

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Parentage of)	No. 67372-6-I
A.G.D., dob 01/17/2009, and)	
A.J.D., dob 01/17/2009,)	DIVISION ONE
)	
Minor Children,)	
)	
JOHN DAVIDSSON,)	UNPUBLISHED OPINION
)	
Appellant,)	
)	
v.)	
)	
JENNIFER J. WILLIAMSON,)	
)	
Respondent.)	FILED: January 14, 2013

Schindler, J. — Representing himself pro se, John Davidsson challenges the court’s decision in this parentage action to designate the mother as the primary residential parent of their children and give her sole decision-making authority based on a history of acts of domestic violence and abusive use of conflict. Davidsson also contends the trial court erred in ordering him to refinance or sell the condominium, excluding witnesses and exhibits, and awarding attorney fees to the mother. We affirm in all respects.

FACTS

Jennifer Williamson and John Davidsson started dating in May 2007. In July

2008, Williamson learned that she was pregnant with twins. In fall 2008, the couple attended counseling sessions with Dr. Lillian Buchanan. Dr. Buchanan tried to help the couple avoid their “negative interactive cycle.”

In December 2008, Williamson and Davidsson purchased a condominium in Lake Stevens. Davidsson paid the down payment of approximately \$8,000. Davidsson drafted a “Co-Habitation/Tenancy-In-Common Agreement” (Agreement). Williamson and Davidsson signed the Agreement on December 22. The Agreement states that Davidsson and Williamson shall each own 50 percent of the condominium, hold title as tenants in common, and are equally responsible for payments, assessments, taxes, and other costs. The Agreement also provides that “[n]o person(s) shall be permitted to visit or stay at the property without the consent of the other party.”

The twins, A.G.D and A.J.D., were born prematurely on January 17, 2009. Williamson stayed home and took care of the babies. In spring 2009, Williamson returned to work as a temporary employee at Microsoft, and Angela Boekelman took care of the children. Boekelman said that Davidsson would not let her take the children anywhere in a car. Because few activities were within walking distance, Boekelman and the children stayed at home most of the time.

In April, Davidsson’s father David Skjonsby came to stay with the couple for a month to help take care of the children. Skjonsby left, and Williamson took the children and went to stay with her mother and stepfather. Williamson agreed to return on the condition that Davidsson would participate in couples counseling. Davidsson and Williamson met with a new counselor a few times. But after the counselor attempted to use a “wheel of abuse” during one of the sessions, Davidsson filed a complaint against

the counselor.

In July 2009, at Davidsson's request, Skjonsby started living at the condominium. Davidsson said that "[s]ince then, my father has been instrumental in the care and nurturing" of the children. After Skjonsby moved in, Davidsson "change[d] the list of approved visitors to me, [Williamson], and my father only." In August, Davidsson enrolled in law school. Davidsson attended classes at night and worked part time in a law office.

On February 17, 2010, Williamson filed a petition to establish parentage, child support, and a parenting plan, and a motion for an ex parte restraining order. Williamson asked the court to designate her as the primary residential parent but allow the children to stay with Davidsson every weekend until a guardian ad litem (GAL) had the opportunity to make a recommendation. In support of the restraining order, Williamson alleged Davidsson had been verbally and emotionally abusive.¹

The court entered a temporary order giving Williamson custody of the children, and issued a temporary restraining order. The order allowed Williamson to go to the condominium on February 17 to remove belongings.²

The court scheduled a hearing for March 1. Before the hearing, Davidsson filed

¹ In her declaration, Williamson states:

[Davidsson] has called [me] names . . . and has on multiple occasions barked at me after calling me a dog, told me that I should "go sleep in a trough like all the other cows", told me I make him sick, threatened to throw me out of a window and break my neck, threatened to "break the legs" of any man that comes into my life or our [children's] lives in the future, and has asked me to leave the house so that he can have a prostitute come over. . . . Often times when Mr. Davidsson is yelling at me and calling me names, he will get right in my face and continue to shout obscenities. Although he falls short of actually hitting me, I am fearful that his rage may escalate to that if pushed. He has behaved that way in front of our [children] and his father as well.

² When Williamson and her family and friends went to the condominium, Skjonsby called the police. Williamson showed the officers the court order and told them Davidsson had a gun locked in a gun safe in the house.

a declaration denying Williamson's allegations and alleging she was "hostile, confrontational, . . . irrational," and abused him "with words and deeds."

