Filed
Washington State
Court of Appeals
Division Two

February 6, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of: AIMEE DENEE GUARDADO, Respondent, and OTTO MICHAEL GUARDADO, Appellant.	No. 49345-4-II UNPUBLISHED OPINION

MAXA, A.C.J. – Otto Guardado appeals the dissolution decree that dissolved his marriage to Aimee Guardado. We hold that (1) the trial court did not abuse its discretion in responding to Aimee's[1] failure to produce her counseling records by excluding those records from the trial; (2) Otto cannot contest the trial court's sealing of Aimee's counseling records on appeal because he did not object in the trial court; (3) the trial court did not err in ordering that the parties have joint possession of an unborn embryo; (4) the trial court did not err in distributing the parties' property; (5) the trial court erred in ordering that the birth certificate of CG, the parties' daughter, be amended, but did not abuse its discretion regarding other issues involving CG; (6) we decline to consider Otto's challenge to the trial court's findings of fact because he failed to make any

[1] For clarity, we refer to the parties by their first name. We intend no disrespect.

meaningful argument concerning those findings; (7) the trial court did not abuse its discretion in denying Otto's motion for reconsideration; and (8) the trial court did not err in awarding Aimee attorney fees based on Otto's intransigence.[2]

Accordingly, we affirm the trial court on all issues except for the portion of the dissolution decree requiring CG's birth certificate to be amended, which we vacate.

FACTS

Background

Aimee and Otto married in December 2011. Shortly after they were married, Otto moved into Aimee's house, which she had purchased before the marriage. Otto kept his previous home and eventually rented it out. During the marriage, Otto provided some assistance in paying the mortgage on Aimee's house.

In January 2012, Aimee and Otto began the process of having a child through in vitro fertilization (IVF). The process successfully created three embryos, two of which were implanted in Aimee. One of the implanted embryos resulted in CG's birth. The remaining embryo was placed in storage.[3]

As part of the IVF process, Aimee and Otto signed an informed consent agreement. The agreement stated that they could store the embryos created during the IVF process. If they did not want to keep the embryos, the parties could discard them, donate them to research, or donate

[2] Otto assigns error to numerous issues that he does not support with any argument. We do not address these assignments of error. *See Shelcon Constr. Grp., LLC v. Haymond*, 187 Wn. App. 878, 889, 351 P.3d 895 (2015).

[3] Although the trial court found that two embryos remained, the record shows that both parties agreed that only one embryo remains.

them to another family. The agreement further noted that the embryos were the property of Aimee and Otto, with rights of survivorship, and that neither party could use them without consent of both partners. The agreement stated, "In the event of divorce or dissolution of the marriage or partnership, the ownership and/or other rights to the embryo(s) will be as directed by court decree and/or settlement agreement." Clerk's Papers (CP) at 736.

Dissolution Filing and Discovery

In March 2014, Aimee petitioned to dissolve the parties' marriage. She requested that the trial court award her possession of her separate property. She asserted that her house was her separate property.

As part of the dissolution, Aimee and Otto agreed to allow Dr. Landon Poppleton to conduct an evaluation regarding custody of CG. The trial court's order stated that Dr. Poppleton would evaluate the impact the parties' temporary parenting plan was having on CG's health and welfare, as well as the comparative custodial fitness of both parties.

On May 8, 2015, the trial court ordered the parties to disclose their health care and mental health records up to that date and provide them to the court. The court conducted an in-camera review, determined what records were relevant, and submitted them to Dr. Poppleton for his review. Dr. Poppleton reviewed the available records and talked to people who knew the parties, and provided a report with his recommendations approximately two weeks before trial.

During discovery, Otto submitted interrogatories requesting information about Aimee's medical history, including any occasions in which she had sought the services of a mental health care provider. Aimee did not disclose that she had received mental health counseling from Jeannette Dezsofi.

Otto submitted an additional interrogatory in September 2015, again requesting information on any services Aimee had received from a mental health provider. In her response, Aimee referenced her initial disclosure and stated that all information had been provided.

In October 2015, Otto moved to compel Aimee to produce records of visits she had with Dezsofi. He stated that Aimee had visited Dezsofi at least on August 1 and 15 and that Aimee had executed a records release, but the records had not been disclosed to the court. The trial court denied Otto's motion.

