



Tanya Goodman, Appellant/cross- Respondent V. David Parson, Respondent/cross-appellant

2020 | Cited 0 times | Court of Appeals of Washington | November 23, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Parenting and Support of

A.P.

DAVID PARSONS,

Respondent/Cross Appellant,

and

TANYA GOODMAN,

Appellant/Cross Respondent. No. 80839-7-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. Tanya Goodman and David Parsons, the parents of A.P., have been involved in protracted conflict since shortly after his birth. The trial court adopted a final parenting plan for A.P. when he was two years old, following a trial. Three years later, after another trial, the court modified the parenting plan. Finding that the mother had engaged in abusive use of conflict, the court allocated sole decision-making authority to the father as to education and non-emergency healthcare and altered transportation provisions. The court declined to modify the residential schedule attorney fees. Both parties appeal.



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Substantial evidence supports the he trial court did not

misapply the law or abuse its discretion with respect to the imposition of RCW

26.09.191 restrictions, transportation provisions, or the residential schedule. We affirm the trial court order and findings on the modification petition and the final

parenting plan.

FACTS

In 2015, Parsons filed a parentage action, seeking the adoption of a

parenting plan for A.P. In November 2016, the court entered the final parenting

plan following a trial. That plan provided for joint decision-making and a

residential schedule that ime with Parsons.

When A.P. reached the age of five, the plan set forth a 50/50 residential

schedule. Due to the high level of conflict between the parties, the parenting

plan included an alternative dispute resolution process and required use of a

parenting coordinator to facilitate the communication. 1

When it adopted the 2016 parenting plan, the court found that Goodman

had not always acted in had potential to

relationship with his father. Specifically, the court found that

Goodman had disparaged Parsons, secretly submitted A.P. to a child abuse

examination, and instigated an abuse investigation of Parsons without concrete

evidence. The court warned Goodman to refrain from communicating a

of Parsons. The court stated that the parenting plan



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should be modified if Goodman continued to act in a manner that created a

Goodman appealed and this court affirmed the parenting plan.

1 The parenting plan provided for mediation, but the court later amended the provision to require arbitration and to allow the parenting coordinator to the right to seek review by the arbitrator. See In re the Parenting & Support of A.P., noted at 6 Wn. App. 2d 1044, 2018

WL 6787917 (unpublished).

The conclusion of the trial and entry of a final permanent parenting plan

did not put an end to, or in any way diminish, the conflict between the parents.

f autism spectrum disorder shortly after the trial and issues

related to the appropriate treatment following that diagnosis and other health

care issues became major sources of conflict. Other disputes involved the

residential provisions, vacations, telephone access, and

appropriate preschool programs. Two parenting coordinators worked intensively

with the parties. The parties submitted approximately 20 issues to arbitration.

The court found the mother to be in contempt in 2017 and again in 2018 for

violating residential provisions of the parenting plan. 2 The mother also filed an

anti-harassment petition against . 3 The trial

court dismissed that petition and imposed sanctions.

The first parenting coordinator withdrew from the case after working with

the parties for approximately a year. Her final status report stated, in part:

Joint decision making is unworkable for this family, fuels conflict and 2

the court concluded that the finding of contempt based on nine violations of the



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ephone access could not be a basis for contempt because the ruling had not been confirmed by the court. See *In re the Parenting & Support of A.P.*, noted at 9 Wn. App. 2d 1089, 2019 WL 3546870, *5 (unpublished). The court held that Goodman was nonetheless subject to sanctions for violating the ruling under RCW 26.09.184(4). Id. at *8. 3 Because Parsons and his spouse share the same last name, we refer to his spouse as Monica to avoid confusion. would be fairly easy to reallocate decision to one or the other parent. In this case, assigning a sole de radically different perceptions of [A.P.] and their polarization regarding his

developmental and medical needs.

The parenting coordinator also noted longstanding concerns about the her the child with an eye to allegations of abuse or neglect. The parenting

coordinator recommended that the mother undergo a psychological evaluation

and recommended a reevaluation of the question of decision making.

