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Court of Appeals
Division I
State of Washington

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

In the Matter of the Marriage of MITCHELL R. AUDRITSH, Appellant, and DEBORAH A. AUDRITSH, n/k/a DEBORAH TRAINOR, Respondent.	)	No. 81127-4-I UNPUBLISHED OPINION

VERELLEN, J. — Mitchell Audritsh appeals an amended child support order. He argues that the court erred by ordering him to pay $500 above the presumptive amount for his monthly child support payments without adequate written findings. But the court had entered findings to support exceeding the presumptive amount at the time of its initial child support order and was permitted to adjust the amount based on changes in the parents' incomes. He further contends that the trial court improperly modified provisions of the order relating to life insurance and school costs, but the court properly clarified these provisions. We affirm.

FACTS

Mitchell Audritsh and Deborah Trainor were married on October 28, 2012. Their daughter was born on September 7, 2013. They separated less than a year later, on August 24, 2014. Trial regarding dissolution of the marriage, child support, and other related issues took place over several days in December 2016.

On April 28, 2017, the trial court entered a written child support order. The court found that the standard child support calculation from the child support schedule worksheets—the presumptive amount—was $842.98. The court increased the presumptive amount by $100 per month because the parents' combined income was more than $12,000 monthly and Trainor had the child 100 percent of the time until Audritsh's visitation began. Therefore, the court ordered Audritsh to pay Trainor child support in the amount of $942.98 monthly.

The court further ordered that daycare expenses up to a maximum of $920 per month be shared proportionally between the parents.

Regarding life insurance, the court ordered that "[t]he father shall name the minor child as beneficiary on any life insurance policy for the duration of his child support obligation."[1]

On March 7, 2019, Trainor petitioned the court to authorize the child to attend private school at Northshore Christian Academy.

[1] Clerk's Papers (CP) at 37.

On March 25, 2019, the court granted the petition. Regarding Audritsh's obligation to pay for the school, the court ordered that "the father's current $920 a month (maximum) toward day care costs[ ] will be used to pay his pro rata share of private school costs."[2]

On November 12, 2019, Trainor filed both a petition to modify the child support order and a motion to adjust the child support order. Both requested that the court increase the amount of child support paid by Audritsh, order Audritsh to maintain a life insurance policy to cover the cost of his required child support obligations, and order him to provide annual proof of insurance.

The court held a hearing on December 2, 2019. At this hearing, the parties focused their argument on Trainor's request that Audritsh's monthly child support payments be increased. Trainor's counsel stated that they would pursue the other issues in a separate motion.

A month later, on January 2, 2020, Trainor filed a motion for presentation of the modified child support order and for clarification of previous orders. In relevant part, Trainor asked the court for "clarification" on two issues: (1) whether the court's March 25, 2019 order required Audritsh to pay up to $920 monthly for Northshore Christian Academy or only his proportional share based upon total costs of no more than $920, and (2) the extent of Audritsh's obligation to list the child as the beneficiary on a life insurance policy.

[2] CP at 514.

The court held a hearing on Trainor's motion on January 21, 2020 and entered a written child support order that same day. The court found that the presumptive amount for the child support payment was $949. The court ordered an upward deviation of $500 from the presumptive amount of monthly child support "based on a change of income of the parties and the needs and best interests of the child."[3] Therefore, the court ordered a total monthly transfer payment of $1,449.

Regarding the issue of the $920 payment toward school costs at Northshore Christian Academy, the court explained orally at the hearing that it intended to cap Audritsh's proportional share of the of the costs at $920. The court's written child support order stated: "Education: Maximum of [u]p to $920 for school costs at Northshore Christian Academy per month in lieu of daycare expense payments (See attached court order of 03/25/19 under Exhibit 1)."[4] Audritsh's proportional share was noted as 57.8 percent; Trainor's proportional share was noted as 42.2 percent.

Regarding Audritsh's obligation to list the child as a beneficiary on his life insurance policy, the 2020 child support order stated:

> The father shall name the minor child as beneficiary on any life insurance policy for the duration of his child support obligation and in an amount sufficient to cover required (court ordered) child support payments up until the child's 18th birthday or when she graduates high school (whichever comes later). The father will provide proof of

[3] CP at 933.

[4] CP at 940.

> all such insurance policies naming the child as beneficiary within two weeks of the signing of this order by the [c]ourt.[5]

Audritsh appeals.

