In re Parentage of K.A.M.

2008 | Cited 0 times | Court of Appeals of Washington | July 2, 2008

UNPUBLISHED OPINION

Robert Merritt appeals a trial court order requiring him to continue child support payments for his adult daughter during the first semester of her fifth year of high school. We vacate the trial court's order, reverse, and remand for further proceedings because the trial court considered evidence that was not before the commissioner when it revised the commissioner's ruling.

FACTS

Merritt and Denise Andlovec divorced and entered a parenting plan for their daughter, K.A.M.[1] The trial court ordered Merritt to pay $641.83 per month for K.A.M.'s support until she "reaches the age of 18 or as long as the child remains enrolled in high school, whichever occurs last." Clerk's Papers (CP) at 28.

During K.A.M.'s fourth year of high school, the 2005-2006 school year, she enrolled at Port Angeles High School, but participated in the Running Start program and attended classes only at Peninsula College and North Olympic Peninsula Skills Center. She took an English and a history course at Peninsula College. She earned a "VP," vanishing pass, in her history course because when she stopped attending class on April 25, 2006, she was passing it. She earned a "VF," vanishing fail, in her English course because when she stopped attending it on May 11, 2006, she was failing. But K.A.M. received an "A" in a digital media course at the North Olympic Peninsula Skills Center.[2] She did not graduate from high school in June 2006, following her fourth year of high school; then she took the summer to decide whether she would continue her high school studies.

Merritt paid child support until June 2006, when K.A.M. turned 18. He then contacted the Washington State Department of Social and Health Services, Division of Child Support (DCS) to inquire about whether he needed to continue paying child support in July 2006 because he was uncertain whether K.A.M. had graduated from high school. According to Merritt, DCS informed him that it had not been able to contact Andlovec to determine K.A.M.'s high school enrollment status and, thus, DCS was closing the case and Merritt need not continue paying child support. According to Andlovec, however, she contacted DCS in June 2006 "and told them that [K.A.M.] was going to take the summer to decide if she wanted to go back to school. And [Andlovec] asked [DCS] not to collect child support at that time because [she] didn't want to have to pay some money back." Report of Proceedings (RP) (Apr. 6, 2007) at 10.

Then on September 21, 2006, DCS sent Merritt a letter telling him that it had "received information that [K.A.M.] is enrolled in high school and scheduled to graduate in June 2007. Current support has been added back to the case. Please resume making payments." CP at 34. Because Merritt is disabled and his sole source of income comes from the Department of Labor and Industries' (L&I) benefit payments, on November 7, 2006, DCS sent a withholding notice to L&I informing it that Merritt owed a child support obligation totaling $2,661.61 and that it was required to withhold $673.92 per month of Merritt's benefits for back payments of child support.

But on November 14, 2006, DCS informed Merritt that he did not owe support. In a letter, it told him that "[s]ixty days from the date on this letter, DCS will stop providing full support enforcement services for your case [because K.A.M.] is not enrolled in the high school but is taking one class at the skill center." CP at 38-39. And on November 14, 2006, DCS sent a letter to L&I releasing the order to withhold Merritt's benefits and indicating that L&I could "disburse all withheld money as appropriate." CP at 41.

One month later, on December 13, 2006, DCS changed its position again. It notified Merritt that he owed $2,661.61 in back child support, notified L&I that he owed $3,303.44 in back child support, and ordered L&I to withhold $800.00 of his benefits each month to pay the child support.[3] At the same time, DCS put a lien on Merritt's real and personal property for $3,303.44 in order to collect the amount it now claimed Merritt was in arrears.

K.A.M.'s February 15, 2007, transcript shows that she was enrolled in Port Angeles High School from September 2002 to August 2003,[4] from September 2003 to June 2006, in September 2006, and again beginning in December 2006. Her transcript also shows that she was enrolled in Lincoln High School from September 2006 to January 2007. According to Cheri Lefevre, the Lincoln High School registrar, K.A.M. "enrolled in Lincoln High School on September 25, 2006. [K.A.M.] maintains her full time enrollment status by attending the [North Olympic Peninsula] Skills Center and the Running Start program through Peninsula College."[5] CP at 62. And according to Debbie Lane, the Port Angeles High School registrar, "[K.A.M.] has been enrolled in the Port Angeles School District since [September 9, 2002, and when K.A.M.] did not graduate in June of 2006, she was retained by the high school," but her February 15, 2007, transcript shows that she was not enrolled in any high school from June 2006 to September 2006.