The father filed a petition to modify the parenting plan. 4 A.P. was five

years old at the time of trial on the modification petition in October 2019. The

court appointed experts to conduct a psychological evaluation and a parenting

evaluation. Clinical and forensic psychologist, Dr. Gary Wieder, conducted the

parenting evaluation and submitted a 104 page report. Dr. Wieder

recommended allocating sole decision-making authority to the father.

After reviewing more than 150 exhibits and hearing testimony from 12

witnesses over 6 days, the trial court entered a final parenting plan and an order

motion for reconsideration, in part, and entered an amended parenting plan and

final order and findings.

The court found a substantial change of circumstances and that

nonresidential changes to the parenting plan See RCW 26.09.260(10). The court determined that the mother had engaged in



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the abusive use of conflict. The court found that or sole

4 The record on appeal does not include Parsons . decision-making authority was reasonable on that basis and in view of the history

The plan provides for the

father to have sole decision-making authority as to educational and non-

emergency health care issues, with input from the mother. The court also found

that the mother had during exchanges home. To address this, the court adjusted the transportation provisions to

require the mother to arrange for third-party transportation at her expense when

exchanges home.

The court declined to , as

requested by the father. D the court found that the

attachment between A.P. and Parsons remained intact, and retained the 50/50

residential schedule. motion for attorney fees. 5

Both Goodman and Parsons appeal.

DISCUSSION

I. Standard of Review

We review a trias decisions related to the welfare of children for an

abuse of discretion. In re Marriage of Horner, 151 Wn.2d 884, 893, 93 P.3d 124

(2004). Relevant here, a court has authority to modify a parenting plan and

impose restrictions under RCW 26.09.191, to the same extent it has the authority

to do so at the time of entry of the parenting plan. In re Marriage of Watson, 132



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Wn. App. 222, 232, 130 P.3d 915 (2006). We review modifications to a parenting

5 The court did not require the use of a parenting coordinator in the 2019 parenting plan, but required the parties to continue to submit disputes to the same arbitrator, based on his extensive familiarity with the case. plan for an abuse of discretion. In re Marriage of Hansen, 81 Wn. App. 494, 498,

914 P.2d 799 (1996). A trial court abuses its discretion when its decision is

manifestly unreasonable or based on untenable grounds or reasons. In re

Marriage of Katare, 175 Wn.2d 23, 35, 283 P.3d 546 (2012).

We uphold a s findings if supported by substantial evidence. In

re Marriage of Raskob, 183 Wn. App. 503, 510, 334 P.3d 30 (2014). Substantial

evidence exists if the record contains evidence of a sufficient quantity to

persuade a fair-minded person of the truth of the declared premise. Katare, 175

Wn.2d at 35. trial court or to weigh the evidence or credibility of witness In re Marriage of

Rich, 80 Wn. App. 252, 259, 907 P.2d 1234 (1996). The person challenging the

findings of fact bears the burden of demonstrating that substantial evidence does

not exist. In re Marriage of Grigsby, 112 Wn. App. 1, 9, 57 P.3d 1166 (2002).

We review s findings of fact support its

conclusions of law. Raskob, 183 Wn. App. at 510.

II.

A. Abusive Use of Conflict

Goodman claims the court did not apply the same standard to both parties

when it found that she, and not Parsons, engaged in the abusive use of conflict.



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She argues that the court found abusive use of conflict even though none of her development, as required by RCW 26.09.191(3)(e). On the other hand, she claims directly involved

A court may preclude or limit any provision of the parenting plan if a

s involvement or conduct has s best

RCW 26.09.191(3). That statute provides a nonexclusive list of

factors that may have an adverse effect s best interests, including

nger of serious

damage to the child 3)(e). A

finding of abusive use of conflict does not require actual damage. In re Marriage

of Burrill, 113 Wn. App. 863, 872, 56 P.3d 993 (2002).

Id.

