your vacations with the kids, incl[uding] airfare, etc. That is your expense and you can more than afford it.
> - What I am willing to pay for presently is additional expenses for [the] kids like clothes, a bike, skates, etc.
> - And obviously education, etc[.] 100% as we discussed.
>
> I looked at [the] bill and [the bookkeeper] is just throwing everything in there and that's just not my understanding. I'll look at the math and adjust what I pay going forward.

Kathleen continued to invoice Dara for various expenses which she claimed were related to the children. The parties often disagreed about what Dara was

responsible for paying for. One such disagreement resulted in the following e-mail correspondence in November 2011:

> Dk,
>
> I am [at] River Run Lodge right now getting the kids their ski clothing and passes.
>
> There is a card on file under Alex with your name. This is what I am putting their clothing on now. This will include a 15% discount that I get as a locker holder.
>
> Could you please put that same card under Chloe's account. Currently it is under mine.
>
> Please [let me know] if you have any issues with this. Thanks. I just want to get their clothes before their sizes sell out.
>
> Thanks.
>
> Kat

Dara replied,

> This is not ok with me Kat. I am happy to pay for their ski passes. Send me an invoice and I will pay it.
>
> But I don't want you using my credit card EVER again. I have said this many many times and I just can't believe that you've [done] this yet again.
>
> You are responsible for clothes, equipment, which is why I pay you your monthly child support. I am making an exception on the ski passes. Do not use my credit card.
>
> DK

Kathleen claims that she became afraid to invoice Dara for expenses he was obligated to pay. She claims she continued to incur these expenses and tracked them on spreadsheets.

In June 2017, Kathleen petitioned to modify the child support order. She requested monthly payments of $40,000, $20,000 per child. She requested that these payments continue until the children turn 26. She also requested that Dara pay various other costs. These charges included a "house/assistant/driver/ administrative assistant home organizer, and coach," and "minimum business class ticket" flights for her to accompany the children to educational and significant family events. Last, she requested over $1.6 million in back expenses she claimed were due under the previous child support order.

Dara proposed a modified child support order that increased his payments to Kathleen. He proposed increasing his monthly payments to $3,908 until C.K. entered college, then $2,898 after that time. He also agreed to pay 100 percent of various educational and extracurricular expenses. And, he paid $68,256 of the reimbursement Kathleen sought prior to a court order to do so.

The matter was set for trial by affidavit. The commissioner set the monthly payment amount at $3,522 per child per month. Payments for each child would continue until the child turned 18 or graduated from high school, whichever was later. He accepted Dara's concession to be responsible for 100 percent of various educational and extracurricular expenses with some caveats. The educational support includes 100 percent of all postsecondary educational costs, including tuition, costs, expenses, and a reasonable allowance while the children attend college until the children are 23 and only if they are in school full time and doing well. The commissioner viewed Dara's 2008 e-mail above as an agreement to pay certain expenses upon which Kathleen relied. However, he found that Dara had

revoked his agreement with the later 2011 e-mail demanding Kathleen cease using his credit card. As a result, the commissioner ordered Dara to pay an additional $76,646 of Kathleen's $1.6 million in claims for reimbursement. He also appointed a special master to assess the veracity of other expense claims and adjudicate future disagreements.

Kathleen moved for revision of the commissioner's orders. The superior court affirmed the commissioner's rulings but made it effective retroactive to the date of filing of the petition. Kathleen moved for reconsideration. The trial court denied the motion.

Kathleen appeals.

DISCUSSION

Kathleen makes three arguments. First, she argues that the monthly transfer payment is contrary to legislative intent for child support under RCW 26.19.001. Second, she argues that the trial court erred in denying her "special child rearing expenses," including an in-home "helper with" the children. Last, she argues that the trial court erred in finding that Dara "revoked" his agreement to pay additional expenses, such that he should have to pay a higher percentage of her claimed back child support expenses. Both parties request attorney fees on appeal.

