In re Marriage of Saleh

117 Wash.App. 1017 (2003) | Cited 0 times | Court of Appeals of Washington | June 9, 2003

Concurring: Marlin J. Appelwick, Mary Kay Becker

UNPUBLISHED OPINION

Bijan Parsadmehr ("the father") contends that the trial court's order modifying the parties' parenting plan and its several post-trial orders holding him in contempt of court are not supported by substantial evidence. He also contends that the trial court erred by requiring him to pay a portion of Dolat P. Saleh's ("the mother's") attorney fees for the modification action based on pre-litigation intransigence, and by ordering him to pay all of the guardian ad litem's fees to be incurred in preparation for a review hearing to be held six months following the trial. And he contends that the trial court erred by ruling that he had waived an objection to certain post-trial evidence of contemptuous conduct by failing to object when the evidence was first introduced in support of the mother's motion for contempt. We reject these contentions and affirm all of the trial court's orders. We also reject the mother's request for an award of attorney fees for this appeal, which she contends was brought in bad faith.

FACTS

Bijan Parsadmehr and Dolat P. Saleh were married in 1987. Their marriage was dissolved by decree of the court in 1996. Two sons were born of the marriage, the oldest in 1990, and the youngest in 1992. By the terms of the agreed parenting plan that accompanied the decree of dissolution of marriage the children were to reside with their mother from Monday evening at 8 p.m. until Friday evening at 6 p.m., each week, and with their father every weekend from Friday evening at 6 p.m. to Monday evening at 8 p.m.[1] The parenting plan provided for joint decision-making.

In or about February of 1999, the parents entered into a written agreement to temporarily change the residential schedule until June 21, 1999. Under this temporary arrangement, the boys were to remain with their mother until 8 p.m. on Fridays, each week, rather than until 6 p.m., and their father would then keep them overnight on Mondays, rather than returning them to their mother at 8 p.m. that evening. Instead of reverting to the original residential schedule as contemplated by this written agreement, however, by sometime during the summer or fall of 1999 the boys were spending every overnight with their father. Thus, the mother's residential time was limited to a few hours on Tuesdays, Wednesdays, and Thursdays of each week. During these hours, the mother did homework with the boys, fed them dinner, and returned them to their father at 9 p.m. The trial court ultimately found that this arrangement was not based on mutual consent. Rather, it resulted from intimidation

by the domineering father, aided by subtle but persistent alienation by the father of the boys' natural affections for their mother, and reluctant acquiescence by the mother, who felt helpless to deal with the alienation, and who hoped to alleviate pressure on the boys by going along with the father's demands.

In the spring of 2000, the father prepared a document that would have formalized this "no overnights" arrangement, but the mother refused to sign it. That summer, the mother requested the father to commence mediation in accord with the terms of the parenting plan, in order to resolve the ongoing dispute as to the residential schedule. She asked for a response to this request by August 31, 2000. On that evening, the parents began quarreling when the mother returned the boys to the father's home. The trial court ultimately found that the mother's version of what took place that evening was more credible than that of the father; thus the court accepted the mother's explanation that the father insisted upon reading his response to the mother's request for mediation out loud, in front of the boys, and that the father blocked the mother's car from leaving the driveway when the father persisted in this effort and the mother attempted to drive away.

The mother sought psychological counseling and legal advice, and, in October 2000, brought a motion requesting that the father be found in contempt of court for failing to follow the parenting plan that accompanied the decree of dissolution of marriage. The father responded by petitioning for modification of that parenting plan, based on his contention that the "no overnights" arrangement had been reached by mutual consent; thus the father claimed that the boys had become integrated into his home with the mother's consent. The mother denied this averment and counter-petitioned for modification of the parenting plan based on changed circumstances. Thus, the issues for the ensuing modification trial were joined.

The parties subsequently agreed through mediation that the threshold requirements for holding a modification trial were satisfied, and they entered into an agreed temporary parenting plan that was much like the original parenting plan. In January 2001, the court appointed a guardian ad litem to investigate and report to the court regarding the best interests of the children in light of the parents' respective petitions for modification. The guardian ad litem provided the parties' attorneys with a lengthy report in March 2001. In October 2001, after interviewing Dr. Jack Reiter, who had performed a parenting evaluation of both parents, and Dr. Darrow Chan, who had been providing therapy to the boys for a period of months, the guardian ad litem provided a follow-up report to the parties' attorneys, recommending a settlement for their consideration, and advising them that she would make the same recommendation if the case proceeded to trial.