Merritt moved to terminate his child support obligation, arguing that it ceased when K.A.M. turned 18 in June 2006 because K.A.M. had dropped out of high school before the end of the 2005-2006 school year, did not enroll in summer school, and did not attempt to re-enroll at the beginning of the 2006-2007 high school year; therefore, he contends that she ceased to "remain[] enrolled" when she turned 18. CP at 28.

The court commissioner denied Merritt's motion because he believed K.A.M. remained enrolled in high school. But he ruled that child support would terminate in June 2007, the end of K.A.M.'s fifth

year of high school. The court commissioner did not enter written findings of fact or conclusions of law. Merritt moved to revise the commissioner's order.

On April 6, 2007, the trial court heard arguments on Merritt's motion to revise. Andlovec admitted that K.A.M. had, by then, dropped out of school in December 2006, contrary to her January 2007 declaration stating that K.A.M. was enrolled in high school. Thus, the trial court determined that Merritt should not pay K.A.M.'s support beyond December 2006, because "she stopped school." RP (Apr. 6, 2007) at 11-12.

The court entered an "Order re Clarification of Support Order" stating that "Child support for [K.A.M.] ended on December 19, 2006, the last day of fall semester of running start at Peninsula College (A du[a]l enrollment with Port Angeles High School[). K.A.M.] has ended her enrollment at Peninsula College and is 18 or older." CP at 115.

Merritt appeals.

ANALYSIS

I. Trial Court's Revision of Court Commissioner's Ruling

Merritt argues that the trial court erroneously considered new evidence when it revised the commissioner's ruling. We agree and vacate the trial court's order and remand for further proceedings.

When the trial court revises a commissioner's ruling under RCW 2.24.050,[6] it reviews both the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner. In re Marriage of Moody, 137 Wn.2d 979, 991-93, 976 P.2d 1240 (1999). Once the trial court makes a decision on review, the appeal is from the trial court's decision, not the commissioner's. RCW 2.24.050; see also State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004).

RCW 2.24.050 limits the trial court's review "to the record of the case and the findings of fact and conclusions of law entered by the court commissioner." "Generally, a superior court judge's review of a court commissioner's ruling, pursuant to a motion for revision, is limited to the evidence and issues presented to the commissioner." "In an appropriate case, the superior court judge may determine that remand to the commissioner for further proceedings is necessary."

Moody, 137 Wn.2d at 992-93. But it is reversible error for the trial court to consider additional evidence on a party's motion to revise. In re Marriage of Balcom, 101 Wn. App. 56, 59-60, 1 P.3d 1174 (2000).

Here, Merritt asked the trial court to revise the commissioner's ruling. But, because K.A.M.'s

situation was extremely fluid, the trial court considered the additional evidence that K.A.M. had withdrawn from, or ceased attending, high school after December 2006 and did not conduct its review based on the evidence before the commissioner.

Therefore, we vacate the trial court's order, and reverse and remand to the superior court to conduct a review limited to the evidence before the commissioner, or, if appropriate, remand this matter to the commissioner for submission of additional evidence and further proceedings. See Balcom, 101 Wn. App. at 60. Furthermore, if the trial court issues a decision based on the commissioner's record, but reaches a different conclusion than that of the commissioner, it should enter its own findings and conclusions. See In re Dependency of B.S.S., 56 Wn. App. 169, 171, 782 P.2d 1100 (1989).[7]

We address interpretation of the child support order because the issue will arise on remand.

II. Interpretation of Child Support Order's Language

Merritt argues that (1) K.A.M. did not remain enrolled in school during the summer between her fourth and fifth year of high school and (2) K.A.M. terminated her enrollment in high school when she ceased attending most of her classes in May 2006, before her eighteenth birthday. Because these are legal issues, we address them for consideration on remand.