We review child support adjustments and modifications for abuse of discretion. In re Marriage of Ayyad, 110 Wn. App. 462, 467, 38 P.3d 1033 (2002). The trial court abuses its discretion if its decision rests on unreasonable or untenable grounds. In re Marriage of Leslie, 90 Wn. App. 796, 802-03, 954 P.2d

330 (1998). Findings of fact are reviewed for substantial evidence. In re Marriage of Lutz, 74 Wn. App. 356, 370, 873 P.2d 566 (1994). We review the superior court's order, rather than that of the commissioner. Maldonado v. Maldonado, 197 Wn. App. 779, 789, 391 P.3d 546 (2017). A denial of revision constitutes an adoption of the commissioner's findings and conclusions by the trial court, and the trial court is not required to make new findings. Id.

I. Monthly Transfer Payment

Kathleen argues that the trial court erred in determining the monthly transfer payment award.

The monthly transfer payment amount is determined by calculating the children's basic support amount and allocating it to the parents based on their percentage share of the combined net monthly income. RCW 26.19.080. The basic child support amount is determined using the economic table at RCW 26.19.020. That table provides the basic support obligation per child per month based on the combined net income of the parents, and the number of children. RCW 26.19.020.

The table is presumptive for combined incomes up to $12,000. RCW 26.19.020. When combined income exceeds this amount, the court may exceed the presumptive amount upon written findings of fact. RCW 26.19.020. If the court does exceed the presumptive amount, it must do so based on the needs of the children commensurate with the parents' incomes, resources, and standard of living. In re Marriage of McCausland, 159 Wn.2d 607, 619-20, 152 P.3d 1013 (2007). The court should not simply extrapolate the amounts on the table upwards

to fit the parents' higher incomes. Id. at 620-21. At a minimum, the court should consider the parents' standard of living, and the children's special medical, educational, and financial needs when entering its findings of fact. Id. at 620.

Here, Kathleen argues that the monthly child support transfer payment for her son in the amount of $3,522 is insufficient to meet the child's basic needs. She argues that, because her own household expenses are $20,000 per month, the award is unreasonable because it represents less than half that number. She further argues that because the transfer payment represents only a small percentage of Dara's income, it does not provide the children with a standard of living commensurate with his own.

The trial court is directed by the statute to determine if it should exceed the presumptive amount at the top of the economic table. RCW 26.19.020. If it is inclined to do so, it must consider the children's needs and the parent's resources and the parent's standard of living. McCausland, 159 Wn.2d at 619-20. These considerations are complex and vary from family to family. There must be findings on the basis to exceed the presumptive support amount. RCW 26.19.020. Here the trial court adopted the commissioner's findings and conclusions.

Kathleen asserted the child support she was awarded was insufficient because it did not even cover half of the $20,000 per month of household expenses for herself and the children. But, that is not an appropriate standard for sufficiency. Nothing in the statute requires that the child support transfer payment must support at least half the expenses of the household of the receiving parent. RCW 26.19.020. Nothing in the statute requires that child support be sufficient to raise

the standard of living in household of the parent receiving the transfer to that of the household of the parent paying the transfer payment. RCW 26.19.020.

Kathleen asked the trial court to rely on In re Marriage of Krieger, 147 Wn. App. 952, 199 P.3d 450 (2008) to determine the support should be higher. The trial court found that case to be distinguishable. The Krieger court overturned a transfer payment as too low because it effectively left the mother to provide all the children's needs beyond basic living with her own income. Id. at 966. This caused a diminution in the children's standard of living because they could no longer participate in the activities they had enjoyed in the past and would have continued if the parents had stayed married. Id.

Here, Dara was making the required child support transfer payments. The trial court found no diminution in the activities that the children have enjoyed while under the existing support order. It rejected the assertion that the children having to fly economy class or drive a Honda CR-V rather than a Range Rover constituted a diminution of the children's standard of living. The trial court concluded that, unlike in Krieger, the mother here was clearly not left to bear all the children's expenses. We agree with the trial court that the facts here are distinguishable from Krieger.