The modification petitions and the mother's still-pending contempt motion were tried to the court in October 2001. The court entered its oral ruling on October 30, 2001, and on November 2, 2001, the court entered its findings of fact, conclusions of law, an order regarding modification, a final parenting plan, and an order for child support. By way of summary, the court denied the father's petition for modification, finding that the "no overnights" schedule was not with the mother's

consent but was based instead on the father's threats to and intimidation of the mother, and his persistent and subtle alienation of the boys from their mother to such a serious degree that they had been robbed of a relationship with their mother. The court also found the father to be in contempt of court for his willful disregard of the original parenting plan, including the residential schedule, the transportation provisions, the respect-for-the-other parent clause, and the requirement for joint decision-making contained in that plan. The court found the guardian ad litem's report of March 2001 to be accurate, well thought out, independent and reliable -- and because the court's own observations during trial confirmed the guardian's findings and analysis of the family dynamics, the court adopted the findings and analysis of the guardian ad litem as contained in the aforementioned report. The court found the mother to be credible and the father to be less credible, both generally and with respect to the parties' varying versions of the events of the evening of August 31, 2000, and that the father had influenced the younger child to change his statement to the guardian ad litem with respect to what he observed on that evening (the child's earlier statement generally supported the mother's version of the events of that evening; his later statement generally supported the father's version).

The court also found that the boys were so thoroughly alienated from their mother, to their detriment, that they would require ongoing therapy with Dr. Chan in order to become reunified with their mother. The court found that the mother would benefit from parenting therapy, and that the father was in need of specialized parental-alienation therapy in order to reach an understanding of the serious emotional harm he had done to the boys by reason of the by-then firmly entrenched alienating conduct in which he had engaged. The court ordered the father to obtain such therapy from Dr. John Dunne, or from such therapist as Dr. Dunne should recommend.

The court found that joint decision-making was unrealistic, in that the father was verbally overbearing, inflexible, intrusive, hard to communicate with, difficult to negotiate with, and determined to discredit the mother. The court found that it would serve the boys' best interests for the mother to be the sole decision-maker with respect to the boys' educations, non-emergent health care, and religious upbringing. For the same reasons, the court was to become the sole means of dispute resolution.

The court found that the father had engaged in abusive use of conflict to the detriment of the boys, and that the opportunity for further parental alienation should be minimized. Accordingly, the court set out a detailed residential schedule that required the children to reside with their mother at all times of the year except for alternating week-ends from Friday at 6 p.m. to the following Monday morning, Thursdays every week from after school to 8:30 p.m. during the school term, and certain other designated times during school vacations, school breaks, holidays and special occasions. The court also restricted telephone contact between the boys and the parent with whom they were not residing at any given time to certain designated hours and days. This restriction was based on the guardian ad litem's recommendations after the father's telephone calls to the boys while they were with their mother had become intrusive and another means of alienation of the boys from their

mother.

The court extended the appointment of the guardian ad litem for a period of six months following the trial, and provided for a review at the end of that time, to be restricted to the issues of whether the father should be granted an additional overnight on Mondays in alternating weeks, and whether telephone contact with the absent parent should be liberalized --the guardian ad litem to make a recommendation with regard to these issues after consulting with the parents' respective therapists and the children's therapist, and the court to make the final decision on these issues if the parents should be unable to agree.

The court divided the guardian ad litem's fees incurred to the time of trial equally between the parents, but ordered that the fees to be incurred post-trial until the review hearing were to be paid entirely by the father. The court also ordered the father to pay one-third of the mother's attorney fees incurred for the modification and contempt actions, based on the father's intransigence in failing to follow the provisions of the original parenting plan, in willfully undermining that plan, in discrediting the mother in the eyes of the children thereby alienating them from their mother, as a result of which the mother was required to incur substantial attorney fees in an effort to remedy the situation.