On January 7, 2016, four days before the beginning of trial, Aimee's attorney received records from Dezsofi. Without reviewing the records, counsel provided them to the court. Immediately before trial began, the court informed the parties that it had received the records but had not reviewed them. Each party received a copy of the records to review on the second day of the three-day trial.

Trial and Testimony

Both parties testified on a range of issues. Regarding the parties' living expenses, Otto testified that he paid for half but acknowledged that he did not present documented support at trial. Aimee testified that Otto had paid about $1,000 per month, which went toward bills and the mortgage on Aimee's house.

Regarding the parties' remaining embryo, Aimee testified that she and Otto had not agreed on what should happen. She stated that she would like for the embryo to remain in storage until it was no longer viable, or to have it be destroyed. She was also open to the embryo being donated to science, but she did not want to have another genetic child with Otto. Otto did not testify about the embryo, but Aimee stated that he wanted it to be implanted in a surrogate.

Aimee also testified about CG's birth certificate. She stated that CG's current birth certificate lists CG's ethnicity as Hispanic and Caucasian, but that Otto's true ethnicity is Thai even though he was adopted at a young age by a Hispanic father. Otto testified that although his birth father was Thai, he considers himself to be Hispanic.

On the final day of trial, the trial court again addressed Aimee's counseling records. The court informed the parties that it did not review the records in detail. Otto argued that the court should not consider the records because the late disclosure prevented him from preparing for trial, and that he had no opportunity to depose Dezsofi. He did not argue that the trial should be continued or that he was entitled to a new trial.

The court found that neither party had committed any discovery violations, stating that a third party had not provided the records in a timely manner. However, the court stated that Aimee had presented her case before the parties had the records. On that basis, the court ruled that it would "disallow admission of those records as a whole." Report of Proceedings (Jan. 13, 2016) at 657. After the trial was completed, the trial court sealed the counseling records.

Trial Court Decision and Dissolution Decree

The trial court entered a written decision that included findings of fact and conclusions of law. The court also entered a dissolution decree.

Regarding the embryo, the court ruled that the embryo could not be used for reproduction because the court could not force Aimee to reproduce. The court ordered that, given the interests expressed by the parties, the embryo would be preserved, with the preservation paid for by Otto. The court added that the parties could petition the court for alternative relief or agree to an alternative disposition at a future date.

Regarding Aimee's house, the trial court found that she had purchased the house before she married Otto and that Otto admitted that the house was Aimee's separate property. The court ruled that Otto had failed to overcome the presumption that the property was separate and awarded Aimee the house and any proceeds from its sale.

Regarding CG, the court ruled that CG's birth certificate should be amended to list Otto's ethnic heritage as Thai. The court stated that it based this conclusion on a concern for CG's knowledge of her biology for purposes of disease diagnosis and a concern for her notions of identity. The court also requested that the State of Washington issue a new birth certificate stating that CG's birth place was Vancouver.

The trial court made specific findings that Otto had filed repetitive motions, had failed to cooperate in changing CG's pickup location, and had filed materials after trial that departed from his previous positions. The court concluded that this conduct amounted to intransigence and supported an award of attorney fees. As a result, the court awarded Aimee $25,000 in attorney fees.

Motion for Reconsideration

Otto moved for the trial court to reconsider its final orders and requested a new trial or evidentiary hearing. His motion asserted a number of arguments, including that the trial court erred in resolving issues of fact at trial. The trial court denied the motion and stated that its determinations on issues of credibility at trial were not grounds for ordering a new trial.

Otto appeals the trial court's judgment and denial of his motion for reconsideration.

ANALYSIS

A. FAILURE TO PRODUCE COUNSELING RECORDS IN DISCOVERY

Otto argues that, because of alleged discovery violations by Aimee in failing to produce her counseling records, he did not receive a fair trial. As a result, he argues that he should receive a new trial.[4] We disagree.

1. Legal Principles

CR 26(b)(1) authorizes broad discovery on "any matter, not privileged, which is relevant to the subject matter involved in the pending action," even if the information will not be admissible at trial. When responding to discovery, a party cannot simply ignore an interrogatory or request for production. *Magaña v. Hyundai Motor Am.*, 167 Wn.2d 570, 584, 220 P.3d 191 (2009). To avoid making an unwanted disclosure, a party must seek a protective order under CR 26(c). An answer that is evasive or misleading is equivalent to a failure to answer. CR 37(d).