The trial court did what the statute required. It determined that a transfer payment above the top presumptive standard in the statutory economic table was necessary and entered written findings of fact to that effect. In making this determination, the court considered the needs of the children, the resources available to the parents, and their standard of living. The trial court appropriately

considered the ages of the children, their applicable special medical needs, and the resources and standard of living of both parents. The trial court took note of the expenses that the father agreed to pay in addition to the transfer payment. These expenses included trust accounts for the children, all educational expenses, the children's medical needs, extracurricular activities, and college preparation expenses. And, they factor into total support and determination of the children's standard of living.

Finally, based on those considerations, the trial court selected a 2.5 multiplier to apply to the presumptive support amount. The trial court has considerable latitude in determining the amount due so long as it considers the statutory factors. It is not this court's role on appeal to substitute its opinion on the proper amount of support. It is our role to determine whether the trial court abused its discretion in the course of making its determination.

We find no abuse of discretion in trial court's determination.

II. Special Child-Rearing Expenses

Kathleen argues next that the trial court erred in not compelling Dara to pay for certain "special child rearing expenses" she requested. Specifically, she argues that Dara should have to pay for a "helper" with the children. She argues that the cost of a helper is not included in the 2008 child support order, but rather is a special child rearing expense, for which Dara must pay his proportionate share. Because the expense is not covered by the 2008 agreement, she argues that Dara is not required to agree to the expense. Rather, she states that she should have sole discretion as to the necessity of the expense, because the parenting plan

gives her the right to make decisions regarding the day to day care and control of the children while they are in her care. However, she concedes that the trial court ultimately has discretion to determine the necessity and reasonableness of special child rearing expenses. RCW 26.19.080(4).

Kathleen's concession is well-taken and exposes the flaw in her argument. The trial court determined that a helper was not a reasonable and necessary special child-rearing expense. The court took into account that A.K. has a non-verbal learning disability that affects his executive functioning and makes it difficult for him to shift or change routine or tasks. Kathleen argues that this disability requires A.K. to have a highly structured environment to meet his needs. She claims that medical providers have told her that if this structure is provided for Alex by an in-home helper, he will eventually learn to implement such structure himself over time. However, she does not identify or provide testimony from such providers. And, the court found that A.K.'s doctor recommends weekly therapy or attendance at an institution that focuses on non-verbal learning disorders as the proper treatment remedy for A.K.'s deficits. In weighing this evidence, the court observed that "[A.K.] does not need someone to schedule for him; [A.K.] needs to learn how to schedule [for himself]." It concluded that it "will not consider a personal assistant or someone in the home as a necessary expense." The trial court's decision was in line with the child's doctor's recommendations for his treatment, and is therefore, within its sound discretion. This decision is not manifestly unreasonable.

We affirm the trial court's determination that an in-home helper was not a necessary special child rearing expense.

III. Recoupment of Expenses for Children

Kathleen argues last that the trial court erred in ordering Dara to pay "only a fraction" of her claimed additional expenses. Specifically, she argues that Dara's 2008 e-mail agreeing to pay for "'additional expenses for [the] kids like clothes, a bike, skates, etc.'" was an agreement to pay expenses not included in the transfer payment. She argues that the trial court erred in determining that Dara revoked this agreement in 2011. She contends that Dara could not unilaterally revoke this agreement because she relied on it in not seeking higher transfer payments. She does not otherwise challenge the trial court's rulings on the additional expenses she claimed.

The trial court treated Kathleen's request for additional expenses as a recoupment action rather than an enforcement action. Kathleen does not challenge this determination. The trial court found that Dara agreed to pay certain expenses in the 2008 e-mail which Kathleen relied upon. However, it found that agreement ended with the 2011 e-mail. Kathleen argues that Dara should not be able to revoke the 2008 agreement for two alternative reasons. First, the 2008 e-mail was a part of a contract, separate from the 2008 order that cannot be unilaterally revoked. Second, the doctrine of equitable estoppel prevents Dara from revoking his 2008 agreement to pay additional expenses.