On December 18, 2001, the trial court granted the father's motion for reconsideration, in part. With respect to the issue of contempt, the court found: "When taken in totality the Court cannot conclude that Mr. Parsadmehr was aware of what he was doing and how his {abusive use of} conflict {adversely} affected the boys." Clerk's Papers at 807. But the court added that, from then on, the father was on notice that continuing the alienating conduct, and failure to take the steps ordered by the court to correct the situation, would be considered contempt of court.

On December 21, 2001, based on a post-trial motion by the mother, the trial court found the father to be in contempt of court for, among other things, continued parental alienation, failure to abide by parenting plan provisions, and failure to obtain parental-alienation counseling as directed. The ruling regarding continued parental alienation was based in part on the mother's revelation that she had taped and transcribed a telephone conversation between the boys and their father during which the father encouraged the boys to let their grades slip at school, and to defy their mother. The court specifically ordered that the mother would be permitted to continue to tape telephone conversations between the boys and their father. The ruling regarding the father's failure to obtain counseling from Dr. Dunne or from someone recommended by Dr. Dunne was based on a declaration from Dr. Dunne and his receptionist that the father had not contacted that office at all.

The court found that the father had had the ability to comply with the court's previous orders but had failed to do so in bad faith. The order contained a warning that unless the father complied with the order to obtain parental-alienation counseling by January 14, 2002, his residential time would be suspended until he did comply. The court awarded the mother attorney fees and costs incurred for

the contempt proceeding.

On January 24, 2002, the court entered an order of contempt nunc pro tunc to December 21, 2001, on the basis of the father's continued failure to abide by the residential schedule provisions, continued engagement in parental alienation of the boys from their mother, continued failure to receive parental-alienation therapy as ordered, and failure to pay court-ordered attorney fees. Attorney fees were again awarded to the mother. On March 20, 2002, the court again held the father in contempt for: failing to comply with the court's orders entered on December 21, 2001, and January 24, 2002, and for systematically continuing with the parental-alienation conduct; for failing to make contact with Dr. Dunne, or a doctor referred by Dr. Dunne, to engage in parental-alienation therapy, and for failing to pay court-ordered guardian ad litem fees. The mother was again awarded attorney fees and costs. On that same day, the court denied a motion brought by the father asking the judge to recuse herself, and asking the court to exclude from evidence the mother's transcription of the taped telephone conversation that led to the court's contempt order entered on December 21, 2001. The court held that the motion to exclude this evidence came far too late, in that even if the father had made a timely objection to the court's consideration of that evidence, as he was then claiming, the time to move for reconsideration of that matter had long-since passed. On April 19, 2002, the trial court entered an order suspending the father's residential time with the children, based on his failure to commence parental-alienation therapy with Dr. Dunne or with a therapist recommended by Dr. Dunne as well as his failure to pay the guardian ad litem fees as ordered.

On May 24, 2002, the trial court denied the father's motion to reinstate residential time.

On June 5, 2002, the trial court held the father in contempt once again, ordering jail time for his failure to obtain parental-alienation therapy as previously ordered. The court ruled that the father could purge himself of contempt by paying the overdue guardian ad litem fees in full, and by beginning alienation counseling with a counselor named by Dr. Dunne. Although the record does not so reflect, the parties have indicated to this court that the father did purge himself of contempt, by finally obeying these two court orders, one day before he was due to report to the county jail.

ANALYSIS

I.

The father does not appeal the trial court's denial of his petition for modification of the parenting plan. He contends, however, that the trial court lacked sufficient evidence to grant the mother's counter petition for modification. Specifically, he argues that there is no significant evidence that the home environment he provided for the boys "under the existing plan" was detrimental to their physical, mental, or emotional health. His arguments on appeal boil down to these: He is not an unusually domineering person, but the mother chose to be subservient, and chose to acquiesce to his wishes and those of the children, not only after the dissolution of the parties' marriage, but before, as

well. Thus, there was no change of circumstances here, but only normal personality differences of a kind that exist in many households, before and after marital dissolution. The overnights ceased because the children wanted it that way, and he supported their wishes by making numerous phone calls to the mother. It was always in the mother's power to ignore the calls, and to ignore the tears of the children, who wanted to spend all their overnights with their father, perhaps because they have more fun at father's house than at mother's house. That the mother was too weak-willed to ignore father's phone calls and the entreaties of the crying children was her fault, not his. It is true that the children are critical of their mother, but their grievances are genuine, and the fact that the children would rather live with their father than their mother is her fault, not his. Moreover, it is unfair to blame the father for what is nothing more than normal adolescent rebellion against the mother, who chose from the start to be in charge of the children's schooling and homework.

