IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Matter of the Marriage of	)	DIVISION ONE
	)	
Tracie Linn Lang,	)	No. 63228-1-I
	)	
Respondent/Cross-Appellant,	)	
	)	UNPUBLISHED OPINION
and	)	
	)	
Brook Wester Lang,	)	
	)	
Appellant/Cross-Respondent.	)	FILED: November 1, 2010
	)	

Dwyer, C.J. — Brook Lang appeals from the parenting plan entered upon the dissolution of his marriage to Tracie Lang, contending that no basis exists justifying the residential restrictions imposed to his detriment in the parenting plan. He also contends that the trial judge was biased against him and erred by not permitting two late-disclosed expert witnesses to testify. Tracie Lang cross-appeals, challenging the parenting plan's dispute resolution provision and contending that the trial court erred by not valuing the parties' primary asset. Finding no error, we affirm.

I

Brook and Tracie Lang married in May 2000. Tracie[1] quit her job as an administrative assistant shortly after the couple became engaged. During the marriage, she did not work outside the household. Brook worked primarily as an executive in sales, marketing, operations, and business development for several high-tech companies. In December 2004, Brook formed Montavo, a Washington corporation. This company eventually merged with another company, resulting in a corporation called Montavo, Inc., a Delaware corporation. Brook eventually became the CEO of Montavo, Inc. and received almost two million shares of the company's stock. Brook and Tracie have three children who were, at the time of trial, ages 7, 5, and 3.

In April 2007, after almost seven years of marriage, the couple separated. Their separation was instigated by a domestic disturbance on April 17 that resulted in Brook being arrested and charged with domestic violence, to which he later entered into a stipulated order of continuance. The day after the couple's fight, Tracie obtained a protection order, and she petitioned for dissolution shortly thereafter.

Both parties were originally represented by counsel in the action. However, in January 2008, Brook's attorney withdrew her representation and Brook proceeded pro se. The abundant correspondence contained in the record

[1] The parties share their surname. For the sake of clarity, we will refer to the parties by using their first names. No disrespect is intended.

reflects the difficult relationship between Brook and Tracie and between Brook and Tracie's attorneys. For example, in most e-mails, Brook insisted on communicating in person, requesting either that the recipient call him on the telephone or meet with him. He also was insistent that Tracie agree to engage in co-parenting counseling, in which his own counselor would purportedly facilitate communications and decision-making between Brook and Tracie. Brook also demanded that the educational, medical, and counseling providers for his children be based near his home. On several occasions, Brook interfered with medical appointments for his children or made additional appointments for his children so that he could attend.

In January 2008, the trial court entered an agreed order requiring a parenting evaluation to be completed by the Parenting Evaluation Treatment Program (PETP) at the University of Washington. However, in May 2008, the PETP parenting evaluator withdrew and filed with the court a declaration of noncompliance, detailing Brook's refusal to participate in the evaluation. Brook apparently refused to accept the appointments with the PETP evaluator because he did not believe that he would be given enough time to meet with the evaluator if he was only provided one additional interview beyond the single interview that PETP normally performs. Also in April 2008, the trial court amended the case schedule, continuing the trial from June 2 to June 30, 2008. Then, in May 2008, the case schedule was again amended, continuing the trial to July 29, 2008.

Despite his earlier refusal to participate in the PETP evaluation, Brook was insistent that a parenting evaluation was an "immensely important and critical item . . . to this particular case." Clerk's Papers (CP) at 829. He deemed an evaluation to be necessary because "[e]veryone needs to understand that others do not have the information I have." CP at 829. Brook desired that Lynn Tuttle perform the evaluation. On June 10, 2008, the trial court granted Brook's motion to appoint Tuttle to provide a parenting investigation and report. The trial court agreed to continue the trial in order for Tuttle to complete her parenting evaluation. On July 22, the trial court ordered that the trial date be continued to October 27, 2008. In its order, the trial court stated, "The court will not grant another trial continuance even if the parties are pro se." CP at 1093.

In late June 2008, an attorney, Camden Hall, entered a limited appearance on Brook's behalf. Hall later represented Brook at the trial.

