 73345-1

No. 73345-1-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

ALEKSANDREA MILUTINOVIC, Appellant
v.
CHRISTOPHER OLIN MORITZ, Respondent

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 AUG -1 PM 3:14

BRIEF OF RESPONDENT

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ORIGINAL

Table of Authorities

Cases (alphabetically arranged)

In re Marriage of Katare, 175 Wash.2d 23, 35 (2012)

In re the Marriage of Leslie, 90 Wn. App. 796, 802-03 (1998)

Statutes

RCW 26.09.050

RCW 26.19.080(2)

RCW 4.56.110(2)

RCW 26.09.140

Response to Assignment of Error

1. The trial court did not err in entering a restraining order against Ms. Milutinovic.

2. The trial court did not err in limiting Mr. Moritz' obligation to pay for childcare, educational and other special child raising expenses.

3. The trial court did not err in assigning responsibility for payment of the children's health insurance premiums.

4. It appears the trial court did err in ordering 6% per annum interest on support arrearage.

Argument

1. The trial court did not err in entering a restraining order against Ms. Milutinovic.

The trial court did not enter a restraining order against Ms. Milutinovic by agreement of the parties. The trial court entered a restraining order against Ms. Milutinovic after hearing her testimony regarding her physically and emotionally abusive interactions with Mr. Moritz.

That portion of the Decree referencing agreement has to do with service of the order on the parties via their attorneys of records, not agreement regarding the entry of the order. (CP 94) Ms. Milutinovic and her attorney argued against the entry of mutual restraining provisions. The trial court undoubtedly took both Ms. Milutinovic and counsel's opinions into consideration when issuing the mutual orders.

Ms. Milutinovic asked the court to reconsider the issuance of mutual restraining provisions in her Motion for Reconsideration. (CP 109, 122 and 136) The trial court specifically addressed, and denied, Ms. Milutinovic's request to vacate the mutual restraining provision. (CP 125)

RCW 26.09.050 grants the authority to issue continued restraining provisions. The issuance of a restraining provision against Ms. Milutinovic was within the discretion of the court. A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Katare,* 175 Wash.2d 23, 35 (2012). No evidence before this court supports a finding that the trial court abused its discretion in entering a restraining provision against Ms. Milutinovic.

2. The trial court did not err in limiting Mr. Moritz' obligation to pay for childcare,

educational and other special child raising expenses.

Based on the income of the parties and the projected needs of the children, the trial court did not err in limiting Mr. Moritz' obligation to pay for childcare, educational and other special child raising expenses. The trial court considered testimony from both parties regarding their income and from Ms. Milutinovic regarding her expected daycare and education costs. After considering the mother's testimony, in particular her request for a nanny and expensive private education for the children, the court limited the father's exposure for childcare, educational and other special child raising expenses to an extra $1,000/month.

A reviewing court must not substitute its judgment for that of a trial court unless the trial court's order rests on unreasonable or untenable grounds. *In re the Marriage of Leslie,* 90 Wn. App. 796, 802-03 (1998). Ms. Milutinovic has not offered evidence supporting a finding that the trial court's decision to limit Mr. Moritz's obligation for payment of special child raising expenses above $1,000/month was unreasonable or based on untenable grounds.

3. The trial court did not err in assigning responsibility for payment of the children's health insurance premiums.

While it is correct that the trial court did not obligate the father to pay a portion of the mother's health insurance for the children, the court also did not require the mother to contribute toward the payment of the father's health insurance for the children. The health insurance for the children available through the father's union has no out-of-pocket cost but does have real costs, in the form of labor performed by the father. In this matter, the trial court heard testimony from both parties and elected to make each parent responsible for the cost of their own health insurance. Doing so was not a violation of RCW 26.19.080(2).

4. The trial court may have erred in ordering 6% per annum interest on support arrearage.

Our review of RCW 4.56.110(2) indicates that judgments for unpaid child support should bear interest at the rate of 12%, not 6% as ordered by the trial court. However, the trial court may have some discretion in this regard.

5. Neither party should be awarded attorney fees.

RCW 26.09.140 states "Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs." In this matter the mother was not awarded attorney fees by the trial court and, and in light of the merit of the matters contested here, has not offered any basis for an award of attorney fees on appeal. Based upon the child support worksheets (Sub 87), each party has the ability to pay his or her own attorney fees and costs.

Conclusion

The restraining order entered against Ms. Milutinovic should not be modified. The limitation on Mr. Moritz's obligation for special child rearing expense should not be increased. The parties' proportionate share of responsibility for payment of health insurance should not be amended. The support order could be amended increasing the interest rate to 12% per annum. Each party should pay his or her own attorney fees.

Respectfully submitted August 1, 2016.

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CERTIFICATE OF SERVICE

I certify that I mailed a copy of the above and foregoing, postage prepaid, on August 1, 2016 to:

(1) Richard L. Pope, Jr., Attorney-At-Law, 15600 N.E. 8th Street, Suite B1-358, Bellevue, Washington 98008 (and email to rp98007@gmail.com)

Signed at Seattle, Washington on August 1, 2016.

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