In examining the father's contentions, we first observe that the trial court heard all the testimony at trial before reading the reports of the guardian ad litem and of Dr. Reiter. Accordingly, the trial court formed its own independent impressions of each parent's strengths, weaknesses, personality, parenting style, attitude, demeanor, and credibility before reading these reports. An appellate court will not disturb the trial court's findings as to the credibility of witnesses at trial. In re Marriage of Fiorito, 112 Wn. App. 657, 667, 50 P.3d 298 (2002). We review challenged findings of fact to determine whether they are supported by substantial evidence, that is, by evidence of a sufficient quantum to persuade a fair minded person of the truth of the declared premises. Group Health Coop. of Puget Sound, Inc. v. Department of Revenue, 106 Wn.2d 391, 397, 722 P.2d 787 (1986). The trial court's factual findings will be upheld on appeal if they are supported by substantial evidence. In re Marriage of Hansen, 81 Wn. App. 494, 498, 914 P.2d 799 (1996).

With certain statutory exceptions not here relevant, the court shall not modify a prior parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a substantial change has occurred in the circumstances of the child or nonmoving party, and that modification is in the best interest of the child and is necessary to serve the best interests of the child. RCW 26.09.260(1). In applying these standards, the court shall retain the residential schedule established by the prior parenting plan unless the child's present environment is detrimental to the child's physical, mental, or emotional health, and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child. RCW 26.09.260(2)(c).[2]

Where the prior parenting plan was uncontested, as the original parenting plan in this case was, the court may consider facts and circumstances that arose prior to the decree of dissolution of marriage, as those facts were "unknown to the court at the time of the prior decree or plan" as provided by RCW 26.09.260(1). See In re the Marriage of Timmons, 94 Wn.2d 594, 598-99, 617 P.2d 1032 (1980). Accordingly, we do not need to consider the father's argument that there has been no change of circumstances because the mother was no less subservient and he was no more dominant than was the case during the marriage.

The record reflects that both parents were born and raised in Iran. Although both have lived in the United States for most of their adult lives, and both were educated in American universities (both have degrees in civil engineering) they nevertheless retain many culturally-based traditions regarding the roles of men and women, particularly within the family unit. As reflected by the statements of several Iranian nationals who were interviewed by the guardian ad litem, in that culture women are expected to be subservient; men are expected to be dominant; and the father "owns" the children, particularly in the case of divorce. A man who feels that he has been "disrespected" by someone feels highly insulted. Mr. Parsadmehr believes that he was disrespected by two of his wife's sisters. As a result, members of the wife's family were not welcome in the family home prior to the dissolution of the marriage, and the father told one of his wife's sisters: "I will make sure everyone in your family dies in the children's eyes." Report of Guardian Ad Litem at 19.

By the time of the commencement of the modification action, the children had adopted many of their father's attitudes about their mother and members of her family. The father had complained bitterly about the mother's perceived shortcomings to everyone who would listen -- including members of the Iranian community living in this area, the guardian ad litem, and Dr. Reiter -- and by inference, to the children, as well. The children spoke to the guardian ad litem about their mother in tones and words that closely resembled those of their father. The younger child was reluctant to say anything good about his mother. The older boy was less willing to criticize his mother, but would do so if asked, using words that were similar to those of the father when he complained to the guardian ad litem about the mother. Both boys also expressed dislike for the female members of their mother's family, and felt that they owed these relatives no respect because some of them had disrespected their father. The children also expressed fear that one of their maternal aunts would poison them, and that another had a communicable disease that they could catch if they were to touch her. When their maternal grandmother visited from Iran following the divorce, the boys did not want to see her. They told their mother that they "just weren't comfortable" seeing their grandmother, although they could not explain why. Report of Guardian Ad Litem at 12.