ANALYSIS

Trial courts are afforded considerable discretion in setting and modifying child support orders, which we seldom disturb on appeal.[6] We review a modification of child support for abuse of discretion where the challenging party must demonstrate that the trial court's decision is manifestly unreasonable, based on untenable grounds, or granted for untenable reasons.[7]

I. Monthly Child Support Payments

Audritsh argues that the trial court erred by ordering an upward deviation of $500 above the presumptive amount in his monthly child support payments. Audritsh contends the $500 upward deviation was improper as either an adjustment because it was too large an increase without specific findings, or as a modification because it was not supported by a finding of a substantial change in circumstances.

When the combined monthly net income of the parents exceeds $12,000, the court may exceed the presumptive amount of child support upon written findings of fact.[8] Here, the parents' combined income exceeded $12,000, and the

[5] CP at 942-43.

[6] In re Marriage of Zacapu, 192 Wn. App. 700, 704, 368 P.3d 242 (2016).

[7] Schumacher v. Watson, 100 Wn. App. 208, 211, 997 P.2d 99 (2000).

[8] RCW 26.19.065(3).

court exceeded the presumptive amount of child support by $500. The court's order explained that the $500 upward deviation was "based on a change of incomes of the parties and the needs and best interests of the child."[9]

A child support order "may be adjusted without a showing of substantially changed circumstances" based upon "[c]hanges in the income of the parents" if at least 24 months have passed since entry of the prior order.[10] The statute "envelopes an adjustment action within the purview of a modification, making an adjustment a form of modification. But the statute makes plain by the qualifying circumstances and procedural requirements of each that an adjustment action is more limited in scope."[11] An adjustment action conforms existing provisions of a child support order to the parties' current circumstances.[12] Either party may initiate the adjustment by filing a motion and child support worksheets.[13]

Consistent with RCW 26.09.170(7)(a), more than 24 months had passed from the time the court's initial April 2017 child support order. Trainor properly initiated the adjustment by filing a motion and child support worksheets.[14] The adjustment was based on changes in the incomes of the parents, as well as the

[9] CP at 933.

[10] RCW 26.09.170(7)(a)(i).

[11] In re Marriage of Scanlon, 109 Wn. App. 167, 172-73, 34 P.3d 877 (2001).

[12] Id.

[13] RCW 26.09.170(7)(b).

[14] See id.

needs and best interests of the child.[15] The trial court found that Audritsh's net monthly income was $12,311, whereas it was $10,082.03 when the initial child support order was entered in 2017.[16] The court found that Trainor's net monthly income was $8,114, whereas it was $7,755.01 in 2017.[17] Neither party assigns error to the findings regarding income, so we treat them as verities on appeal.[18]

Audritsh argues that the trial court failed to make adequate written findings of fact, citing RCW 26.19.065(3) and McCausland v. McCausland.[19] At the time the court entered its initial child support order exceeding the presumptive amount in 2017, the court issued extensive written findings in the form of a seven-page letter.[20] These findings include the factors identified by McCausland, such as the parents' standard of living and the child's medical, educational, and financial needs.[21] They became the law of the case.[22]

RCW 26.09.170(7)(a)(i) allows for a subsequent adjustment based upon "[c]hanges in the income of the parents." As detailed above, the court's 2020 order found a change in incomes that is undisputed on appeal. The court's

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[15] Id.

[16] CP at 30, 929-30.

[17] Id.

[18] See In re Estate of Lint, 135 Wn.2d 518, 532-33, 957 P.2d 755 (1998); Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 407, 858 P.2d 494 (1993).

[19] 159 Wn.2d 607, 152 P.3d 1013 (2007).

[20] CP at 22-28.

[21] Neither parent appealed these findings.

[22] See Marriage of Trichak, 72 Wn. App. 21, 24, 863 P.2d 585 (1993).

adjustment conforms the child support to the parties' current circumstances. Audritsh cites no authority requiring a court to make additional findings to exceed the presumptive amount of child support in an adjustment action when the court has already issued findings on that topic in its initial child support order.

We affirm the $500 upward deviation as an adjustment under RCW 26.09.170(7). We need not reach the further issue of whether the court could have also ordered the same $500 upward deviation as a modification based upon a substantial change.

II. Alleged Improper Modifications: School Costs and Life Insurance

Audritsh argues that the trial court improperly modified the child support order by modifying the life insurance provision of the child support order and by orally modifying the amount he had to pay for the child's school costs. Audritsh argues that these are not clarifications, as Trainor contends, but instead are improper modifications.

