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No. 62079-7-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

IN RE: THE MARRIAGE OF
CHRISTINE K. HAZLETT, Respondent,

And

STEVEN R. HAZLETT, Appellant.

RESPONSE BRIEF OF APPELLEE

Paul W. McVicker, WSBA # 39590
Attorney for Appellee Christine K. Hazlett
33530 1st Way S, Suite 102
Federal Way, WA 98003-7332

(206) 438-4090

Table of Contents

Tables of Cases and Authorities.....3-6

 Points and authorities.....3-5

 Table of cases alphabetized.....6

Introduction.....7-8

Issues Presented for Review.....8

Statement of the Case.....9-11

Argument.....11-17

 A. The continuing restraining order, award of tax exemptions, and restrictions on the parenting time and responsibilities of Appellant are within the broad discretion of the court in granting relief based on the equities of the case and the evidence presented and are not an abuse of discretion.....11-13

 B. The Findings of Fact, Decree of Dissolution, and Parenting Plan are consistent with the evidence and the rulings of the court and the court has the authority and discretion to amend or correct its findings and decrees to conform to the evidence and facts of the case.....13-15

 C. The court did not err and no reversible error has been demonstrated.....15-18

Conclusion.....18-19

TABLES OF CASES AND AUTHORITIES

A. The continuing restraining order, award of tax exemptions, and restrictions on the parenting time and responsibilities of Appellant, Mr. Hazlett, are within the broad discretion of the court in granting relief under the law based upon the equities of the case and the evidence presented, and are not an abuse of the discretion by the trial court.

- The child’s best interest is the standard by which the court determines and allocates the parties’ parental responsibilities.
RCW 26.09.002.....11
- The trial court is mandated to determine all issues, including parenting, continuing injunctions, and tax allocations.
RCW 26.09.050.....12
- A decree is not void as going beyond the relief requested.
Nelson v. Nelson, 56 Wash. 571, 106 P. 138 (1910).....12
Dale v. Cohn, 14 Wash.2d 214, 127 P.2d 412 (1942).....13
- Broad discretion is vested in the trial court to provide for necessary restraining orders.
RCW 26.09.050.....13
- Such restraints are reviewed for abuse of discretion.

Hecker v. Cortinas, 110 Wash.App. 865, 869, 43 P.3d 50 (2002).....13

In re Marriage of Stewart, 133 Wash.App. 545, 137 P.3d 25 (2006).....13

- Restrictions may be imposed by the Court with proper findings.

RCW 26.09.191 (3)13

Burrill v. Burrill, 113 Wash.App. 863, 56 P.3d 993 (2002).....13

B. The Findings of Fact, Decree of Dissolution of Marriage and Parenting Plan entered by the Court are consistent with the evidence and the rulings of the Court and the court has the authority and discretion to amend or correct its findings and decrees to conform to the evidence and facts of the case.

- Findings of fact and conclusions of law need to sufficiently suggest the factual basis for the ultimate conclusions.

Lawrence v. Lawrence, 105 Wash.App. 683, 20 P.3d 972, (2001).....14

- Clerical mistakes may be corrected by the court at any time of its own initiative or on the motion of any party

CR 60 (a).....14

- The test is whether the court’s intention is embraced.

Marchel v. Bunger, 13 Wash.App. 81, 533 P.2d 406 (1975).....15

In re Marriage of King, 66 Wash.App. 134, 831 P.2d 1094, (1992).....15

- Appellate courts may look to the trial courts' oral decision to interpret the judgment of the Court.

City of Lakewood v. Pierce County, 144 Wash. 2d 118, 30 P.3d 446 (2001).....15

In re LaBelle, 107 Wash.2d 196, 728 P.2d 138 (1986).....15

C. The trial court did not err and no reversible error has been demonstrated.

- The standard for review of decisions is whether discretion is exercised on untenable grounds or for untenable reasons, considering the purpose of the trial court's discretion.

Coggle v. Snow, 56 Wash. App. 499, 784 P.2d 554 (1990).....15

State ex rel. Carroll v. Junker, 79 Wash.2d 12, 482 P.2d 775 (1971)15

- Appellate courts generally are reluctant to disturb a child custody disposition because of the trial court's unique opportunity to personally observe the parties:

In re Marriage of Timmons, 94 Wash.2d 594, 617 P.2d 1032 (1980).....16

- Failure to comply with CR 52 (c) is harmless error if no prejudice is shown.