Both boys told the guardian ad litem that they did not wish to spend overnights with their mother. After spending time with their mother, they would return to their father's home with a litany of complaints about "all of the things that were wrong at Mom's house." Report of Guardian Ad Litem at 30. When asked to explain to the guardian ad litem what was "wrong" the boys said that their mother was not interested in them because she used a laptop computer when the boys were with her. Notably, the father also told the guardian ad litem that the mother was not interested in the children, as illustrated by her use of a computer when the boys were with her. According to Dr. Reiter, the father was "out to prove" that the mother is a "bad parent." Dr. Reiter's Evaluation Report at 12; Second Report of Guardian Ad Litem at 2. The father made various reports to police and school authorities that the mother "beat" the boys. Although investigations showed these allegations to be false, the mother was confronted by police at her front door several times, who were there to investigate the welfare of the children because of these reports. The father told the wife's sister's husband that he would do anything to get the children away from their mother, and that he would do

whatever it takes to get his way.

The mother's therapist reported that the mother was psychologically intact and fully in contact with reality, although she had been depressed and anxious about the children's well being. When she came into treatment, she felt intimidated and coerced by Mr. Parsadmehr, and was not at all knowledgeable about her rights. But with treatment, she had come to understand the concept of emotional abuse and was learning to be more assertive.

This and other significant evidence in the record supports the trial court's findings of fact. Those findings, in turn, support the modification of the parenting plan. One parent's undermining of the other parent's relationship with the children can be very detrimental to children and, thus, modification based on such behavior is appropriate. In re Marriage of Velickoff, 95 Wn. App. 346, 355, 968 P.2d 20 (1998). Although the father contends that his behavior was not nearly as bad as that which occurred in Velickoff, the very experienced trial judge in this case viewed the father's systematic alienation of the children from their mother to be very serious indeed. The court also distinguished the family dynamics here from the more normal post-dissolution situation:

Certainly in divorce situations, you often have the children playing one parent off from another saying, "I don't want to be with X, because I don't like her rules or his rules." So those are typical kinds of things that you hear in normal families. But you don't see this kind of alienation and this kind of attitude of the children towards their mother and the mother's family that are very clearly evident in this case.

Report of Proceedings dated October 30, 2001 (court's oral ruling) at 8-9. We reject the father's challenge to the sufficiency of the evidence to support the court's findings of fact in support of the modification. Certainly, there was some evidence at the trial to support the father's viewpoint. But it was the trial court's prerogative to sift that evidence and to determine the weight to be given to it. After listening to the father's testimony and observing his attitudes and demeanor, the trial court concluded that joint decision-making was simply unworkable in this case, and that the only realistic means of dispute resolution must be by the court. We will not substitute our judgment for that of the trial court.

II.

Although the trial court modified its initial finding that the father was in contempt of court because it was not clear that the father understood, prior to the modification trial, just how harmful to the children his alienating conduct had been, the court left in place its determination that the father should be required to pay one-third of the mother's attorney fees incurred for the modification and contempt actions. The father challenges this ruling, contending that the only kind of intransigence that will justify an award of attorney fees is that which occurs in the course of litigation.

In re Marriage of Saleh

117 Wash.App. 1017 (2003) | Cited 0 times | Court of Appeals of Washington | June 9, 2003

Under RCW 26.09.140, the court may, after considering the financial resources of both parties, order a party to pay a reasonable amount to the other party for the cost of maintaining or defending any dissolution proceeding, including, among others, a modification proceeding. While the needs of the requesting party are generally balanced against the other party's ability to pay, the court may also consider the extent to which one spouse's intransigence caused the other spouse to require additional legal services. In re Marriage of Williams, 84 Wn. App. 263, 272, 927 P.2d 679 (1996). If intransigence is established, the financial resources of the spouse seeking fees are irrelevant. In re Marriage of Crosetto, 82 Wn. App. 545, 564, 918 P.2d 954 (1996). An award of attorney fees is reviewed for abuse of discretion and will only be overturned if the decision was clearly untenable or manifestly unreasonable. In re Marriage of Knight, 75 Wn. App. 721, 729, 880 P.2d 71 (1994).