At the March 1 hearing, the court entered a temporary order restraining the parties "from coming to the other's residence except for exchange of the children." The court appointed a GAL to "make recommendations based upon an independent investigation regarding the best interests of the child(ren)." The temporary order allows the children to reside with Williamson during the week and with Davidsson every weekend pending the GAL investigation. On April 29, Davidsson stipulated to an agreed order of paternity.

On June 25, 2010, the GAL filed a 23-page report. Based on police reports, the GAL described a number of incidents between Davidsson and prior girlfriends, and an incident with his father. The GAL also describes interviews with Williamson and Davidsson and a number of others, including Skjonsby, Williamson's mother, day care providers, and therapists.

Williamson expressed concerns about "the father's anger issues, which he has not dealt with." Williamson told the GAL "she was afraid of Mr. Davidsson and lived every day in fear, not knowing if it would be a good day or a bad day." Williamson also described an incident in November 2009 when Davidsson told her to leave and would not let her go back into the house. Williamson said that after Davidsson slammed the door and cracked the frame, she called 911. The GAL notes Williamson was diagnosed with a general anxiety disorder and she takes medication to control her anxiety.

The GAL's description of the interview with Williamson states, in pertinent part:

[Davidsson's] extreme ups and downs concern [Williamson]. He can have suicidal thoughts and be in a fetal position, be punching holes in the wall, or be happy. His last apartment was riddled with holes on the wall. There were holes next to the bed because of night terrors. He has thrown things at her, such as [A.J.D.]'s diaper because he had a diaper rash. He has punched her laptop [computer], broken her Blackberry. When he broke her laptop, she saw a fist-shaped crack on the screen. She had heard a noise but thought he had smashed his fist on the countertop. He also threw and broke her cell phone. She felt that he was breaking her lifelines, her access to friends and family. He would not allow her to have friends come to the house without his express approval.

There was an incident in which he took a bottle from [A.J.D.]'s mouth and threw it, hitting her on the head because she had sprayed his things by accident. He said she was negligent. He often called her demeaning names.

Davidsson told the GAL that he does not have an "anger problem," and that Williamson's allegations were "patently false." According to Davidsson, "the mother's mental health is a key issue." Davidsson described Williamson's decision to leave as abusive. Davidsson expressed concerns about Williamson's parenting and her "laissez-faire" approach. Davidsson said that her "hands off attitude towards [the children's] health . . . does not meet his standard of care." Davidsson also told the GAL that he was concerned that he was only able to have the twins stay with him two days a week.

Davidson's father Skjonsby told the GAL that he and Williamson took care of the children, and he had a good relationship with her. Skjonsby said that he would "occasionally" intervene when the parents argued. The GAL also interviewed a therapist Davidsson saw in 2008, the therapist who worked with the couple in 2008, and child care provider Boekelman.

The GAL recommended the court designate Williamson as the primary residential parent and the children stay with Davidsson Tuesday, Thursday, and

alternating weekends. Because Williamson's "reports of [Davidsson's] accusations and anger are credible," the GAL recommended that Williamson have sole decision-making authority until Davidsson completes an anger management class. The GAL also recommended both parents engage in counseling and "[t]he father should keep his gun in a gun safe."

After the GAL issued the report, Davidsson filed a motion to appoint a parenting evaluator and continue the trial. The GAL did not object to appointment of a parenting evaluator. Williamson opposed appointing a parenting evaluator and continuing the trial date. In reply, Davidsson argued that a parenting evaluation was critical, and he was not asking Williamson to "pay anything toward the evaluation." Davidsson asked the court to appoint a parenting evaluator "at my expense," and continue the trial date to allow time to conduct the evaluation and prepare the report.

The court granted Davidsson's motion. The court appointed Dr. Eden Deutsch to conduct a parenting evaluation at Davidsson's "sole expense," and continued the trial date from August 12, 2010, to January 12, 2011. Davidsson retained Dr. Deutsch and signed an agreement stating he was "responsible for payment of 100% of the costs" for the evaluation. Williamson participated in the evaluation and met with Dr. Deutsch.

On December 30, the parties stipulated to an order continuing the trial date from January 12 to May 18 to allow completion of the parenting evaluation and mediation. On February 25, 2011, Williamson filed a motion to compel Davidsson to comply with the parenting evaluation order. In response, Davidsson filed a motion to clarify or, in the alternative, to limit fees for the parenting evaluation. Davidsson argued that the

parenting evaluator's fees exceeded the amount ordered and he could not pay the fees.