Seidler v. Hansen, 14 Wash.App. 915, 547 P.2d 917 (1976).....17

TABLE OF CASES ALPHABETIZED

Burrill v. Burrill, 113 Wash.App. 863, 56 P.3d 993 (2002).....13

City of Lakewood v. Pierce Co, 144 Wash. 2d 118, 30 P.3d 446 (2001)..15

Coggle v. Snow, 56 Wash. App. 499, 784 P.2d 554 (1990).....15

Dale v. Cohn, 14 Wash.2d 214, 127 P.2d 412 (1942).....13

Hecker v. Cortinas, 110 Wash.App. 865, 869, 43 P.3d 50 (2002)...13.

In re LaBelle, 107 Wash.2d 196, 728 P.2d 138 (1986).....15

Lawrence v. Lawrence, 105 Wash.App. 683, 20 P.3d 972, (2001).....14

Marchel v. Bunger, 13 Wash.App. 81, 533 P.2d 406 (1975).....15

In re Marriage of King, 66 Wash.App. 134, 831 P.2d 1094, (1992).....15

In re Marriage of Stewart, 133 Wash.App. 545, 137 P.3d 25 (2006).....13

Nelson v. Nelson, 56 Wash. 571, 106 P. 138 (1910).....12

In re Marriage of Timmons, 94 Wash.2d 594, 617 P.2d 1032 (1980).....16

Seidler v. Hansen, 14 Wash.App. 915, 547 P.2d 917 (1976).....17

State ex rel. Carroll v. Junker, 79 Wash.2d 12, 482 P.2d 775 (1971)15

Statutes:

RCW 26.09.002.....11

RCW 26.09.050.....12,13

RCW 26.09.191 (3)13

CR 60 (a).....14

INTRODUCTION

This case involves the parenting of two minor children, Joshua Hazlett, age 11 and Nicole Hazlett, age 9. This is an appeal from the final orders of the trial court, specifically the Decree of Dissolution of Marriage and the Parenting Plan, following a trial of the case.

Appellant, Steven Hazlett, seeks to amend and modify the decree and parenting plan based upon perceived factual and procedural errors by the trial court. Specifically, appellant seeks to

- a) Reverse the restraining order entered as part of the Decree of Dissolution;
- b) Modify the award of the tax deductions to petitioner granted by the court; and
- c) Remove the restrictions on decision making and residential time of the appellant as set forth in the parenting plan.

A trial was held herein on June 11 and 12, 2008 before the Honorable Judge Theresa B. Doyle. (RP Vol I and Vol II) Following trial, the Court found, among other things, that the respondent/appellant, Mr. Hazlett, engaged in abusive use of conflict under RCW 191(3)e. (RP 191) The trial court restricted Mr. Hazlett's parenting time and participation in decision making regarding the children.

The record of the trial is clear and the findings of the Court are unambiguous. Substantial evidence supports the findings and ruling of the court. There is no abuse of discretion by the trial court and the decision of the court is not manifestly unreasonable, against the manifest weight of the evidence, nor based on untenable grounds or for untenable reasons

ISSUES PRESENTED FOR REVIEW

Whether the trial court erred in issuing a continuing restraining order against Mr. Hazlett in favor of the petitioner and minor children and in awarding the tax exemptions for the minor children to petitioner.

Whether the trial court erred in amending the findings of fact entered post trial.

Whether the trial court erred in restricting the residential time of Mr. Hazlett as a result of the court's finding of abusive use of conflict, and in awarding the sole decision-making to the petitioner under the parenting plan.

STATEMENT OF THE CASE

The Dissolution of Marriage case was filed by the Petitioner and respondent herein, Christine C. Hazlett, on April 2, 2007. It was preceded by an Order of Protection against Mr. Hazlett issued in an action filed by the Petitioner, Christine. During the pendency of the case, various orders were entered and various reports and evaluations were ordered. Among the temporary orders entered were:

- A temporary order in the dissolution action was entered on June 15, 2007, which, among other things, restrained Mr. Hazlett and restricted his contact with the minor children of the parties.
- An order on motion for revision was entered on July 13, 2007 keeping restrictions and the restraining order in place.
- An Order entered September 14, 2007 at a review hearing wherein the court adopted the recommendations from the CASA report dated September 7, 2007 (filed November 15, 2007), with some modifications, and ordering Mr. Hazlett to obtain a psychiatric evaluation.

Supervised visitation and restricted parenting remained in place for Mr. Hazlett throughout the proceedings.