A clarification is "'merely a definition of the rights which have already been given[,] and those rights may be completely spelled out if necessary.'"[23] A court may clarify a decree by defining the parties' respective rights and obligations if the parties cannot agree on the meaning of a particular provision.[24] "A modification,

[23] In re Marriage of Christel, 101 Wn. App. 13, 22, 1 P.3d 600 (2000) (quoting Rivard v. Rivard, 75 Wn.2d 415, 418, 451 P.2d 677 (1969)).

[24] Id.

on the other hand, occurs when a party's rights are either extended beyond or reduced from those originally intended in the decree."[25]

Life Insurance. Audritsh argues that the trial court erred by "modifying" the language of the child support order regarding life insurance. We disagree; it was a clarification. The court's initial April 28, 2017 child support order required that "[t]he father shall name the minor child as beneficiary on any life insurance policy for the duration of his child support obligation."[26]

In November 2019, Trainor's petition to modify and motion to adjust requested that the court order Audritsh to maintain a life insurance policy to cover the costs of his required child support obligations and provide proof of such insurance. In response, Audritsh filed a declaration stating that the requirement to list the child as a beneficiary on his life insurance policy was already part of the April 2017 child support order and that he was complying with it:

> The final divorce order in April 2017 mandated that I name [their child] as a beneficiary on any life insurance policy that I own. I had done that even before the decree and have continued to do [so] to this day. This is a superfluous demand.[27]

At the hearing on December 2, 2019, Audritsh's attorney reiterated his position that the requirement already existed and that Audritsh was complying, so no new order was necessary:

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[25] Id.

[26] CP at 37.

[27] CP at 724.

> The request that Mr. Audritsh put the child's name on life insurance policies. That already exists. That's paragraph 24 of the 2017 order that states: "The Father shall name the minor child as beneficiary on any life insurance policy for the duration of his child support obligation." There. The Father's declaration states he's been complying with this order and continues to name the child on the life insurance policy. We don't need a new order. The order already contains that provision. And it was granted at the time of trial. It seems unclear now what it is they want changed about this order, if anything. It seems like they just wanted it. But it's there already. So it's a Dorothy problem. Click the heels three times; she's in Kansas. She's got what she asked for the first time around.[28]

On January 15, 2020, Audritsh filed a motion to strike and deny, arguing that Trainor's request regarding clarification of the life insurance provision attempted to modify the court's order by adding additional language not in the original order, was not based on facts before the court, and had been withdrawn at the December 2, 2019 hearing.

At the next hearing on January 21, 2020, Audritsh's attorney argued that Trainor's request would impermissibly modify the court's previous order without giving Audritsh the opportunity to be heard and respond to the potential modification. The court's written order, issued the same day, specified the amount of the life insurance policy and ordered Audritsh to provide proof of the policy:

> The father shall name the minor child as beneficiary on any life insurance policy for the duration of his child support obligation and in an amount sufficient to cover required (court ordered) child support payments up until the child's 18th birthday or when she graduates high school (whichever comes later). The father will provide proof of

[28] Report of Proceedings (RP) (Dec. 2, 2019) at 9-10.

> all such insurance policies naming the child as beneficiary within two weeks of the signing of this order by the [c]ourt.[29]

Because Audritsh repeatedly represented to the court that the requirement to name the child as a beneficiary on his life insurance policy was part of the initial 2017 child support order and that he was complying, we conclude the court's January 21, 2020 order was a clarification, not a modification. By Audritsh's own admission, it does not appear that the court was extending his obligations because he already listed the child as a beneficiary on his life insurance policy and continued to do so since the 2017 order.

The court's January 21, 2020 order did add two requirements which were not in the 2017 order: that Audritsh maintain an amount of life insurance sufficient to cover his required child support payments and that he provide proof of insurance.

Regarding amount, "[l]ife insurance is commonly required as security for child support, because it provides 'a relatively painless method of protecting children from the untimely death of an obligated parent.'"[30] To serve as security, the life insurance policy necessarily needs to be in an amount sufficient to cover

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[29] CP at 942-43.