For violations of the rules of discovery, CR 26(g) and CR 37(b) allow trial courts to impose sanctions, including excluding evidence, continuing the proceedings, or granting a default judgment. *See* CR 37(b)(2). The sanction imposed should be tailored to advance the purposes of discovery, and therefore should be proportional to the violation and the circumstances of the particular case. *Magaña*, 167 Wn.2d at 590. The remedy should be the least severe sanction that will be adequate to serve its purpose, but not so minimal as to undermine the purpose of discovery. *Id.* When balancing these concerns, the trial court is in the best position to decide how to respond to allegations of discovery abuse. *Id.* at 583.

[4] Otto also argues that the trial court erred by not making any findings of fact about the counseling records. But it is unclear what findings Otto is proposing that the trial court should have made. The court ruled that the records would not be admitted at trial.

The trial court has broad discretion in imposing the proper discovery sanction. *Id.* at 582. We review a trial court's decision for abuse of discretion. *Id.* A trial court abuses its discretion when its decision is based on untenable grounds or is manifestly unreasonable. *Id.*

2. Analysis

Here, the trial court did not abuse its discretion in excluding Aimee's counseling records instead of imposing a more significant sanction. First, the trial court found that neither party was at fault in failing to produce the records in a timely manner. Aimee did fail to properly disclose her treatment with Dezsofi, but she had signed a release to allow Dezsofi to provide the counseling records.

Second, there is no evidence that the late disclosure impaired Otto's ability to prepare for trial. The records were not relevant to most of the issues at trial. And although Aimee's health records arguably were relevant to Aimee's fitness as a parent, they were of limited relevance on that issue compared with other sources of information such as Dr. Poppleton's report.

Third, exclusion was the remedy Otto requested at the time. He and his attorney had an opportunity to review the records and did not move for a mistrial or argue that the trial should be continued. He apparently did not consider them to be important enough to ask for a more significant remedy.

Accordingly, we hold that the trial court did not err in excluding the records as a sanction and that Otto has not shown that he is entitled to a new trial.

B. SEALING OF COUNSELING RECORDS

Otto argues that the trial court erred in sealing Aimee's counseling records without undertaking the analysis required under *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d

716 (1982). But Otto did not argue this issue before the trial court and a party generally cannot raise an issue for the first time on appeal. *See* RAP 2.5(a). One exception is for "manifest error affecting a constitutional right." RAP 2.5(a)(3). However, Otto does not make any argument for why he should be able to raise this issue for the first time on appeal. We do not make arguments for the parties that they have not made themselves. *Cave Props. v. City of Bainbridge Island*, 199 Wn. App. 651, 663, 401 P.3d 327 (2017).

Accordingly, we hold that Otto has failed to preserve any objection to the trial court's sealing of Aimee's counseling records.[5]

C. DISTRIBUTION OF EMBRYO

Otto argues that the trial court erred in not awarding ownership of the parties' unborn embryo to either party. We disagree.

1. Legal Background

a. Distribution of Property

RCW 26.09.080 states that the trial court must "make such disposition of the property and the liabilities of the parties . . . as shall appear just and equitable," based on relevant factors. This decision " 'does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation

[5] Even if Otto had argued that the RAP 2.5(a)(3) exception applies, that argument would have been unsuccessful. The constitutional right of access to court proceedings under article 1, section 10 of the Washington Constitution applies to court documents only if the documents were part of the court's decision making process. *Bennett v. Smith Bundy Berman Britton, PS*, 176 Wn.2d 303, 310-11, 291 P.3d 886 (2013). Documents that were irrelevant to the court's decision making process do not receive constitutional protection. *Id.* at 311. Here, the trial court expressly stated that it did not review Aimee's counseling records, instead only skimming them to identify what they were. Because the court excluded and did not consider the records, they were irrelevant to its decision and do not receive constitutional protection.

of the future needs of parties.' " *In re Marriage of Larson*, 178 Wn. App. 133, 138, 313 P.3d 1228 (2013) (quoting *In re Marriage of Crosetto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996)).