The court granted the motion to compel compliance with the parenting evaluation and awarded Williamson \$750 in attorney fees.³ The court found that "Dr. Deutsch has stopped his work in part, at least, because the father told him to stop because of an impending mediation last year that was cancelled." The court also found:

To the extent there was such a "threshold," the Order requires the relative expense of an evaluation by Drs. Deutsch and Gilbert be decided before either began an evaluation, not after Dr. Deutsch had started his work and the mother had, in good faith, complied with Dr. Deutsch's evaluation requests of her. The father is sophisticated and had competent counsel in August 2010.^[4]

The court ordered Davidsson to "make a good faith effort to comply with the August 4, 2010 Order." Davidsson did not comply with the order, and Dr. Deutsch did not complete the parenting evaluation. On April 6, 2011, Davidsson's attorney filed a notice of intent to withdraw effective April 22.

On May 9, the GAL filed a supplemental report. In addition to conducting another interview with Davidsson and Williamson, the GAL also interviewed Davidsson's friends Eric Watt and Janie Munoz, former nanny Sharlotte Cooper, and the director of the day care facility.

Williamson told the GAL the twins were enrolled in County Kids day care and were "blossoming socially. Their language skills . . . have developed [and] they have

³ The court stated, in pertinent part:

Because of the father's not following the Court's prior Order and in not following through with the evaluation by Dr. Deutsch, and because of the mother's need and father's ability to pay, the mother—petitioner is awarded \$750.00 in fees and costs for having to bring this motion.

⁴ (Emphasis in original.)

structured and unstructured playtime.” Williamson said that before County Kids day care, Cooper took care of the children but there were problems with “her consistency and lateness.”

In his interview with the GAL, Davidsson said he continued to have concerns about Williamson’s parenting. Davidsson said that after Cooper had filled out a questionnaire he prepared, he contacted Child Protective Services (CPS). The GAL report states that after Davidsson spoke with Cooper, he “was concerned and wrote a letter to CPS but was told that there was not enough information to investigate.”

Cooper told the GAL she did not fill out the questionnaire and Davidsson misrepresented what she told him. The GAL report states, in pertinent part:

[Cooper] told me that she did not fill out the questionnaire but that [Davidsson] asked her questions, and he filled it out. She also said that she felt he had twisted her words and that she had told him he was getting it all wrong. She said that, when she worked as a nanny for [Williamson], he contacted her frequently by email, and it made her uncomfortable. [Cooper] cannot think of any concerns about [Williamson]’s parenting.

.....

[Cooper] told me that both parents were very good parents and loved their children. Neither is abusive or neglectful. There was never any reason to contact CPS.

.....

[Cooper] said that [Williamson] was stern but not harsh with the [children] and gave them timeouts. At the father’s house, there were no rules or structure. The children had no set naptime or meals. They were allowed to throw food or their cups. When she cared for [A.J.D.] and [A.G.D.] the day after they were at their father’s house, they would throw food and cups. They were also exhausted after spending the day at there [sic]. She said that they are great kids but need some structure and guidance.

.....

The home was not dirty. Part of her routine was to wash the dinner dishes and to vacuum daily, primarily because her own daughter has problems with cat dander.

The GAL adhered to the recommendations in the previous report but expressed concerns about the conflict between the parents and the need for Davidsson to engage in anger management.

My concerns in this case continue to be the conflict between the parents and their inability to communicate. However, it appears that they can communicate about the basic needs of their children. Their parenting styles are different, and the father needs to accept this rather than try to change or critique the mother's style by contacting babysitters and CPS. It is concerning that he continues to monitor her parenting. He needs to follow through with the recommendation that he engage in counseling and anger management. He should provide copies of this report and the previous report to the counselors as well as any court orders regarding the children.

Representing himself pro se, Davidsson filed a trial brief. Davidsson criticized the GAL's report and recommendations, and attached the "Declaration of Anthony Zold," a clinical psychologist who had reviewed the GAL report and "over 250 pages" of pleadings in the case. Davidsson asked the court to designate him as the "full, legal custodial parent," and that the children reside with him four days per week and with the mother three days per week. In his "Financial Declaration for Trial," Davidsson asked the court to award him 100 percent of the condominium and order Williamson to sign a quit claim deed.