A trial was held on June 11 and June 12, 2008, the Honorable Theresa B. Doyle, judge presiding. In addition to the evidence adduced at

trial and contained in the record of proceedings, the court considered the following reports and evaluations:

- A Domestic Violence Assessment by Family Court Services, dated March 2007, filed June 2007;
- Two CASA reports: one dated September 2007, filed November 2007, and the other dated February 2008;
- A Domestic Violence Assessment by Aby and Associates, dated September 2007;
- A Psychological Assessment by Maria Lara, Ph.D. of River Valley Psychological Services, dated December, 2007; and
- A Psychiatric Evaluation by Andy J. Sands, M.D., Board Certified Psychiatrist, dated April, 2008.

(RP 9-11)

Following trial, the court made certain findings, including a finding of abusive use of conflict. (RP 183-221, 191) The Court also found “there’s more than ample evidence that the dynamics of domestic violence are here. The controlling atmosphere, the attempts to instill fear, the blaming others, all of those other attributes of a domestic violence relationship I find are here.” (RP 183) Following the findings by the court, the court set a date of June 23, 2008 for presentation of the written orders of court, including the parenting plan and decree. (RP 211, 218).

The court reviewed the proposed decree and findings following trial, making specific changes from the proposed drafts. The court signed and entered the findings of fact on June 12, 2008 following the conclusion of the trial. On June 24, 2008 the Decree for Dissolution of Marriage and the Parenting Plan were signed and entered by the Court. Subsequently, on July 14, 2008 the Findings of Fact and Conclusions of Law were amended by the Court to conform to the Decree and Parenting Plan.

ARGUMENT

A. The continuing restraining order, award of tax exemptions, and restrictions on the parenting time of Appellant, Mr. Hazlett, by the trial court are within the broad discretion of the court in granting relief under the equities of the case and evidence presented and are not an abuse of the discretion of the trial court.

In a case for dissolution of marriage where there are minor children, Washington statutes mandate the court to determine and allocate the parties' parental responsibilities and financial obligations based upon a standard of the child's best interests. (RCW 26.09.002). In addition to the testimony at trial, the court considered six professional

reports and evaluations from Family Court Services, CASA, Aby and Assoc, a psychologist and a psychiatrist. (RP 9-11)

The court is also granted broad authority and discretion under the statute which mandates that “the court shall” among other things:

“...make provision for a parenting plan for any minor child of the marriage...make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders including the provisions contained in RCW 9.41.800, make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW...”

(RCW 26.09.050)

The issues of the restraining order and the allocation of the tax exemption were squarely before the court. No matter what the prayer for relief, which may be granted or denied, the court has the responsibility of allocating the tax exemption, entering necessary restraining orders and providing a parenting plan. The court’s jurisdiction over the issues is complete and not limited. It has been held, and is well settled law, that a decree is not void as going beyond the relief requested. See *Nelson v.*

Nelson, 56 Wash. 571, 106 P. 138 (1910); *Dale v. Cohn*, 14 Wash.2d 214, 127 P.2d 412 (1942).

A trial court has broad discretion under its mandate to provide for any necessary continuing restraining orders. It is not limited in the type of restraining order that may be issued. An order for protection, an anti-harassment order, or other appropriate restraint may be imposed by the trial court. (RCW 26.09.050) The court's decisions relative to such restraints are reviewed for an abuse of discretion. See *Hecker v. Cortinas*, 110 Wash.App. 865, 869, 43 P.3d 50 (2002). See also *In re Marriage of Stewart*, 133 Wash.App. 545, 137 P.3d 25 (2006).

Under the mandate of the court in providing a parenting plan, restrictions may be imposed and the court may preclude or limit any provisions of the parenting plan if the court finds, among other things, that abusive use of conflict creates a danger to the child's psychological development. See RCW 26.09.191 (3). See also *Burrill v. Burrill*, 113 Wash.App. 863, 56 P.3d 993 (2002). The findings of fact and conclusions and the record of the court's ruling (RP 183-221, 191) are clear in the court finding abusive use of conflict.

B. The Findings of Fact, Decree of Dissolution of Marriage and Parenting Plan entered by the court are

consistent with the evidence and the rulings of the Court and the court has the authority and discretion to amend its findings and decrees to conform to the evidence and facts of the case.

A trial court must make findings of fact and conclusions of law sufficient to suggest the factual basis for the ultimate conclusions. See *Lawrence v. Lawrence*, 105 Wash.App. 683, 20 P.3d 972, (2001). Here the court has done that. Mr. Hazlett, however, attacks the decision of the court on the basis that the court amended the findings of fact, and claims that doing so is reversible error.