When distributing property, the trial court is in the best position to determine what is fair, just, and equitable under the circumstances. *In re Marriage of Doneen*, 197 Wn. App. 941, 949, 391 P.3d 594, *review denied*, 188 Wn.2d 1018 (2017). Therefore, we will not reverse the trial court unless the court manifestly abused its discretion. *Id.*

b. Joint Possession

Here, the trial court ordered joint ownership of the parties' embryo. The parties generally have a right to have their interests in property definitely and finally determined once the dissolution is complete. *Byrne v. Ackerlund*, 108 Wn.2d 445, 448-49, 739 P.2d 1138 (1987). For that reason, the court in *Shaffer v. Shaffer* held that the trial court had erred in making the parties tenants in common of their apartment and its furnishings. 43 Wn.2d 629, 629-31, 262 P.2d 763 (1953). The court reasoned that the effect, which was as if the trial court had not disposed of the property at all, "was not a performance of the court's statutory duty." *Id.* at 630.

However, the court in *Byrne* distinguished *Shaffer* while approving an agreed disposition awarding a parcel of real property to one spouse and liens on the property to the other spouse. 108 Wn.2d at 449-51. The court concluded that "the *Shaffer* requirement is satisfied by a specific disposition of each asset which informs the parties of what is going to happen to the asset and upon what operative events." *Id.* at 451. Subsequent decisions have applied the same rule, allowing trial courts to order joint ownership of property when supported by fairness and equity. *See In re Marriage of Sedlock*, 69 Wn. App. 484, 500, 849 P.2d 1243 (1993); *In re Marriage of Irwin*, 64 Wn. App. 38, 53-54, 822 P.2d 797 (1992).

c. Ownership of Embryos

Only one Washington case has addressed assigning possession of an embryo, and the court resolved that case based solely on the parties' express agreement. *See In re Marriage of Litowitz*, 146 Wn.2d 514, 527-28, 48 P.3d 261 (2002). The court in *Litowitz* did not identify the relevant concerns in the absence of an express agreement, but other courts have generally adopted a balancing-of-rights approach.

For example, *Litowitz* cited favorably an opinion by the Tennessee Supreme Court, *Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992). The court in *Davis* stated,

> [D]isputes involving the disposition of preembryos produced by *in vitro fertilization* should be resolved, first, by looking to the preferences of the progenitors. If their wishes cannot be ascertained, or if there is dispute, then their prior agreement concerning disposition should be carried out. If no prior agreement exists, then the relative interests of the parties in using or not using the preembryos must be weighed.

842 S.W.2d at 604. This analysis is consistent with the approach used by other courts. *See Szafranski v. Dunston*, 2015 IL App (1st) 122975-B, ¶ 124, 34 N.E.3d 1132, 1161, 393 Ill. Dec. 604; *In re Marriage of Dahl*, 222 Or. App. 572, 194 P.3d 834, 840-41 (2008); *Reber v. Reiss*, 42 A.3d 1131, 1136 (Pa. Super. Ct. 2012).

When weighing the parties' relative interests, courts have considered a variety of factors. These have included the parties' preferred disposition, *Davis*, 842 S.W.2d at 604; whether one or both parties are the progenitors, *Litowitz*, 146 Wn.2d at 527; any current or likely future inability of a party to procreate, *Szafranski*, 34 N.E.3d at 1162-63; the constitutional rights of the parties, including the right to avoid governmental intrusion, the right to procreate, and the right to avoid procreation, *McQueen v. Gadberry*, 507 S.W.3d 127, 143 (Mo. Ct. App. 2016); and any legally established interests of the embryo. *Id.* at 141-42.

2. Embryo Distribution Analysis

Here, although the parties had entered into a written contract, the contract stated only that, in the event of dissolution, ownership or rights to any embryo would be "as directed by court decree and/or settlement agreement." CP at 736. Therefore, the trial court properly resolved the issue by balancing the parties' interests.

The court noted the relevant concerns: both Aimee and Otto were progenitors, Otto had undergone a vasectomy before the parties' marriage, Aimee did not want another child with Otto, and Aimee wanted the embryo either destroyed or stored until it was no longer viable at Otto's expense. The court ruled that the embryo would be preserved at Otto's expense, but allowed the parties to agree to an alternative disposition at a future date.