Williamson filed a motion in limine to exclude witnesses and trial exhibits that were not timely disclosed. The motion sets forth discovery requests and interrogatory answers, and points out that Davidsson was represented by counsel until April 22.

In her trial brief, Williamson asked the court to designate her as the primary residential parent with sole decision-making authority, and allow Davidsson to spend time with the children on Wednesdays and alternating weekends. Subject to removing

her from all financial responsibility for the condominium, Williamson agreed Davidsson should be awarded the condominium.

The mother is prepared to quit claim her interest in this property to the father and let him have sole possession and ownership [of] the real property if he refinances the property to relieve her of all liability for the property. If this is not done by December 1, 2012, the condominium should be sold. Meanwhile, respondent should hold the mother harmless by December 1, 2010, from any liability, debt or obligation related to that property.^[5]

The three-day trial began on May 18. The court granted Williamson's motion in limine. The "Order Granting Petitioner's Motion in Limine" states, in pertinent part:

1. Petitioner's Motion in Limine is GRANTED as follows.
2. Other than himself, respondent may only call as witnesses in this matter, . . . the Guardian Ad Litem, as an expert witness and his father, David Skjonsby, as a lay witness.
3. Any testimony by lay or expert witnesses shall be limited to their legitimate percipient observations and, where permitted by the Evidence Rules, opinions.
4. Any privileged communications involving the petitioner and an attorney cannot be offered into evidence in this matter.
5. The use of learned treatises by respondent shall be limited to the use by ER 803(a)(18).

A number of witnesses testified, including Davidsson, Williamson, the GAL, Skjonsby, and Boekelman. The court also admitted into evidence a number of exhibits, including police incident reports, the GAL reports, and the condominium Agreement.

Williamson testified that Davidsson was abusive toward her.

He was verbally abusive towards me, emotionally abusive on a couple of occasions. It did escalate to physical abuse. Everything from name calling to demeaning statements, statements about my weight, about my hair color, making comments about how prostitutes could raise the children better than I could, how -- and then just escalating many times into rages that resulted in him punching things. He destroyed my laptop, he threw my cell phone against the wall and broke it. He's broken DVD [(digital versatile disk)] players, fans -- room fans he's lifted up and

⁵ (Italics omitted.)

smashed on the floor. He cracked the door frame of the back door leading into the garage when he was trying to prevent me from getting back into the house. And I put my foot in the door, and he slammed his weight against it and broke the entire frame.

Williamson testified that Davidsson tried to control her and he threatened to take the children away from her.

He tried to control me in many different ways, anything from making me ask permission to have friends or family come over to the house, to I would get in trouble if the children were fed nonorganic food, no matter what the food was. He controlled the temperature of the house, he insisted that I run various air filters, humidifiers. I wasn't allowed to take the children more than one place on any given weekend, and I wasn't allowed to take them someplace on both days on the weekend, because he felt like that overstimulated them. Nobody else was allowed to transport the children. He would tell me oftentimes if he didn't feel like I had dressed them warm enough. One time he wanted to know why [A.J.D.] had scratches on his legs, and he insisted that I dress the children in long pants, even though it was August and 90 degrees. When I was pregnant, he monitored what I ate.

Money wise, if he would loan me money, there was always a pay back schedule. And if I didn't pay him back in a timely manner, arguments and conversations ensued.

Q Did he ever threaten to take the children so that you would never see them again?

A Oh, yes. Many.

Q What would be the context of a typical instance when that would occur?

A Usually it was when he was explaining to me how other women would be able to do a better job raising my children than I could. On one occasion I remember specifically that he said that a prostitute could do a better job raising the [children] than I could.

Williamson said that she moved out because of Davidsson's behavior and concerns for her safety.

There was a move out on February 17th because life at the Lake Stevens home had become very unsafe, unpredictable, and unhealthy for me and the [children] to stay there. I no longer felt safe sleeping in my own bed, so I was sleeping on the floor in the living room. He wouldn't let me sleep for any long period of time, he would wake me up, like I said yesterday, mooing or barking at me or pushing at me. I wasn't sleeping, I wasn't

eating. It had been a year since the [children] had come home from the NICU [(neonatal intensive care unit)] and I felt like that was enough time.

Williamson said that even after she left, she continued to fear Davidsson and continued to have difficulty communicating with him.

[M]y communications with Mr. Davidsson are strained, limited, and always shadowed by my fear of him. When I do try to communicate with Mr. Davidsson, oftentimes it turns into an escalation and an argument, which brings back a lot of memories of the abuse. And I also don't want to engage in escalation behaviors when my children are nearby.