Here, the trial court stated:

{Parsadmehr} argues that it is only intransigence during trial that merits an award of fees. However, the cases cited to the court do not specifically so state. They do award fees for litigation intransigence but don't say that fees otherwise can't be awarded. Here, there was a final dissolution and parenting plan already in place. It was {Parsadmehr's} conduct that created the necessity to return to court at all. Even if {Saleh} had tried to intervene earlier litigation would still have been necessary. Only a portion of {Saleh's} fees were awarded to account for the possibility that the matter might have been resolved more expeditiously had the mother acted sooner than she did. Even if the court had not found contempt there was sufficient intransigence regarding the original parenting plan to award attorney fees. The court specifically does find intransigence and bases the attorney fee award on that finding.

Clerk's Papers at 808 (emphasis added).

It is true that many decisions awarding attorney fees for intransigence are based on litigation abuses. See State ex rel. Stout v. Stout, 89 Wn. App. 118, 126-27, 948 P.2d 851 (1997) (intransigence found where party failed to make timely response to petition for modification, obtained continuances for discovery which was then not conducted, and failed to comply with discovery requests); In re Marriage of Foley, 84 Wn. App. 839, 930 P.2d 929 (1997) (intransigence found where husband filed numerous frivolous motions, refused to show up for his own deposition, and refused to read correspondence from his wife's attorney, all delaying trial and requiring his wife to incur additional attorney fees). But see In re Marriage of Fleckenstein, 59 Wn.2d 131, 133, 366 P.2d 688 (1961) (intransigence found where party failed to comply with orders and to make payments). Here, as the trial court noted, the father's failure to follow the original parenting plan created the need for the mother to spend money and time taking legal action. This was a sufficient basis for a finding of intransigence. See In re Marriage of Greenlee, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992) (court upheld finding of intransigence and thus award of attorney fees because party was forced to come to court to enforce decree after being unable to otherwise settle the issue outside the legal arena). Accordingly, the trial court's award of one-third of the mother's attorney fees was not an abuse of

discretion.

III.

The father's next contention on appeal is that the trial court erred when it ordered him, in the order on modification of the parenting plan, to pay all of the guardian ad litem's fees to be incurred in preparation for a review hearing six months after the trial. RCW 26.12.175(1)(d) states that the court "may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay." The court ordered each party to pay half of the outstanding balance due to the guardian ad litem as of the time of the trial itself, but placed the entire obligation on the father for the post-trial fees.

While the trial court did not explicitly find that the father had the ability to pay all of the guardian ad litem's fees in the modification order, the court did so find in connection with the subsequent contempt orders. Moreover, it was in the father's power to reduce post-trial guardian ad litem fees to a minimum by obeying the trial court's orders to obtain specialized parental-alienation counseling. This order was designed to enhance the likelihood that the restrictions on the father's residential schedule and telephone contact with the children could be liberalized after a period of six months, upon the recommendation of the guardian ad litem and the therapists for the mother, father and children. Clearly, the order that the father pay the post-trial fees to be incurred by the guardian ad litem were for the purpose of providing him with a financial incentive to cooperate for the ultimate benefit of his children. In light of the father's history of intransigence, this was not an abuse of the trial court's discretion.

IV.

The father next argues that the trial court erred when it found him in contempt on December 21, 2001, on March 20, 2002, and on June 3, 2002. He has not specifically assigned error to the contempt order of January 24, 2002, but that order was entered nunc pro tunc to December 21, 2001, so we will review both orders. On November 2, 2001, the court ordered the father, among other things, to "consult with John Dunne, M.D. or should Dr. Dunne not be available such other therapist as recommended by Dr. Dunne for treatment concerning parental alienation." Clerk's Papers at 536. After the father failed to do this, the mother filed a motion for contempt. On December 21, 2001, after hearing oral argument, the trial court found the father to be in contempt. In its January 24, 2002, contempt order nunc pro tunc to December 21, 2001, the trial court ordered that the father could purge the contempt by providing: "written confirmation to the guardian ad litem and {the} mother's attorney that he has entered counseling, schedule an appointment at the earliest possible date to commence parental-alienation counseling not later than January 4, 2002." Clerk's Papers at 912.