The trial court's ruling was consistent with the relevant case law. First, as required in *Byrne*, the disposition clarified the parties' rights with respect to the embryo. 108 Wn.2d at 449-51. Second, the court concluded that it could not properly force Aimee to give birth to another child. *See Davis*, 842 S.W.2d at 604 ("Ordinarily, the party wishing to avoid procreation should prevail."). Third, if Otto did not agree to destroy the embryo, the court properly allowed him to protect his interests at his own expense. *See McQueen*, 507 S.W.3d at 149 (upholding award of joint ownership, with embryos to be stored until parties reach agreement); *In re Marriage of Witten*, 672 N.W.2d 768, 782-83 (Iowa 2003) (reaching same result, with party opposing destruction to bear the expense of storage).

Allowing the parties to store the embryo while specifically stating the parties' rights and obligations was appropriate under RCW 26.09.080 and was not otherwise an abuse of discretion. Accordingly, we hold that the trial court did not err in ordering joint ownership of the embryo.

D. PROPERTY DISTRIBUTION

Otto argues that the trial court erred in making property distributions by mischaracterizing Aimee's house as separate property and by making or failing to make several other distributions. We reject Otto's arguments.

1. Legal Principles

In a dissolution action, all of the parties' property, both community and separate, is before the court. *In re Marriage of Schwarz*, 192 Wn. App. 180, 188, 368 P.3d 173 (2016). Whether property is characterized as community or separate is determined by the time at which it was acquired. *Id.* at 189. Property acquired during marriage is presumed to be community property. *Id.* Property acquired before marriage is separate. *Id.* at 188.

Once property is established as separate, there is a presumption that it remains separate absent sufficient evidence that the owner intended to convert the property from separate to community property. *Id.* at 190. In the case of real property, this conversion generally requires an acknowledged writing. *In re Estate of Borghi*, 167 Wn.2d 480, 484-85, 219 P.3d 932 (2009).

A trial court's characterization of property is a mixed question of law and fact. *Schwarz*, 192 Wn. App. at 191-92. Issues of fact include, for example, the time at which property was acquired and the method of acquisition. *Id.* at 192. We review the trial court's factual findings for substantial evidence. *Id.* But the ultimate characterization of property as community or separate is a question of law, which we review de novo. *Id.*

2. Characterization of Aimee's House

Otto argues that Aimee's house should have been treated as community property to which he is entitled half the value. However, the record clearly shows that Aimee acquired the

house before the parties were married, making the house her separate property. *Schwarz*, 192 Wn. App. at 188. Otto does not point to any evidence that Aimee attempted to convert the house into community property.

Otto emphasizes that he assisted with mortgage payments while the parties lived together. When parties to a dissolution have used community assets to make loan payments, one party may have a right to an equitable lien over the other party's separate property. *See In re Marriage of Kile*, 186 Wn. App. 864, 884, 347 P.3d 894 (2015) ("Community property contributions that retire a purchase obligation on separate property will give rise to a community right of reimbursement protected by an equitable lien.").

Here, the trial court did not appear to consider Otto and Aimee's community mortgage payments when distributing the parties' property. However, even when a trial court errs, remand is limited to situations where (1) the trial court's reasoning shows that its division was significantly influenced by its characterization of property and (2) it is unclear whether the court would have divided the property in the same way had it applied a proper characterization. *Schwarz*, 192 Wn. App. at 192.

The court made several statements suggesting that it would have reached the same distribution even had it properly characterized the property: that Otto saved money he would have otherwise spent renting another house, that Otto's use and enjoyment of the house more than offset his monthly contributions, and that Otto's contribution to the household was offset by the fact that he kept the rental income from his own house.

Accordingly, we hold that even if the trial court mischaracterized Aimee's house, that error would not warrant reversal.

3. Other Issues

The trial court allowed Aimee to liquidate the contents of a retirement account with her employer in the amount of $9,800. Otto argues that the account should have been treated as community property. But Otto has not pointed to any evidence that community funds were deposited into the account. And there is support in the record for the trial court's conclusion that the retirement account was opened before the parties were married. Accordingly, we hold that the trial court did not abuse its discretion in not awarding Otto a portion of the account.

The trial court did not distribute a debt with the Vancouver Clinic to either party. Otto argues that this was an error, but the parties presented almost no evidence at trial regarding whether the debt existed, the amount due on the debt, or whether a portion of the debt had previously been paid. Accordingly, we hold that the trial court did not abuse its discretion in implicitly ruling that the debt did not exist.