Davidsson testified that he provided the majority of care for the children.

Davidsson said that the children were happier and healthier when they stayed at his house. Davidsson also testified that Williamson's decision to leave was abusive.

There were several instances where [Williamson] took the children out of the home inexplicably without warning to me and I was left wondering where my children were and that was very hard for me not knowing where they were and – and I felt that that was a form of abuse.

The GAL testified that although she had recommended Davidsson participate in an anger management program, after listening to the testimony at trial, she recommended Davidsson engage in domestic violence treatment.

I will tell you, as I reviewed for trial, went through my files again, have sat in trial yesterday, that I have become more and more concerned about the issue of domestic violence in this case, and concerned about the need for extensive anger management, or some type of domestic violence treatment. . . . I think it's not just the physical incidents, it is the approach that the father has taken in terms of monitoring what the mother does. It seems as though it's continued to take place.

The trial court found that while Davidsson loves his children and is a capable caregiver, he engaged in an abusive use of conflict, acts of domestic violence, and unreasonably controlling behavior directed toward Williamson that was “adverse to the children's best interests.” The court entered extensive findings of fact and conclusions

of law addressing the parenting plan, the division of property, and attorney fees. The court ordered the parties to retain the condominium as tenants in common until Davidsson refinances to “completely remove” Williamson from liability for the property, or sell the condominium. Finding that Davidsson’s intransigence delayed trial and increased costs, the court awarded Williamson attorney fees of \$25,000.

The court adopted a parenting plan designating Williamson as the primary residential parent and allowing the children to reside with Davidsson every other weekend, including Friday, and every other Wednesday. The parenting plan also prohibits Davidsson from possessing a firearm “in the presence of the children,” and orders Davidsson to participate in domestic violence treatment within 14 days after entry of the parenting plan.

Based on finding an abusive use of conflict and a history of acts of domestic violence, the court gave Williamson sole decision-making authority and did not authorize dispute resolution. The parenting plan provides, in pertinent part:

2.2 Other Factors (RCW 26.09.191(3))

Mutual decision making and designation of a dispute resolution process other than court action shall not be required because of the following:

The existence of a limitation under RCW 26.09.191(3) including the abusive use of conflict by the father (both before and after the commencement of these proceedings) which creates the danger of serious damage to the children’s psychological development: and physical and verbal violence and unreasonably controlling behavior directed to the mother by the father (including in the children’s presence) which is adverse to the children’s best interests.

A history of acts of domestic violence by the father toward the mother as defined in RCW 26.50.010(1) consisting of

the infliction of reasonable fear by the mother of imminent physical harm or bodily injury or assault caused by the father (e.g., breaking things of the mother[‘s], punching objects in the presence of the mother, verbal insults, and the threatening use of a gun by a household member).

The mother’s demonstrated greater responsibility for performing parenting functions relating to the daily needs of the children; the creation of harmful parental conflict by the father, the history of the mother’s greater (and the father’s lesser) participation in past decision making and the demonstrated inability of the father to consistently cooperate with the mother in decision making about such matters as the children’s physical care and emotional stability and to minimize the children’s exposure to harmful parental conflict.^[6]

ANALYSIS

Davidsson contends the trial court did not address the statutory factors in determining residential placement and the best interests of the children, and substantial evidence does not support finding abusive use of conflict or a history of domestic violence. Davidsson also contends the court erred in requiring him to refinance or sell the condominium, in granting the motion in limine, and awarding attorney fees to Williamson.

Residential Placement⁷

Davidsson asserts the court did not engage in an analysis of the mandatory factors under RCW 26.09.187(3) in adopting a parenting plan, and deciding to designate Williamson the primary residential parent with sole decision-making authority.

⁶ (Emphasis added.)

⁷ Under the Uniform Parentage Act, chapter 26.26 RCW, after paternity has been acknowledged, the parties may commence a judicial proceeding for a parenting plan on the same basis as provided in chapter 26.09 RCW. RCW 26.26.375(1)(a).

Decisions concerning the provisions of a parenting plan are reviewed for abuse of discretion. In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). A trial court “abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” Littlefield, 133 Wn.2d at 46-47.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Littlefield, 133 Wn.2d at 47. An appellate court will not retry the facts on appeal, and will

accept findings of fact as verities if they are supported by substantial evidence in the record. In re Marriage of Thomas, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991).