Here, the court found, in relevant part,

1. The Court finds the mother has engaged in abusive use of conflict. The mother was found in contempt of court on July 28, 2017 and on July 12, 2018 for intentionally withholding the child from the father in violation of the final Parenting Plan. The mother has been sanctioned pursuant to CR 11 for seeking an anti- harassment order against the stepmother in bad faith. The mother filed a motion for contempt against the father which she later withdrew, but only after the father filed a response and incurred attorney fees. The court finds credible the testimony of the therapy appointment, the mother blocked her view of the child and

attending the appointment and removed the child from her arms.

The court finds credible the testimony of the father that: (a) the mother improperly interfered with the child receiving a flu shot and a vaccination for Hepatitis A, (b) the mother violated the November Baby Cam located in his house that was ordered to be

inappropriate conduct caused an autism specialist to decline evaluating the child and thus unnecessarily delayed his autism reevaluation.



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...

3. The court finds that the father has caused unnecessary conflict with the mother, but that his conduct falls short of abusive use of conflict. food even though it appears to serve no purpose other than to

cause the mother distress. The mother testified credibly that the father can see the school from his home and that he spies on the mother when she drops the child off at school. The mother testified the father stood behind the front door and surreptitiously audio

recorded her rather than assisting with the transfer. The mother of kindergarten, the father stood-by video-recording her the entire time.

Substantial evidence in the reco

the identified incidents occurred. We do not agree that the court must have

applied the legal standard unequally in order to reach different conclusions about

t amounted to abusive use of conflict. The court

found that Goodman engaged in both different and more extensive conduct than

Parsons. The court concluded that Parsons actions using food coloring,

watching the mother from his home when she dropped A.P. at school, audio

recording the mother from behind a door, and video recording her with A.P. on

the first day of kindergarten caused unnecessary conflict. But, those actions

did not involve the child and the court correctly did not find

that those acts created a danger of serious damage

development. And, c court expressly found

that conduct was inappropriate. The court addressed the misconduct by ordering the parties not to record each other without consent and directing the

on Goodman at A.P.



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Goodman points out that her acts were not egregious in comparison with abusive use of conflict that has occurred in other cases. For example, Goodman cites Burrill, in which the mother engaged in abusive use of conflict by, among other things, raising unfounded allegations of sexual abuse that resulted in the f-child relationship. Burrill,

113 Wn. App. at 867-68. But, the conduct in Burrill was the basis for more severe restrictions than the court imposed here. Id. at 868. And, more importantly, the fact that a court relied on more serious misconduct to find abusive use of conflict in another case does not establish that actions were insufficient to support restrictions under RCW 26.09.191(3).

Goodman claims that A.P. was not involved in or aware of some of her actions, such as her legal actions against Monica and Parsons and her confrontation of Monica therapy session. So, even if these actions fueled conflict between the parties, she asserts that they posed no danger of ser psychological development.

But, Goodman concedes that a child may be psychologically harmed by parental conduct of which the child is unaware. Generally, courts find abusive use of conflict where one parent inserts a child into a parental conflict. See

Burrill, 113 Wn. App. at 868. And, here, in addition to acts that A.P. was

presumably unaware of, the court relied on other acts that directly involved him in conflict and created a risk of alienating him from Parsons or eroding his parental



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trust.

Dr. Wieder concluded that Goodman engaged in the abusive use of

extorti

hostility toward Monica sent

harmful empts to sabotage s

caretaking Dr. Wieder determined that the

nd

s

pervasive negative views of the father and his spouse were not susceptible to

change:

So my concern is that the distorted views that I believe she has about the father and Stepmother could lead her, and likely will lead her, to both provocatively controlling behaviors and potentially overinvolvement behaviors with her child. The evidence in the record is sufficient to persuade a fair-minded person

that Goodman involved the child in th danger of

serious damage to his psychological development. Therefore, the court acted

within its discretion by restricting -making authority under

RCW 26.09.191(3).

B. Transportation Provisions

Goodman challenges the provision that requires her to arrange for a third-

party to transport A.P. to Parsons home. The court adopted the measure to

address conflict during exchanges at th :



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conduct at his home during child exchanges has increased the conflict. She unnecessarily prolongs the exchanges at his home, causing the child distress. She interferes with the child entering the a child exchange even though there was no reason to seek help from law enforcement.