Otto argues that the trial court failed to account for personal property that he paid for but was no longer in his possession. The trial court ruled that the parties did not present sufficient credible evidence of value to allow for a ruling. Otto cites only a spreadsheet containing a list of items and estimated values of his interest. The court admitted the spreadsheet at trial, but noted that without foundation for each value, it could be used for demonstrative purposes only. Because Otto did not lay foundation for any of the line items, the spreadsheet was not evidence of value. Accordingly, we hold that the trial court did not abuse its discretion in not awarding to Otto his asserted value of the items.

Otto argues that the trial court erred in awarding each party their own car when Aimee's car was worth more and he assisted in paying the car loan during marriage. However, Aimee

testified, and the trial court found, that Aimee and Otto paid for approximately half the value of the other's car. Regardless of the value of the cars, the trial court's award " 'does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage.' " *Larson*, 178 Wn. App. at 138 (quoting *Crosetto*, 82 Wn. App. at 556). Otto has not demonstrated that the award was unfair. Accordingly, we hold that the trial court did not abuse its discretion in awarding the parties their own cars.

E. ISSUES INVOLVING CG

1. CG's Birth Certificate

Otto argues that the trial court erred in ordering that CG's birth certificate must be amended to list her ethnic heritage as Thai and in requesting that a Washington birth certificate be issued showing CG's place of birth as Vancouver, Washington rather than Oregon.

Trial courts exercise broad authority when entering a dissolution decree, and the decree may address a variety of issues. *See* RCW 26.09.050. However, the trial court's authority is not without limits. For instance, in *In re Marriage of Hurta*, the court held that a trial court could not require the parties to change their child's name. 25 Wn. App. 95, 96, 605 P.2d 1278 (1979). The court reasoned that the dissolution statutes did not include any relevant provision, and a specific statute allowed the parties to apply for a name change for their child. *Id.*; *see* RCW 4.24.130.

Here, the trial court stated that it based its ruling on a concern that CG know of her biology for purposes of disease diagnosis and concern for her notions of identity. But an order to amend a child's birth certificate is not among the categories listed by statute that a dissolution decree may contain, and is not related to an included category. If a person born in Washington

wishes to change his or her birth certificate, there is a process for requesting a new certificate from the state registrar. *See* RCW 70.58.095.

Accordingly, we vacate the trial court's order that CG's birth certificate be amended and the order requesting the State of Washington to issue a new birth certificate.

2. CG's Allergy Testing

Otto argues that the trial court abused its discretion in requiring CG to undergo testing for a milk protein allergy.

The statutory objectives of a parenting plan include providing for the child's physical care, maintaining the child's emotional stability, and "[t]o otherwise protect the best interests of the child." RCW 26.09.184(1)(a), (b), (g). We review a parenting plan for abuse of discretion. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012).

Here, the parties disagree about whether CG displayed symptoms of a milk allergy and therefore disagreed about whether she should be tested.[6] Part of this disagreement is based on inconsistent statements by CG's primary care provider. Despite this inconsistency, Dr. Poppleton testified that regardless of whether CG was in fact suffering from a milk protein allergy, it would be in CG's best interests to resolve the issue. This evidence supports the trial court's conclusion that CG should be tested.

[6] The parties apparently also disagree about whether CG has in fact been tested. Aimee argues that this issue is moot, suggesting that CG has already received the allergy test. Otto argues that CG has not yet been tested. Because Aimee has not pointed to any evidence that the issue is moot, we address it.

The trial court's conclusion that CG should be tested is consistent with the statutory goals for a parenting plan and consistent with the evidence. Accordingly, we hold that the trial court did not abuse its discretion in ordering that CG be tested for a milk allergy.

3. Child Support Condition

Otto argues that the trial court abused its discretion in requiring that he be current on all support obligations before he may claim a tax exemption for CG.

RCW 26.09.050(1) expressly directs the trial court to "make provision for the allocation of the children as federal tax exemptions." That language does not suggest that the court is restricted in the way Otto suggests, and at least one court has upheld the same type of condition on taking the exemption that the trial court imposed here. *See In re Marriage of Peacock*, 54 Wn. App. 12, 13, 17-18, 771 P.2d 767 (1989). We hold that the trial court did not err by requiring Otto to be current on his child support before he can claim the exemption.[7]

F. CONTESTED FINDINGS OF FACT

Otto assigns error to a significant number of the trial court's findings of fact and conclusions of law. He addresses many of these alleged errors with a single sentence, and the ones addressed in more depth contain little actual argument. Further, Otto does not indicate how his claims, if accepted, would change the result below.