Because of the trial court's unique opportunity to observe the parties, we are “ ‘extremely reluctant to disturb child placement dispositions.’ ” In re Parentage of Schroeder, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001) (quoting In re Marriage of Schneider, 82 Wn. App. 471, 476, 918 P.2d 543 (1996)). This court does not review the trial court's credibility determinations, nor can it weigh conflicting evidence. In re Marriage of Rich, 80 Wn. App. 252, 259, 907 P.2d 1234 (1996).

When making decisions regarding residential placement, the trial court must analyze the factors in RCW 26.09.187(3). RCW 26.09.187(3)(a) requires the court to consider:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for future performance of

parenting functions, as defined in . . . RCW 26.09.004[(2)], including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

Davidsson relies on In re Marriage of Cabalquinto, 100 Wn.2d 325, 329, 669 P.2d 886 (1983); and In re Marriage of Murray, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981), to argue the court did not address the factors under RCW 26.09.187(3)(a). In Cabalquinto and Murray, the court held that although specific findings are not necessarily required on each statutory factor, the record must reflect they were considered. Cabalquinto, 100 Wn.2d at 328-29; Murray, 28 Wn. App. at 189.

Unlike in Cabalquinto and Murray, the record in this case shows the court considered each of the statutory factors in adopting the parenting plan and in determining the best interests of the children.

In the report, the GAL analyzed each of the statutory factors under RCW 26.09.187(3). The report states, in pertinent part:

**The relative strength, nature, and stability of the child's relationship with each parent:
(This factor is given the most weight.)**

The children seem comfortable with both of their parents. They are independ[e]nt physically and interact with each other but return to their parents when needed. They are more affectionate with their mother, who is more interactive with them than the father, and seek her out regularly.

. . . **Agreements of the parties:** The father believes that the children

should spend 50% of their time in each home so that they have access to all three of their primary caretakers, himself, the mother, and the paternal grandfather. The mother proposes that the children reside primarily with her and have frequent contact with their father such as Wednesday, Friday, and every other weekend.

. . . Each parent's past and potential for future performance of parenting functions including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child:

Both parents have been involved in raising [A.J.D.] and [A.G.D.] It appears that after their birth, the mother was more involved than the father and this continued after she returned to work and the children were in daycare because he was working and attending school in the evenings. Both are more than adequate parents. The mother is more interactive and relaxed with the children. The father appeared to be more of an observer of the children, rather than interacting with them. . . .

Although the mother has a diagnosis of Generalized Anxiety Disorder, she is on medication and her functioning as a parent (or otherwise) is not affected.

The father's lengthy history of problems in relationships, which [h]as required ongoing law enforcement involvement since 2003, raises issues about his potential as a parent. It is concerning that these types of interactions with girlfriends and even his father will occur again. Reports of his episodes of anger are particularly concerning.

. . . The emotional needs and development level of the child: [A.J.D.] and [A.G.D.] have nearly their entire childhood in front of them. They are toddlers and are exploring their world at home and in daycare. They need to do that as they continue to turn to each of their parents for comfort and stability. Both parents are committed to being there for them. The father provides them beneficial structure but limits their access to the bigger world. The mother is more open to providing interaction outside of home. The children can benefit from both approaches as they grow. It would be beneficial to them if their parents learn to communicate with each other, limit their conflict, and interact more comfortably in front of the children.^[8]

The court addressed the statutory factors in its oral ruling. The court expressly incorporates the analysis in the GAL report of each of the statutory factors under RCW

⁸ Davidsson's criticism of the GAL's investigation is not supported by the record. The GAL testified that she conducted home visits, interviewed Davidsson at least two times, reviewed CPS records, and interviewed all of the father's collateral sources.

26.09.187(3) and disagreed with some of the findings. The court ruled, in pertinent part:

I am incorporating by reference the assessment made by the guardian ad litem at pages 20, 21 and 22 of her report and that is from Exhibit 16. I am not going to recite that but she evaluates the factors that the Court must evaluate in entering into a Parenting Plan, and I incorporate by reference the same analysis that she reached in those pages. I would take exception only in the following particulars, first with respect to paragraph 7.3.3, the guardian indicates that [Davidsson's] home and his rules are more structured, and while I don't generally disagree I think that I would take exception in some respects. The testimony is clear that the father permits the children to color on at least some of the walls in his home.