It is clear, however, from the amended Findings and the memorandum by Judge Doyle on the face thereof that the court amended the findings to conform to the decree and facts of the case. It is well within the discretion of the court to so do. Under CR60 (a):

“Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party”

In this case the court is merely conforming the Findings to the facts and Decree of the case. “The test for distinguishing between ‘judicial’ and ‘clerical’ error is whether, based on the record, the judgment embodies the trial court's intention. (citations omitted.)” (13 Wash.App. 84) *Marchel v. Bunger*, 13 Wash.App. 81, 533 P.2d 406 (1975). See also *In re Marriage of King*, 66 Wash.App. 134, 831 P.2d 1094 (1992).

Should the Appellate courts have any doubt regarding the interpretation of the judgment of the trial court, the Appellate courts may look to the trial courts’ oral decision to interpret the judgment of the Court. *City of Lakewood v. Pierce County*, 144 Wash. 2d 118, 30 P.3d 446 (2001); *In re LaBelle*, 107 Wash.2d 196, 728 P.2d 138 (1986).

C. The trial court did not err and no reversible error has been demonstrated.

The standard for appellate review of decisions of the trial court is whether discretion is exercised on untenable grounds or for untenable reasons, considering the purpose of the trial court’s discretion. See *Coggle v. Snow*, 56 Wash. App. 499, 784 P.2d 554 (1990); *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 482 P.2d 775 (1971).

Appellate courts generally are reluctant to disturb a child custody disposition because of the trial court's unique opportunity to personally

observe the parties, and to consider all of the evidence presented. See *In re Marriage of Timmons*, 94 Wash.2d 594, 617 P.2d 1032 (1980).

Here the trial court considered the evidence and testimony of the parties, the recommendations of CASA, and a broad range of reports and evaluations. Mr. Hazlett has re-argued the facts of the case and seeks a modification of the judgment of the court without an adequate showing of legal error or an abuse of discretion by the trial court. The trial court cannot be said to have come to a conclusion that no reasonable person would have, given the facts of the case and the evidence considered by the court, nor that the court has exercised its discretion on untenable grounds or for untenable reasons.

Mr. Hazlett also claims lack of sufficient notice of the presentation of the final orders in the case on June 23, 2008. However, Mr. Hazlett fails to show any prejudice as a result. If Mr. Hazlett in fact received no notice, he was present at the conclusion of the trial when the court set June 23, 2008 as the date for presentation. (RP 211,218) He was also present when the court delivered the findings and rulings of the court and he had the proposed findings and orders prepared by Christine. He had the opportunity and often challenged the court during the delivery of the court's ruling. However, Mr. Hazlett fails to show any prejudice from the alleged lack of notice. Failing a showing of prejudice, such error, if any, is

harmless error and not reversible error. See *Seidler v. Hansen*, 14 Wash.App. 915, 547 P.2d 917 (1976).

CONCLUSION

Mr. Hazlett argues in his appeal brief that the trial court erred in its findings and orders. He re-argues the facts and the significance of those facts in an effort to modify and reform the judgment of the court. These facts were before the trial court with significantly more content than that which is attacked in the appellant's brief. The court had the benefit of six professional reports from CASA and Family Court Services to that of a psychologist and a psychiatrist. The court had the opportunity to hear the parties and to assess their demeanor and behavior.

It is the mandate of the trial court to decide all of the issues relative to the dissolution of the marriage; dividing the assets and liabilities, allocating parenting responsibilities and parenting times, providing for continuing necessary restraining orders, and restricting the parenting participation of a parent where the best interests of the child or children necessitate such under the law. The findings of the court need to be clear and understandable. They need to be supported by the evidence. And the court has the authority to amend and correct the findings, conclusions and

orders to conform to the evidence and facts of the case. The court in this case has done all of that.

The court is vested with broad discretion in deciding all of the issues relative to the dissolution of the marriage and the parenting of the children, within the context of the best interests of the children. An abuse of the court's discretion is the standard of review and the basis for a reversal of the trial court. That abuse of discretion must be such that no reasonable person could come to the decision made because it is based on untenable grounds or untenable reasons. There has been no adequate showing of any abuse in the discretion of the trial court. The reasons, findings and orders of the trial court in this case are sound and well supported by the facts and evidence considered by the court.

Accordingly the appeal of Mr. Hazlett should be denied with costs and attorneys' fees.

Respectfully submitted,



Paul W. McVicker, WSBA # 39590

Attorney for Respondent, Appellee Christine C. Hazlett

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

Steve R. Hazlett,
Appellant

And

Christine K. Hazlett,
Respondent

Case No. 62079-7-1

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date a copy of the Respondent/Appellee's Brief was placed in a properly stamped envelope and sent via USPS mail to the following:

Steven Robert Hazlett
PO BOX 585
Maple Valley, WA 98058

I declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

Dated **6/25/2009** at **Seattle, Washington.**

Steven Field

Steven Field, Paralegal