A. Equitable Estoppel

Kathleen claims that the doctrine of equitable estoppel should preclude Dara from revoking his 2008 agreement. Equitable estoppel requires (1) a party's admission, statement, or act that is inconsistent with a later claim; (2) an action by another in reasonable reliance on that act, statement, or admission; and (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement, or admission. Colonial Imps., Inc. v. Carlton Nw., Inc., 121 Wn.2d 726, 734, 853 P.2d 913 (1993). The party asserting an equitable estoppel claim must prove its elements by clear, cogent, and convincing evidence. Id.

Kathleen has failed to meet her burden because it was unreasonable to continue to rely on Dara's 2008 e-mail after he had sent the 2011 e-mail. Dara's e-mail in 2008 indicated that he "presently" agreed to pay for "additional expenses for [the] kids like clothes, a bike, skates, etc." In 2011, he sent an e-mail stating in part, "You are responsible for clothes, equipment, which is why I pay you your monthly child support." The text of both e-mails indicates that Dara was seeking to limit his agreements, not broaden them. A reasonable person would not read these e-mails as giving them license to front thousands of dollars in expenses without seeking further agreement. Kathleen was not justified in relying on Dara's statements to incur unapproved expenses after 2011.

We reject Kathleen's equitable estoppel claim.

B. Contract Claim

Kathleen argues that the 2008 e-mail was part of a larger agreement by Dara to pay expenses for the children before the 2008 child support order. A parent may voluntarily and formally obligate themselves to do more than the law requires by entering into an independent contract with their former spouse. Untersteiner v. Untersteiner, 32 Wn. App. 859, 864, 650 P.2d 256 (1982). For a valid contract to exist, there must be an offer, acceptance, and consideration. In re Marriage of Obaili, 154 Wn. App. 609, 616, 226 P.3d 787 (2010). Such an agreement must be clear and unmistakable. Riser v. Riser, 7 Wn. App. 647, 651, 501 P.2d 1069 (1972).

The trial court found that Kathleen understood Dara's 2008 e-mail as an agreement to pay additional expenses for the children. Dara does not dispute that the 2008 e-mail evidenced a then present intent to pay additional expenses, but instead argues that he clarified the scope of that intent with the 2011 e-mail. The commissioner agreed with Dara and found the 2011 e-mail was notice of a change in his intent and effectively changed his obligation going forward. The trial court declined to revise. The challenge here is to whether Dara could unilaterally change the agreement.

Kathleen argues that the 2008 e-mail was part of a larger agreement, reached before the 2008 child support order, which Dara cannot unilaterally revoke. However, she does not point to any evidence of any prior agreement. The 2008 child support order does not reference any other agreement of the parties,

and she does not explain why the order would not supersede any prior agreements.

The language of the 2008 e-mail says only that Dara is "presently" willing to pay for certain expenses. Kathleen claims that she accepted a lower transfer payment in the 2008 order as consideration for Dara's agreement to pay additional expenses. But, the 2008 e-mail was sent after the 2008 child support order was entered, so it is unclear how an agreement in the 2008 order could have been given in exchange for the promise to pay expenses in an e-mail sent after that order. Kathleen points to no other evidence in the record to support this assertion. The language of the 2008 e-mail alone does not provide clear and unmistakable evidence of an irrevocable agreement. In the absence of consideration for a promise, the e-mail language is more a gratuitous offer than an irrevocable promise. We reject Kathleen's argument that the 2008 e-mail evidenced an agreement that Dara could not unilaterally revoke or modify.

The trial court did not err in finding that Dara could revoke his 2008 agreement. Its findings on recoupment are otherwise unchallenged. We therefore affirm the trial court's determination as to the amounts Kathleen was entitled to recoup.

IV. Attorney Fees

Both sides request attorney fees on appeal under RAP 18.1. Dara argues he should receive attorney fees because Kathleen has needlessly driven up the cost of litigation and her appeal is devoid of merit. Kathleen urges this court to exercise discretion to award her fees largely because Dara has the ability to pay.

Though we reject Kathleen's claims, her appeal is not completely devoid of merit. Likewise, although Dara indisputably has the ability to pay attorney fees, so does Kathleen. We therefore deny both parties' requests for attorney fees.

We affirm.

Leppelwick, J.

WE CONCUR:

Mann, C.J.

Verellen J