Interpretation of a child support order is a question of law we review de novo. See Stokes v. Polley, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001). If the order is clear and unambiguous, we have nothing to interpret. See In re Marriage of Bocanegra, 58 Wn. App. 271, 275, 792 P.2d 1263 (1990). When the language of an order is ambiguous, we attempt to ascertain the intent of the trial court by using general rules of contractual and statutory construction. See In re Marriage of Gimlett, 95 Wn.2d 699, 704-05, 629 P.2d 450 (1981); In re Marriage of Thompson, 97 Wn. App. 873, 878, 988 P.2d 499 (1999). Orders "should be construed as a whole, giving meaning and effect to each word." Stokes, 145 Wn.2d at 346-47.

We give undefined terms "their 'plain, ordinary, and popular' meaning." Boeing Co. v. Aetna Cas. and Sur. Co., 113 Wn.2d 869, 877, 784 P.2d 507 (1990) (quoting Farmers Ins. Co. v. Miller, 87 Wn.2d 70, 73, 549 P.2d 9 (1976)). The words "remain" and "enrolled" are not defined in the child support order and, thus, we may ascertain their plain and ordinary meaning by reference to a dictionary. Boeing, 113 Wn.2d at 877.

A. Remain

The verb remain has many definitions, including "be still extant, present, or available: be left when the rest is gone"; "to stay in the same place or with the same person or group"; "to stay behind while others withdraw"; and "to continue unchanged in form, condition, status, or quantity." Webster's Third New International Dictionary 1919 (2002). Thus, to remain means that K.A.M.'s status as a high

school student continued unchanged. For example, when a student finishes his or her freshman year of high school, has not withdrawn from school, and intends on returning in the fall, he or she remains in high school.

B. Enrolled

The verb enroll is defined as "to insert, register, or enter (as a person or a fact) in a list, catalog, or roll," and also as "to enroll oneself or cause oneself to be enrolled (as in . . . for a course of study)." Webster's Third New International Dictionary 755 (2002) (alteration in original). Enrollment is the act of registering for and being registered. Failure to attend a registered course does not mean that a student is not enrolled in that course. Rather, an affirmative step is required for K.A.M. not to be enrolled in high school; she would have to withdraw her registration. Here, the child support order requires Merritt to continue paying support for "as long as the child remains enrolled in high school." CP at 28. Thus, if K.A.M.'s status of enrollment, or registration, remained the same, then she would continue to "remain[] enrolled in high school."[8]

C. Remand Necessary for Factual Determination

Here, the child support order is clear: Merritt must pay for K.A.M.'s support until she reaches 18, or for as long as she remains enrolled in high school, whichever occurs last. Under the plain language of the support order, Merritt could be responsible for K.A.M.'s support after K.A.M. turned 18 so long as K.A.M.'s status of enrollment, or registration, remained the same.

While the interpretation of the child support order is a legal issue, we decline to determine whether K.A.M. remained enrolled in high school because such a determination requires an examination of the facts of this case. The court commissioner and trial court failed to enter written findings for our review on appeal and, therefore, we remand for the trial court's determination (or the court commissioner's determination, if the trial court remands the case to the commissioner) of whether K.A.M. remained enrolled in high school as a factual matter.

III. No Prejudicial Judicial Misconduct

Merritt also argues that he was prejudiced by judicial misconduct. During the hearing on Merritt's motion to revise, Merritt's counsel asked that the trial court subtract the summer months from Merritt's obligation to pay K.A.M.'s support through December 2006 because she was not attending high school during the summer and had already turned 18. The trial court responded: "I'm not going to put it on her. He's going to have to just live with that, okay? She went to school that fall. I'm not going to alter that part of it." RP (Apr. 6, 2007) at 11. Merritt argues that these statements are prejudicial because they assume that K.A.M. was living at home and unemployed.

"A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably

prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing." State v. Ra, 142 Wn. App. 868, 884, 175 P.3d 609 (2008). Here, we are not convinced that a prudent and disinterested person would conclude that Merritt did not obtain a fair hearing. The trial court's statements concerned K.A.M.'s continuous enrollment in high school and it refused to parse out the child support award between the school year and the summer after her fourth year of high school. The child support order is clear; Merritt must pay K.A.M.'s support until she reaches 18 or as long as she remains enrolled in high school, whichever is longer. So long as K.A.M. remained enrolled in high school, Merritt was responsible for her support past her eighteenth birthday. Furthermore, the trial court heard from both Merritt and Andlovec during the revision hearing and it gave both parties ample opportunity to explain their positions. Therefore, we conclude that Merritt was not prejudiced by the trial court's comments and the trial court did not commit misconduct.[9]

IV. Attorney Fees

Merritt requests "attorney fees and other costs created to bring this case here." Br. of Appellant at 34. And Andlovec notes in her brief that "[i]t would be well appreciated by the Respondent if the court would see fit to rule that the Appellant be held financially liable for all her cost she was forced to expend in order to answer this latest legalese intimidation." Br. of Resp't at 10.