Goodman claims s finding is based on speculation that she is the cause of A. to transitions. But, the testimony of Parsons, Monica, and Dr. Wieder, and video evidence support the . There was evidence that Goodman prolonged transitions, ind to encourage him to enter the house when Monica was present, and encouraged A.P. to demand assistance. And, as recounted by the court, on one occasion, the mother sat in her vehicle with A.P. for more than an hour and then, unnecessarily, summoned police to assist her. T -party to speculation that she might be unable to comply w

C. Other Issues

Goodman challenges the requirement that A.P. attend school in the district where Parson lives. She claims this decision failed to take into account the traumatic brain injury she suffered in January 2018 which impacts her ability to transport A.P. during her residential time. However, the choice of school issue was not before the court in 2019. Several months earlier, the arbitrator resolved the issue after considering input from the parents and the parenting coordinator. 6 The issue of school choice is not properly before us in this appeal of the 2019



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parenting plan and order and findings on modification.

Goodman also credibly that the mother and father are incredibly polarized in their beliefs about what is best for the child, and that argument, substantial evidence in the record supports this finding. Dr. Weider

testified consistently with other evidence in the record alth care providers. There was evidence demonstrating that although A.P. had seen as many as 30 doctors since the entry of the parenting plan and had been subjected to a wide array of medial and

6 In his brief Parsons asserts that the mother sought review of the did not appeal. developmental exams for someone his age, there was little evidence to

ncerns. And, there was evidence

that the mother continued to insist that A.P. suffered from ailments and injuries in the face of contrary medical evidence.

In its findings and order on modification, the court ordered the father to arrange for an autism reevaluation within six months. The mother claims the court erred by entering the parenting plan because, without the results of that evaluation, it was not possible to know what provisions are in est.

We disagree. In adopting the parenting plan, the court took into account all of lopment, including his pending reevaluation. Goodman fails to establish error.

III. Parsons Cross Appeal

A. Residential Schedule

Parsons claims that, based on the finding of abusive use of conflict, the



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court should have adopted his proposed residential schedule and significantly

Parsons argues that reducing the

residential time was warranted because the evidence showed that her

alienating behaviors had already affected A.P. 7

As explained, the court had discretion to place limitations on involvement, including her residential time, based on its finding under RCW

7 Parsons claims that A.P. has made spontaneous statements that suggest coaching by Goodman. However, he cites an exhibit that was not designated as a part of the record on appeal. To the extent that Parsons raised the issue in the parenting evaluation, the evaluator concluded the allegations could not be verified. 26.09.191(3)(e). But, the court was not required to do so. And, in addition to the

evidence Parsons cites, the court considered other evidence that A.P. was

attached to both parents and both have strengths. The court also considered Dr.

that notwithstanding the abusive use of conflict, the court

should not disturb the residential schedule and doing so would not necessarily

reduce the potential impact of alienating behavior. The court did not abuse its

discretion.

B. Attorney Fees

The provided that Parsons could request attorney fees

in a posttrial motion. Parsons apparently filed such a motion, seeking over

\$35,000 in fees, and the trial court denied it. The court later denied his motion to

reconsider that ruling.

Parsons claims he was entitled to fees because undying

necessitated the modification. However, Parsons failed to



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are included in the record on review. A determination of intransigence is necessarily factual. In re Marriage of Wixom, 190 Wn. App. 719, 725, 360 P.3d 960 (2015). Without a record of the arguments raised below and the basis for claim that the court abused its discretion in denying his request for attorney fees. See In re Marriage of Bobbitt, 135 Wn. App. 8, 29-30, 144 P.3d 306 (2006) (this court reviews a motion for attorney fees based on intransigence for an abuse of discretion). IV. Attorney Fees on Appeal Parsons seeks an award of attorney fees on appeal, arguing that s frivolous. But, he cites CR 11 and RCW 4.84.185 and neither provides a basis to recover his fees on appeal. We deny the request. 8 Affirmed.

WE CONCUR:

8 A c opening brief and not limited to to the issues he raised in his cross appeal, we disregard the improper arguments. See RAP .

