

original

NO. 36068-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE MARRIAGE OF:

HASSAN SIDDIQI,

Appellant

v.

ZOHRA SIDDIQI

Respondent

FILED
JAN 11 2010
CLERK OF COURT
SUPERIOR COURT
CLARK COUNTY
WA

THE HONORABLE JUDGE EDWIN POYFAIR
JUDGE OF THE SUPERIOR COURT
OF CLARK COUNTY, STATE OF WASHINGTON

APPELLANT'S BRIEF

=====

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I. ASSIGNMENTS OF ERROR

A. Assignment of Error Number One : The trial court erred in entering insufficient findings of fact in support of its deviation from the standard calculation of child support.

B. Assignment of Error Number Two: The trial court erred in setting the transfer payment at \$264 per month.

C. Assignment of Error Number Three: The trial court erred in ordering a modification of the original child support, not a vacation of the original order under CR 60.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the trial court's decision pursuant to CR 60 a modification of the erroneous order of child support entered?
2. Did the trial court abuse its discretion by failing to require Zohra Siddiqi to pay support for the child when the child is in her father's care?
3. Did the trial court abuse its discretion by failing to give Hassan Siddiqi any credit for the amount of child support he overpaid due to the erroneous support order?

III. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Zohra and Hassan Siddiqi married on July 3, 1998. (RP-5) For ease of reference herein, parties sharing a common surname shall be referred to by the party's first name. Zohra gave birth to the couple's daughter on November 2, 1999. (RP-5) After a trial before the Honorable Edwin Poyfair on July 27, 2005, the trial court ordered a parenting plan a giving the parties equal parenting time with their daughter. (RP-167)

B. PROCEDURAL HISTORY.

Zohra and Hassan Siddiqi separated in August , 2001. (RP-5) The matter proceeded to trial before the Honorable Edwin Poyfair on July 27, 2005. The trial court entered final orders on October 7, 2005 in the absence of Hassan and his attorney. (RP-189)

Hassan retained another attorney to file a CR 60 motion in September, 2006 to address errors in the final orders. (RP-195) The parties agreed to entry of corrected orders to address all issues except the amount of child support. (RP-194)

After hearing the CR 60 motion, the trial court ordered a transfer payment from Hassan to Zohra of \$264 with respect to child support and declined to give Hassan any credit for overpaying child support from the entry of the order to the entry of the corrected order in January, 2007. (RP-204 to 205, CP-60)

From the entry of the corrected child support order this appeal timely follows.

IV. ARGUMENT

A trial court's decision setting child support is reviewed on appeal for abuse of discretion. In re Marriage of Crosetto, 82 Wn. App. 545, 560, 918 P.2d 954 (1996). Likewise, the court's decision to deviate from a standard calculation, including a deviation based on residential time is also discretionary. In re Marriage of Rusch, 124 Wn. App. 226, 236, 98 P.3d 1216 (2004), overruled in part on other grounds by In re Marriage of McCausland, 159 Wn.2d 607, 152 P.3d 1013 (2007)

An abuse of discretion occurs when a judge exercises his or her discretion on a ground, or to an extent, that is clearly untenable or manifestly unreasonable. Curran v. Curran, 26 Wn. App. 108, 110, 611 P.2d 1350 (1980)

The trial court abused its discretion in the case at bar because the court failed to require Zohra to support her child when the child is in the care of her Hassan and it failed to give Hassan any credit for the months of overpayment of child support due to the defective order..

The parenting plan entered in this case affords each parent equal residential time with the child. (CP-42) Hassan's motion for CR 60 relief clearly addressed a scrivener's error in that the trial court required him to pay the full amount of child support, but also acknowledging that a deviation was ordered. (CP-78)

With respect to child support and the residential credit given the joint custody arrangement implemented by the court, the trial court indicated, "Oh, well, certainly. That's the transfer payment. Oh, that's going to be 50/50 and it's going to be whatever the overage is when you do the calculations." (RP-181)

In ruling on the CR 60 motion, the trial court declined to take in to account that Hassan paid \$544.50 per month from the time the original child support order was entered in October, 2005 through the pendency of the CR 60 motion. (RP-204 to 205) The trial court ordered that Hassan pay the corrected amount from January 1, 2007 forward. (CP-64)

The trial court applied the mandatory child support schedule set forth in RCW 26.19.020 to obtain a total support amount of \$815 per month.

RCW 26.19.075 sets forth standards for deviation from the standard calculation. including:

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

.....

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

Hassan filed worksheets prepared using SupportCalc reflecting child support as follows:

SHARED CUSTODY ADJUSTMENT: SUM OF DAYS SQUARED
FORMULA

	FATHER	MOTHER
Number of Overnights At Father's Residence	183.0	
Number of Overnights At Mother's Residence		182.0
.497 Of \$531 Is Father's Net Support Obligation	\$264	
.503 Of \$284 Is Mother's Net Support Obligation		\$143
Father Transfers The Difference: \$121 Per Month to Mother		

The computer program utilizes this formula that was initially part of the mandatory child support schedule set forth in RCW 26.19.020 when the statute the legislature enacted the mandatory child support schedule in 1980.

This formulation takes in to account the time each party spends with the child and multiplies that fraction of the year by the amount of child support the nonresidential parent would owe (transfer) to the residential parent if the residential parent was the full time residential parent of the child. The formula then deducts the lesser transfer payment (in this case Zohra's) from the greater transfer payment to get the net transfer payment. This formula evenly applies the presumptive child support schedule to each parent for the portion of the year he or she is the residential parent of the child.

The trial court opted to disregard this formula and require Hassan to pay Zohra \$264 per month instead of the \$143 difference between the two parents' relative support obligation. . (CP-42) In effect, the trial court relieved Zohra of any obligation to support her daughter for the half of the year Hassan is the residential parent of the child.

The court gave the following reasons for deviation from the standard calculation under Section 3.7 of the Order of Child Support:

The child support amount ordered in paragraph 3.5 deviates from the standard calculation for the following reasons:

The child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The deviation does not result in insufficient funds in the receiving parent's household to meet the basic needs of the child. The child does not receive public assistance.

RCW 26.19.035 requires:

(2) Written findings of fact supported by the evidence. An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

Hassan would respectfully submit that the findings entered by the court fail to support the trial court's deviation from the standard schedule in that the

findings fail to identify any reason for failing to require Zohra to contribute to the child's support when she resides with her father.

V. CONCLUSION

For the reasons stated above, Hassan Siddiqi respectfully requests that the court remand this matter to the trial court to enter a child support order requiring a transfer payment from Hassan to Zohra in the amount of \$121 or in the alternative to remand the matter to the trial court to enter sufficient findings to support the deviation from the scheduled amount.

Respectfully submitted this ^{4th} day of September, 2007.



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Attorney for the Appellant

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STATE OF WASHINGTON
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DEPUTY

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

In re the Marriage of,
ZOHRA SIDDIQI,
Respondent,
and
HASSAN SIDDIQI,
Appellant.

NO. 36068-3-II
CLARK COUNTY
CAUSE NO. 02-3-01770-1
DECLARATION OF MAILING

I, Judy Adams declare:

That I am a citizen of the United States of America; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 5th day of September, 2007 declarant deposited in the mails of the United States of America properly stamped and addressed envelopes directed to the following named individuals, to-wit:

Clerk of the Court of Appeals
Division II
950 Broadway, Suite 300
Tacoma, Washington 98402

Ms. Zohra Siddiqi
17209 21st Street
Vancouver, WA 98683

said envelope containing a copy of this declaration and a copy of the Brief of Appellant in this matter.


JUDY ADAMS

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