Tuttle's parenting evaluation was completed on September 1, 2008. She made several recommendations in her evaluation, including that the children's primary residential placement be with Tracie. She also recommended that Brook be required to enroll in a domestic violence treatment program and a "DV Dads class." Ex. 518 at 25. She noted in her evaluation that Brook's "difficulty accepting limits and understanding the views of others will likely impact the children." Ex. 518 at 23. During the interviews that Tuttle conducted, both Brook and Tracie expressed reservations about making joint decisions. Tuttle

recommended that Tracie be given sole decision-making authority for major decisions.

Tuttle later explained the reasoning underlying her recommendation that Brook complete the domestic violence and DV Dads programs. Tuttle believed that "it seemed difficult for [Brook] to acknowledge his own behaviors and how they contributed to problems and to take responsibility for that." Report of Proceedings (RP) (Oct. 28, 2008) at 282. She explained that the recommended domestic violence treatment is a phased program that usually takes one year to complete, which involves weekly meetings in group sessions and then eventually meets once or twice per month. The focus of the program is on "issues of entitlement, acknowledging impacts on others, and acknowledging responsibility for actions." RP (Oct. 28, 2008) at 279. The DV Dad class is designed to address "the impact on children from abusive behaviors and how to address some of those impacts on the children." RP (Oct. 28, 2008) at 279.

On October 8, 2008, more than a month after Tuttle finished her report, Brook moved the trial court to allow him to make late witness designations of five witnesses, including two of Brook's neighbors and three expert witnesses. The witness designation deadline had passed on April 28, 2008. Two of the proposed expert witnesses, Dr. Wendy Hutchins-Cook and Dr. John Dunn, would have testified "about the procedure for conducting parenting evaluations (and, by extension that it was not followed by Ms. Tuttle), about the impact of

divorce on young children and why it is important that young girls have a proper relationship with their father." CP at 1036. The other proposed expert witness was Brook's therapist, Charlotte Svenson, who would purportedly rebut the domestic violence conclusions and recommendations of Tuttle. Brook's motion asserted that these witnesses were not earlier designated because Brook did not know that these witnesses would be necessary to rebut Tuttle's parenting evaluation report until after she finished it on September 1.

On October 24, 2008, the trial court partially granted Brook's motion, allowing the proposed fact witnesses and Svenson to testify. However, the trial court found that "[a]llowing late designation of expert witnesses prejudice's Ms. Lang's ability to prepare for trial." CP at 1039. Thus, the trial court denied Brook's request to add Dr. Hutchins-Cook and Dr. Dunn to the witness designations. At trial, Brook objected to Tuttle testifying and again requested that Dr. Hutchins-Cook and Dr. Dunn be allowed to testify. His renewed motion to allow the two expert witnesses to testify was denied, and Tuttle was permitted to testify at trial.

At trial, both parties testified at length. In addition, several family members and neighbors testified, one of Tracie's health care providers testified, and Brook's therapist testified. There was testimony regarding instances of Brook's controlling behaviors, including speaking to Tracie for hours on end, sometimes flicking the lights in order to make her listen; shutting the power off

throughout the house when Tracie removed herself from an argument; and driving the family car at excessive speeds while yelling at Tracie. The parties also testified regarding the April 17, 2007 domestic disturbance that had instigated their separation.

With respect to the parties' property, evidence presented at trial revealed that almost two million shares of Montavo, Inc. stock were community property. At the time of trial, the Montavo shares were trading on the over-the-counter stock exchange for $0.60-$0.80 per share. However, Brook testified that there were certain regulatory and practical restrictions on the immediate sale of the stocks.

The trial lasted eight days, spanning from the end of October to the beginning of December. The final orders were signed on January 22, 2009.

In the decree of dissolution, the trial court divided the parties' various assets and liabilities. The trial court awarded 45 percent of the Montavo stock to Brook and 55 percent of the stock to Tracie. The trial court awarded Tracie a greater amount of the stock because "instead of giving Mrs. Lang an award of attorney's fees, the court is awarding her more of the stock because it is the only thing from which she is going to be able to realize anything." CP at 987. The trial court did not enter any findings regarding the actual value of the stock.

In the parenting plan, the trial court awarded primary residential time to Tracie, with their children initially visiting with Brook about six days a month.