"The general rule in Washington is that attorney fees are not awarded unless permitted by contract, statute, or in specific equitable circumstances." Jain v. J.P. Morgan Sec., Inc., 142 Wn. App. 574, 587, 177 P.3d 117 (2008). RCW 26.09.140 provides that "[t]he court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under [the marriage dissolution statutes]." "The decision to award fees under RCW 26.09.140 is discretionary and must be based upon a consideration that balances the needs of the spouse seeking fees against the ability of the other spouse to pay." See Moody, 137 Wn.2d at 994.

Merritt and Andlovec proceeded pro se on appeal. It appears from the trial record that Merritt and Andlovec are in the relatively same financial position. Therefore, considering the financial resources of both parties, we deny their requests for fees and costs.

We vacate, reverse, and remand for further proceedings consistent with this opinion.

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 pursuant to RCW 2.06.040, it is so ordered.

Van Deren, C.J.

We concur:

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Hunt, J.

Penoyar, J.

1. K.A.M. was born on June 3, 1988.

2. Our appellate record does not contain attendance records for this course.

3. Apparently, DCS's confusion concerning K.A.M.'s enrollment status occurred because when she attempted to register for courses at Peninsula College, the classes were full and she was placed on a waiting list. Nonetheless, due to a miscommunication, K.A.M. continued attending classes and her instructors officially enrolled her in the courses by December 8, 2006.

4. K.A.M. was enrolled at Centralia High School during part of September 2003.

5. Andlovec submitted Lefvre's letter, written December 12, 2006, and Lane's letter, written January 18, 2007, with her declaration.

6. RCW 2.24.050 provides: All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

7. We would suggest, but cannot order, that DCS's efforts to collect or remit child support for K.A.M be held in abeyance until a final order is entered by the trial court in light of DCS's various statements to Merritt concerning child support enforcement after June 2006.

8. Merritt does not challenge the trial court's determination that K.A.M. was enrolled in "high school" when she attended Peninsula College through the Running Start Program and the North Olympic Peninsula Skills Center. But he does suggest that we use RCW 28A.225.010 (mandatory attendance statute) to define the term "in high school." High school is defined as "a secondary school," Webster's Third New International Dictionary 1069 (2002), but when a student takes course through the running start program or at a skills center, he or she is participating in an approved high school educational pathway. See RCW 28A.600.160 ("Students shall be allowed to enter the educational pathway of their choice. . . . Educational pathways may include, but are not limited to, programs such as work-based learning, school-to-work transition, tech prep, vocational-technical education, running start, and preparation for technical college, community college, or university education."). Therefore, when K.A.M. was attending these courses, she was attending courses in pursuant of her high school diploma.

9. Merritt also argues that his counsel was ineffective. "In civil cases, the constitutional right to legal representation is presumed to be limited to those cases in which the litigant's physical liberty is threatened, or where a fundamental liberty interest, similar to the parent-child relationship, is at risk." In re Dependency of Grove, 127 Wn.2d 221, 237, 897 P.2d 1252 (1995) (citations and footnote omitted). Furthermore, our Supreme Court recently held that the Washington State Constitution's guarantee of open administration of justice under article I, section 10, did not guarantee publicly funded counsel in dissolution proceedings. In re Marriage of King, 162 Wn.2d 378, 391, 174 P.3d 659 (2007). Thus, Merritt does not have a constitutional right to effective assistance of counsel and we will not review his claim on appeal. Merritt further asks us to consider many issues that are not appropriate for appeal. Generally, a party may not raise an issue for the first time on appeal. "However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right." RAP 2.5(a). Here, none of the issues Merritt raises for the first time on appeal fall into one of the above three categories and we, therefore, do not consider them.