[30] In re Marriage of Sager, 71 Wn. App. 855, 861, 863 P.2d 106 (1993) (quoting Aetna Life Ins. Co. v. Bunt, 110 Wn.2d 368, 380, 754 P.2d 993 (1988)); see also Standard Ins. Co. v. Schwalbe, 110 Wn.2d 520, 523, 755 P.2d 802 (1988) ("In dissolution proceedings, a trial court may order a spouse obligated to pay child support to maintain life insurance for the benefit of minor children as security for the support obligation should the spouse die before the children are emancipated.").

the required child support payments. This underlying purpose, combined with Audritsh's repeated representations that the life insurance requirement already existed and that he was complying, persuades us that the court's addition of the amount was in fact merely spelling out the details of the obligation it had already imposed in 2017.

Regarding proof of insurance, such verification of compliance did not extend Audritsh's obligation to list the child as a beneficiary on the life insurance policy. The 2020 order merely clarified and did not modify the 2017 order.

Audritsh's argument that he did not have the opportunity to be heard or respond is not compelling. As detailed above, he responded in writing via a declaration in November and a motion in January, and was heard orally, through counsel, at hearings in December and January.

We affirm the clarified life insurance provision.

School Costs. Audritsh argues that the trial court erred by orally clarifying the amount it had ordered him to pay towards the child's school costs at private school Northshore Christian Academy. It is undisputed that the court ordered Audritsh to pay his 57.8 percent proportional share of school costs. The issue is whether the court capped the total of Audritsh's monthly share at $920 or capped the total amount of school costs to be divided between the parents at $920.

The court's initial child support order on April 28, 2017 capped total daycare expenses at $920 monthly, split proportionally between the parties. When the court authorized the child's attendance at Northshore Christian Academy on March

25, 2019, the written order stated that "the father's current $920 per month (maximum) toward daycare costs will be used to pay his pro rata share of private school costs."[31] The court's wording suggests a conflict with the 2017 initial order that divides a total maximum of $920 per month of daycare costs between the parents.

The parties disputed whether the court capped the total of Audritsh's monthly share of school costs at $920 or capped the total amount of school costs to be divided between the parents at $920. Trainor's motion for clarification asked the court to settle this dispute.

At the hearing on January 21, 2020, the trial court explained that it intended to order Audritsh's proportional monthly share to be capped at $920:

> Okay. As far as this $920, the original says he shall pay his proportionate share up to a maximum of $920, daycare expenses monthly. Okay. So it's not daycare expenses anymore, but he pays his proportional share up to a maximum of $920. That's what the court meant. That's what the court will continue with. I'm not saying he has to pay any more than his proportional share. But his—it's up to $920. If his proportional share is $1,400, he only has to pay $920. So I'm not sure which one I'm agreeing with, but I'm agreeing with what I said before and what I meant, [a]nd that is [h]e pays his proportional share but only up to a maximum of $920.[32]

At the end of the hearing, the court reiterated its intent in response to a question by Trainor's attorney. Trainor's attorney asked, "Just hypothetically, let's say that there was $2,000 in expenses and, just hypothetically, they both paid

[31] CP at 514.

[32] RP (Jan. 21, 2020) at 17.

50/50, all inclusive[. S]o in other words, under that scenario, he would go up to the 920 instead of a thousand dollars?"[33] The court responded, "Yes. The maximum is $920. But it's not $920 total. I mean, it is the proportional share up to a maximum of $920."[34]

The written child support order, issued that same day, states: "Education: Maximum of [u]p to $920 for school costs at Northshore Christian Academy per month in lieu of daycare expense payments (See attached court order of 03/25/19 under Exhibit 1)."[35] Each party was ordered to pay their proportional share.

Audritsh argues that this January 21, 2020 written order is clear on its face that total education costs were capped at $920 and that he was ordered to pay only his proportional share of that amount. However, the court's written order also referenced the earlier March 25, 2019 order which orders Audritsh to pay up to $920 monthly. There was no reason for the court to include this earlier order unless it was shorthand for its decision to cap Audritsh's share at $920. And the court's oral rulings leave no doubt that the court intended to cap Audritsh's share of school costs at $920 per month. This was not a modification of the March 25, 2019 order.

Trainor requests that we award her attorney fees pursuant to RCW 26.09.140 and RAP 18.1. Based on Trainor's demonstrated need and

[33] Id. at 18-19.

[34] Id. at 19.

[35] CP at 940.

Audritsh's ability to pay, we award Trainor her full reasonable attorney fees on appeal payable by Audritsh in an amount to be determined by a commissioner of this court upon Trainor's compliance with our rules.[36]

We affirm.

WE CONCUR:

[36] Audritsh asks that costs be awarded to him. Costs generally are awarded to the substantially prevailing party under RAP 14.2. Audritsh has not substantially prevailed.