In addressing the best interests of the children, the court recognized Davidsson's relationship with the children and his capacity to care for the children, but considered his "overbearing and controlling nature as well as the impact of his domestic violence" on the mother, and "the impact that that may hold for the children themselves." The court

ruled:

I would also take some issue with respect to paragraph 7.3.6. Certainly the children aren't old enough to voice opinions with respect to parenting, but I think some of the guardian's discussion there about the time that the children should be with the father or with the mother may be at variance a bit with what testimony I have heard. Clearly at time of trial both the mother and father have requested to be the primary residential parent. And while the father seems willing to exceed to a shared 50/50 split of residential time, he clearly believes that he should be the primary residential parent and would like the Court to adopt the plan designating him as such.

Finally I take exception to the guardian's conclusions in paragraph 7.3.7 because the employment circumstances are different.

Restrictions Under RCW 26.09.191

Davidsson also contends substantial evidence does not support the decision to impose decision-making restrictions under RCW 26.09.191 based on a history of domestic violence and abusive use of conflict.

Under the mandatory provisions of RCW 26.09.191(1)(c), the court “shall not require mutual decision-making or designation of a dispute resolution process other than court action” if the court finds a history of acts of domestic violence.⁹ Under RCW 26.09.191(3)(e), the trial court has the discretion to impose restrictions if “[a] parent's involvement or conduct may have an adverse effect on the child's best interests” based on “[t]he abusive use of conflict . . . which creates the danger of serious damage to the child's psychological development.”¹⁰

Here, substantial evidence supports the court’s findings of a history of domestic violence and Davidsson’s abusive use of conflict. The court found Williamson’s testimony describing a history of domestic violence and abusive use of conflict credible, and we defer to the trial court regarding witness credibility and conflicting evidence.

Rich, 80 Wn. App. 259. The court ruled, in pertinent part:

⁹ RCW 26.09.191(1)(c) provides:

The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in . . . a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

“Domestic violence” is defined, in pertinent part, as follows: “Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members.” RCW 26.50.010(1)(a).

¹⁰ RCW 26.09.191(3) provides, in pertinent part:

A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

- • • • •
- (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.

The mother testified to a history of verbal and emotional abuse and occasional physical abuse. She mentioned he was demeaning toward her about her weight, her appearance. She testified that he broke a laptop computer in a fit of anger; that he broke a door; that he broke her cellphone [sic]; that he broke a DVD player; that he punched holes in the wall of his apartment and comments about sleeping in the barn with her cow friends; barking at her like a dog, kicking her out of bed. And in his brief that he filed at the start of the case I found it interesting that he said that the mother has a credibility problem. I don't recall where it is but I thought it was in strange juxtaposition to the testimony that the mother presented, some of which was corroborated by the testimony of other witnesses. And in his closing argument Mr. Davidsson says that he is a victim of both emotional, verbal abuse as well as physical abuse by the mother. I am wondering if he was even listening to the same trial that I heard.

When he in his memorandum compared the mother's behavior as a reference to abusive use of conflict by comparing [sic] to the way Jews were treated by the Nazis, I presume that he was equating the mother's behavior to being a Nazi, and it seems that the problems that he has are -- are transparent in those kinds of comments and they preclude the sort of collaboration that is necessary for a co-Parenting Plan of any sort to work effectively. The guardian ad litem said that as she listened to the testimony at trial she became more concerned about the father's propensity for domestic violence. She cited control, hypervigilance, hostility, and the issue to me is not so much physical abuse. I don't find a pattern of physically beating up Ms. Williamson, but it is a controlling behavior that is very, very disturbing, and there is physical domestic violence, breaking electronic appliances and furniture and punching holes in walls when there are children present, regardless of their age, simply reflects a lack of awareness of what that impact is on children.^[11]

Claiming there is no evidence of a history of domestic violence, Davidsson also challenges imposition of the restriction preventing him from possessing firearms in the presence of the children. Because substantial evidence supports finding a history of domestic violence, the court did not err by imposing the restriction. See District of

¹¹ The GAL also expressed concerns about the "lengthy history of [Davidsson's] problems in relationships," and his "insistence on establishing rules for the mother."

The father's lengthy history of problems in relationships, which [h]as required ongoing law enforcement involvement since 2003, raises issues about his potential as a parent. It is concerning that these types of interactions with girlfriends and even his father will occur again. Reports of his episodes of anger are particularly concerning.

Columbia v. Heller, 554 U.S. 570, 636, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008);

State v. Krzeszowski, 106 Wn. App. 638, 641, 24 P.3d 485 (2001).