The trial court found that Brook's residential time with the children should be limited based on RCW 26.09.191(3)(g) findings. The trial court conditioned Brook's residential time on his satisfactory completion of a domestic violence treatment program and a DV Dads class. Once Brook completes these programs, his residential time will expand to about eight days a month. The trial court awarded sole decision-making authority to Tracie, with some limitations on which educational and medical providers she can choose. The trial court also ordered that disputes between the parties be submitted to mediation.

The trial court's findings of fact and conclusions of law filed with the parenting plan indicate the bases for the trial court's RCW 26.09.191(3)(g) restrictions. The trial court found that Brook

> engaged in a pattern of intimidation and control of his wife during their marriage that the court finds was abusive. The court concludes that it is in the best interests of the children for Mr. Lang to obtain domestic violence treatment to hopefully help him gain insight into his behavior and to learn how to behave appropriately with his family members, most importantly his three daughters. Mr. Lang used his ability to bully and control Mrs. Lang and others to drive his personal relationships.

CP at 980. The trial court also concluded that Brook "is not capable of agreeing with anybody else about anything unless they simply agree to whatever his position is." CP at 986. The trial court explained that "this case presents a clear domestic violence relationship. Domestic violence is based on intimidation and control and Mr. Lang is one of the most controlling people this court has ever observed." CP at 987. The trial court then concluded that "if he is going to be a

good dad to the girls, he needs to get some insight into his behavior . . . [because] it is not an appropriate way of behaving with people who are your family." CP at 987. The trial court maintained that the April 17, 2007 domestic disturbance events were not material to its decision regarding the parenting plan provisions.

Brook then moved for reconsideration on several bases, including an argument that the trial court improperly defined domestic violence as "intimidation and control" rather than basing its finding that Brook committed "domestic violence" on the statutory definition. CP at 1009–10. The trial court denied the motion, stating: "Ms. Lang testified at trial to several incidents between the parties that meet the statutory definition of Domestic Violence as set forth in RCW 26.50.010(1): '. . . assault or the infliction of fear of imminent physical harm, bodily injury or assault.'" CP at 1024.

Brook appeals. Tracie cross-appeals.

II

Brook first contends that the trial court erred by imposing residential restrictions based on RCW 26.09.191(3)(g) because the trial court did not make express findings supporting the imposition of such limitations. We disagree.

We review for an abuse of discretion a trial court's decision on the provisions of a parenting plan. In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). In adopting a parenting plan, the trial court must

consider a number of provisions in the Parenting Act, including RCW 26.09.191, which sets forth a number of limiting factors that require or permit restrictions upon a parent's actions or involvement with a child. Littlefield, 133 Wn.2d at 52.

Pursuant to RCW 26.09.191(2), the trial court is required to limit a parent's residential time with the children if that parent has engaged in particular conduct, including having "a history of acts of domestic violence as defined in RCW 26.50.010(1)."[2] RCW 26.09.191(2)(a)(iii).[3] Any limitations imposed by the trial court pursuant to RCW 26.09.191(2) "shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time." RCW 26.09.191(2)(m)(i).

Pursuant to RCW 26.09.191(3), the trial court may, but is not required to, limit any provision of the parenting plan, including a parent's residential time or decision-making authority, where the trial court finds that "[a] parent's involvement or conduct may have an adverse effect on the child's best interests." A parent's conduct that may adversely affect a child includes: neglect or nonperformance of parenting functions, an emotional or physical

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[2] RCW 26.50.010(1) defines "domestic violence" as
(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

[3] RCW 26.09.191(1) prohibits the trial court from requiring mutual decision-making or from designating any nonjudicial dispute resolution process where a parent has engaged in willful abandonment or refusal to perform parenting functions, abuse of the child, or acts of domestic violence.

impairment, substance abuse, lack of emotional ties between the parent and child, the abusive use of conflict by the parent, withholding access to the child from the other parent, or "[s]uch other factors or conduct as the court expressly finds adverse to the best interests of the child." RCW 26.09.191(3)(a)-(g).