[7] Otto also makes two statements, which he categorizes as "other errors": that the trial court did not explain why it was in CG's best interest for Otto not to pick her up from daycare early and that the trial court did not explain why it ordered a restricted parenting plan without limiting factors under RCW 26.09.191. Because these are statements that are otherwise unsupported by argument, we do not address them. *Shelcon Constr.*, 187 Wn. App. at 889.

We generally do not consider assignments of error that are not supported by meaningful argument and citation to the record. *Shelcon Constr. Grp., LLC v. Haymond*, 187 Wn. App. 878, 889, 351 P.3d 895 (2015). Accordingly, we decline to consider these assignments of error.

G. DENIAL OF MOTION FOR RECONSIDERATION

Otto argues that the trial court erred in denying his motion for reconsideration. We disagree.

CR 59 allows parties to file a motion for reconsideration with the trial court. The rule states that the trial court may grant the motion for "causes materially affecting the substantial rights of [the] parties," based on nine listed grounds. CR 59(a). We review for abuse of discretion the trial court's denial of a motion for reconsideration. *West v. Dep't of Licensing*, 182 Wn. App. 500, 516, 331 P.3d 72 (2014).

Here, Otto submitted a motion for reconsideration that did not state the particular ground in CR 59(a) on which he relied, although he asserted a number of arguments. There is no indication in the record that the trial court abused its discretion in declining to reconsider its rulings based on these arguments. Accordingly, we hold that the trial court did not err in denying Otto's motion for reconsideration.

H. ATTORNEY FEES AT TRIAL

Otto argues that the trial court erred in finding him intransigent and on that basis awarding Aimee attorney fees. We disagree.

A trial court may award reasonable attorney fees if one party's intransigence increased the other party's legal fees. *In re Marriage of Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993 (2002). Determining intransigence is a factual issue, but it typically involves delaying,

obstructing, filing unnecessary or frivolous motions, refusing to cooperate, noncompliance with discovery requests, and any other conduct that makes a proceeding unnecessarily difficult or costly. *In re Marriage of Wixom*, 190 Wn. App. 719, 725, 360 P.3d 960 (2015), *review denied*, 185 Wn.2d 1028 (2016). We review a trial court's decision regarding the award of attorney fees for abuse of discretion. *In re Marriage of Obaidi*, 154 Wn. App. 609, 617, 226 P.3d 787 (2010).

Here, the trial court made three sets of findings relevant to intransigence. First, the court found that Otto filed repetitive motions, including 13 motions from June 2015 through the trial in January 2016, which often requested the same relief after being previously denied. Second, Otto required Aimee to file a motion to change the pickup location of CG between each party's assigned residential time. Third, Otto filed new materials after trial, specifically a new parenting plan.

The court concluded that these findings supported an award of attorney fees. Otto does not specifically contest the substance of these findings, but argues that they did not amount to intransigence. Taken together these findings support a conclusion that Otto's actions, including filing unnecessary motions and refusing to cooperate, delayed and obstructed the litigation. Accordingly, we hold that the trial court did not abuse its discretion in awarding Aimee attorney fees.

I. ATTORNEY FEES ON APPEAL

Aimee requests that we award her reasonable attorney fees and costs on appeal. She argues that an award is warranted because Otto's appeal is further evidence of his intransigence.

We may award a party reasonable attorney fees or expenses under RAP 18.1(a) if allowed by applicable law. In dissolution actions, we may award attorney fees on appeal if one party is shown to be intransigent. *Larson*, 178 Wn. App. at 146.

Although the trial court found that Otto had acted intransigently, he has not done so with respect to this appeal. He raised some debatable issues and the appeal as a whole does not show that he has acted intransigently. Accordingly, we deny Aimee's request for attorney fees on appeal.

CONCLUSION

We affirm the trial court on all issues except for the portion of the dissolution decree requiring CG's birth certificate to be amended and requesting that a new birth certificate be issued, which we vacate.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Maxa, A.C.J.
MAXA, A.C.J.

We concur:

Johanson, J.
JOHANSON, J.

Sutton, J.
SUTTON, J.