Refinancing/Selling The Condominium

For the first time on appeal, Davidsson asserts the court did not have the authority to order him to refinance or sell the condominium in order to remove Williamson from any liability for the condominium. The findings of fact and conclusions of law state, in pertinent part:

The parties should retain their condominium . . . as tenants in common without right of survivorship until [Davidsson] either refinances the condominium to completely remove [Williamson] from any liability as to the condominium (if this happens [Williamson] should quit claim her interest in the property to [Davidsson]) or the property shall be sold by December 1, 2012. For so long as [Williamson] is liable for any debt on, or related to, this property, [Davidsson] may reside in the condominium and should be responsible for paying all expenses and debt related to the condominium. (The parties' Co-Habitation/Tenancy[-In-]Common Agreement has not been followed, so the Court has not had to address its fairness and other legal and equitable issues in connection with the Agreement.)

We need not consider an argument raised for the first time on appeal. RAP 2.5(a); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Nonetheless, there is no dispute that the couple owned the condominium as tenants in common, Davidsson requested the court award the condominium to him, and Williamson agreed to quit claim her interest in the condominium on condition that Davidsson remove her from any financial responsibility for the condominium. The court did not err in ruling that the parties retained their interest in the condominium until Davidsson removes Williamson "from any liability" by either refinancing or selling the property.

Motion In Limine

Davidsson contends the court abused its discretion by excluding witnesses and exhibits that were not disclosed until the day before trial. There is no dispute that Davidsson was represented by counsel during discovery.

Williamson filed a motion to exclude witnesses and exhibits not previously disclosed. Williamson set forth in detail interrogatories and requests for production, as well as the request to supplement answers to interrogatories.

The court ruled:

I'll disallow them for trial today. I'll restrict your witnesses to those whom you disclosed in answers to interrogatories, namely, yourself, your dad, and [the GAL].

I'm not going to permit testimony from other witnesses, and I'm not going to permit -- I won't entertain written materials whether reports, declarations, or others partly because of the lack of disclosure in response to the discovery request, but also because, if they're not here to testify, what they would have to say would be hearsay.

The court did not abuse its discretion in granting the motion in limine. The failure to comply with CR 26(e) and supplement discovery requests subjects the party to such terms and conditions as the trial court may deem appropriate. CR 26(e)(4).

Attorney Fees

Davidsson asserts that the trial court abused its discretion by awarding attorney fees to Williamson. Davidsson contends the finding of intransigence is not supported by the record.

In a parentage action, the court has discretion to award attorney fees to the prevailing party, regardless of the party's ability to pay. RCW 26.26.140; In re Marriage

of M., 92 Wn. App. 430, 441, 962 P.2d 130 (1998); In re Marriage of T., 68 Wn. App. 329, 333-34, 842 P.2d 1010 (1993) (need and ability to pay are not necessary in awarding attorney fees in a parentage action).

The record supports the finding of intransigence. The court awarded Williamson attorney fees and costs “because of the added expense that [Davidsson] caused [Williamson] to incur in this matter: in the mediation, for the GAL, her deposition and trial.” In its oral ruling, the court describes Davidsson’s intransigence in more detail.

[Davidsson] has taken exception to the request for attorney fees on the basis of intransigence [W]hen he says that the only delay was because of this -- his request for a second evaluation, that’s not the only delay. When he chose to discontinue that evaluation, there were motions brought before the commissioners, and appeal from those decisions, I think a further hearing to clarify, you know, what minimum compliance would be, and then he chose to disregard that -- that Court order, all of which was initiated by the father and puts the mother to the expense of having to respond to all of those hearings and delays in the trial, all occasioned by the father’s conduct which got nowhere. So it’s all simply a waste of time and unnecessarily drives up the fees incurred by the mother.

The request for that evaluation resulted in a trial postponement from August 2010 to January 2011, and then again from January to May, and yet again when we were in trial in May because largely of the father’s inability to proceed in an orderly fashion. Matters broke down and we experienced similar delays today, and all of that reflects to the Court’s view exactly what [Williamson’s attorney] has complained of, which is the father’s intransigence which drives up the fees.

Substantial evidence supports the trial court’s finding of intransigence and the award of fees.¹²

We affirm.



¹² Williamson requests fees on appeal. We decline to award additional fees on appeal.

WE CONCUR:

Leach, C. J.

Grosse, J