A trial court "may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191." In re Marriage of Katare, 125 Wn. App. 813, 826, 105 P.3d 44 (2004) (remanding for clarification regarding the legal basis for imposing restrictions because the trial court's finding in the parenting plan that there was no basis to impose restrictions under RCW 26.09.191 created an inconsistency and ambiguity). In addition, "any limitations or restrictions imposed must be reasonably calculated to address the identified harm." Katare, 125 Wn. App. at 826.

The trial court herein expressly found that there was a basis to impose restrictions pursuant to RCW 26.09.191(3). In addition, contrary to Brook's contention, the trial court made express findings supporting the imposition of the limitations included within the parenting plan. These express findings were made concurrently with the parenting plan and are contained within the trial court's findings of fact and conclusions of law, which the trial court incorporated by reference into the parenting plan. The findings regarding Brook's controlling and intimidating personality and inability to recognize his personality flaws support the trial court's imposition of the requirements that Brook participate in a

domestic violence treatment program and a DV Dads class and that his residential time be limited until he completes the required programs. The trial court made express findings supporting its determination that RCW 26.09.191(3) restrictions were necessary. All of these findings are amply supported by the record.

In addition, the restrictions imposed on Brook are reasonably calculated to address the harm identified by the trial court. See Katare, 125 Wn. App. at 826. Tuttle, the parenting evaluator, testified regarding the focus and general curriculum of both the domestic violence perpetrator treatment program and the DV Dads class. These programs are designed to address the patterns of behavior and personality characteristics that the trial court identified as harmful. Accordingly, the trial court properly imposed limitations in the parenting plan based on its RCW 26.09.191(3)(g) finding and based on its supporting findings regarding intimidation and control being adverse to the children's best interests.

Brook argues, however, that the trial court imposed the RCW 26.09.191(3)(g) restrictions because the trial court found that Brook committed "domestic violence." Had the trial court found that Brook had a history of committing acts of statutorily-defined domestic violence, it would have been required to impose restrictions—including limiting Brook's residential time with the children—pursuant to RCW 26.09.191(1) and (2), rather than RCW 26.09.191(3). RCW 26.09.191(1), .191(2)(a); RCW 26.50.010(1). We disagree,

however, that the trial court imposed the RCW 26.09.191(3)(g) restrictions on the basis that Brook committed statutorily-defined domestic violence. Contrary to Brook's contentions, the trial court's statements that "domestic violence is based on intimidation and control" and that there was a "domestic violence relationship" do not reflect that the trial court found that Brook had committed statutorily-defined domestic violence. Rather, the statements reveal the trial court's opinion that domestic violence results because the perpetrator has a need for control and uses intimidation, and they reflect the trial court's conclusions that Brook's behavior would present an adverse setting for the Lang children if it were to continue. In fact, the trial court expressly found that there was no basis for RCW 26.09.191(1) or (2) restrictions. This indicates that the trial court did not find any basis to conclude that Brook had a history of domestic violence as defined by RCW 26.50.101(1).

However, the trial court's order denying Brook's motion for reconsideration states that Brook had committed acts that satisfied the statutory definition of domestic violence. This statement is not supported by the record. The evidence presented at trial did not provide the trial court any foundation to find that Brook had a history of committing acts of domestic violence as defined in RCW 25.50.010(1). Therefore, the trial court erred by stating that Brook committed acts meeting the statutory definition of domestic violence.

However, despite this error, the trial court's denial of reconsideration was

proper. The trial court had not previously determined in any of its January 22, 2009 orders that Brook had committed statutory domestic violence. Contrary to Brook's assertions in his motion for reconsideration, the trial court did not impose the RCW 26.09.191(3)(g) restrictions in the first instance on the basis of statutorily-defined domestic violence. As discussed above, the reasons for the restrictions were Brook's pattern of control and his intimidating personality. We may affirm the lower court on any basis established by the pleadings and supported by the record. In re Marriage of Rideout, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003) (quoting Truck Ins. Exch. v. VanPort Homes, Inc., 147 Wn.2d 751, 766, 58 P.3d 276 (2002)). Accordingly, the denial of the motion for reconsideration was proper. The trial court did not err by placing restrictions in the parenting plan.[4]

III

Brook next contends that the trial court erred by partially denying his motion to allow a late designation of witnesses and by excluding the testimony of two of these proffered witnesses. We disagree.