We uphold the trial court's December and January contempt orders on this issue. As evidence of the contempt, Saleh produced a declaration from Dr. Dunne, as well as Dr. Dunne's assistant, stating that

their office was never contacted by the father, or anyone else on his behalf, and that if there had been such contact, an appointment would have been scheduled or a referral would have been made. The father provided no evidence to the trial court that he had contacted Dr. Dunne, other than his own declaration, and even now he provides no citation to the record for supportive evidence that was before the trial court at the time of the contempt hearing. Rather, he contends that he was not in contempt because he found counseling from another source than that ordered by the trial court. The trial court had a tenable basis for exercising its contempt powers. See In re Marriage of James, 79 Wn. App. 436, 439-40, 903 P.2d 470 (1995) (a trial court's contempt order will not be reversed absent an abuse of that discretion).

We also uphold the trial court's March and June contempt orders, for continued failure by the father to make appropriate therapist arrangements and to provide the guardian ad litem with confirmation of weekly therapy. The trial court had before it substantial evidence that Parsadmehr continued to "willfully" fail to make contact with Dr. Dunne in order to engage in parental-alienation therapy, with Dr. Dunne or a therapist referred by Dr. Dunne. The trial court did not abuse its discretion. Moreover, the trial court complied with the requirement of RCW 26.09.160 that there be a specific finding of bad faith or intentional misconduct. Each of the contempt orders contains findings and conclusions stating that the father "willfully failed to" -followed by a list of father's failures to comply with previous orders of the court. The father provides no authority for the proposition that the trial court must use the exact term "intentionally." The trial court's use of the word "willfully" is equivalent to "intentionally." See Webster's Third New International Dictionary 2617 (3d ed. 1993) (defining "willful" as "done deliberately : not accidental or without purpose : intentional, self determined).

V.

The father argues that the trial court erred by considering the evidence provided by the mother that she had taped and transcribed a telephone conversation between the children and their father while the children were in her home. This evidence was provided prior to the contempt hearing on December 21, 2001 in support of the mother's contention that the father was still engaging in parental alienation by conspiring with the boys to let their grades slide so that the mother would look bad. Insofar as the record reflects, the father's objection to the consideration of this evidence was first raised months after that hearing, after the court suspended the father's residential time with the children, on April 19, 2002, for his failure to obtain parental-alienation counseling as previously ordered. The court rejected the request as untimely, pointing out that there was no court reporter at the hearing the previous December, that the session was not tape-recorded, and thus there was nothing to support the father's claim that he had in fact objected to the evidence at the time that it was presented. The court also pointed out that the 10-day deadline for filing a motion for reconsideration of such evidentiary ruling as the court may have made in response to any such objection had long since passed. Although the father raises an interesting legal issue regarding the admissibility of the transcription of the taped telephone call in light of RCW 9.73.050, we decline to

reach the issue because it was not timely preserved in the trial court. Moreover, the record reflects that the father's residential time was suspended because he willfully refused to comply with the court's order regarding parental-alienation counseling, not because, months before, the trial court considered the evidence contained in the transcription of the taped telephone call to support its finding that the father was in contempt of court for, among other things, actively pursuing a course of conduct that alienated the boys from their mother.

VI.

Finally, we address the mother's request to be awarded attorney fees for this appeal. Her request is made under RCW 26.09.260(11), which provides for such an award when a motion to modify a parenting plan is brought in bad faith. But the trial court never found that the father brought his modification action in bad faith. Moreover, the father has not appealed the trial court's denial of his motion for modification. To the extent that the mother's request for attorney fees is based on a contention that the father filed a frivolous appeal, it must also be denied. This court denied a motion on the merits to dismiss the appeal earlier in this appellate process, thereby rejecting the notion that the father's appeal raised no debatable issues. The mother is entitled to her costs under Title 14 of the Rules of Appellate Procedure but each party must bear his and her own attorney fees for this appeal.

We affirm the trial court's orders in all respects.

1. The plan also provided for extended vacation times and holiday times in each parent's home. We have omitted a description of these provisions, as they are not relevant to the issues on appeal.

2. The father characterizes the modification here at issue as a major modification, and the trial court treated it as such by making all the necessary findings to support a major modification under RCW 26.09.260(2)(c). The mother does not contend that this was only a minor modification as defined by RCW 26.09.260(5). Accordingly, we will treat the matter as a major modification without going through the exercise of counting the number of days or overnights in a calendar year by which the father's residential schedule was actually changed.