We review for an abuse of discretion a trial court's ruling on the admissibility and scope of the testimony of expert witnesses not timely disclosed.

[4] Brook argues that Tracie agreed not to pursue a claim that he engaged in domestic violence and, accordingly, the trial court should not have entertained the issue. We disagree. "A trial court's obligation to follow the law remains the same regardless of the arguments raised by the parties before it." State v. Quismundo, 164 Wn.2d 499, 505–06, 192 P.3d 342 (2008). The issue of domestic violence was raised in the petition for dissolution of marriage and in the confirmation of issues pleading. More importantly, it was interjected at trial by Tuttle, the parenting evaluator that Brook insisted be used in this case. The trial court did not err by addressing a question so important to the children's well-being.

Burnet v. Spokane Ambulance, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997); In re Marriage of Gillespie, 89 Wn. App. 390, 404, 948 P.2d 1338 (1997). Pursuant to King County Local Rule (KCLR) 26(b), each party must disclose all primary and rebuttal witnesses, including expert witnesses, according to the case management schedule set for the case. "Any person not disclosed in compliance with this rule may not be called to testify at trial, unless the Court orders otherwise for good cause and subject to such conditions as justice requires." KCLR 26(b)(4).[5]

Here, the trial court partially granted Brook's motion to allow a late designation of witnesses and to allow those witnesses' testimony, allowing Brook to call two lay witnesses and one of the three untimely-designated expert witnesses. However, the trial court denied Brook's request to designate two other expert witnesses outside the scheduling period because "[a]llowing late designation of expert witnesses prejudices Ms. Lang's ability to prepare for trial." CP at 1039. Brook made his motion only two and a half weeks prior to trial, and the trial court entered an order merely three days prior to trial. The trial court was unwilling to continue the trial yet again. The witnesses that the trial court allowed to testify were offered to directly rebut Tuttle's conclusions in the parenting evaluation regarding Brook's domestic violence and Brook's and

[5] Brook cites to numerous cases regarding exclusion of expert witnesses as a sanction for a party's failure to comply with a discovery order. However, this is not a case involving sanctions. Rather, this case involves an application of KCLR 26(b). Brook made a motion requesting that the trial court allow Brook to designate witnesses outside the case scheduling period and the trial court denied the motion.

Tracie's parenting. The two expert witnesses for which the trial court would not order late designation were offered to testify about the procedure for parenting evaluations and the impact of divorce on young children.[6] The simple fact is that evidentiary rulings must be reviewed in light of other evidentiary rulings made in the same case. The trial court properly applied KCLR 26(b)(4), determining that there was not good cause to allow the testimony of two of the five proffered late-designated witnesses. The trial court did not abuse its discretion in so ruling.

IV

Seizing upon some of the trial court's oral remarks, Brook next contends that the trial court judge was biased against him. We disagree.

"For a judge to be biased or prejudiced against a person's cause is to have a preconceived adverse opinion with reference to it, without just grounds or before sufficient knowledge. It is a particular person's state of mind that affects his opinion or judgment." In re Application of Borchert, 57 Wn.2d 719, 722, 359 P.2d 789 (1961). Importantly, we presume that the trial court performed its functions without bias or prejudice. Wolfkill Feed & Fertilizer Corp. v. Martin, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). A party alleging judicial bias must

[6] Brook argues throughout his briefing that he had good cause to designate the witnesses at such a late stage in the proceedings because he had been unaware that he would need these experts until Tuttle submitted her report at the beginning of September. Because of Tuttle's report, Brook contends, he needed to rebut allegations of domestic violence that he had previously understood would not be at issue in the trial. However, the two expert witnesses that the trial court would not allow to testify were not offered to testify to anything regarding allegations of Brook's domestic violence. Brook misstates the purpose for which these expert witnesses were offered in arguing on appeal that he had a reasonable excuse for not having timely designated these witnesses.

present evidence of actual or potential bias. State v. Post, 118 Wn.2d 596, 618, 619 n.9, 826 P.2d 172, 837 P.2d 599 (1992). We use an objective test to determine whether a judge's impartiality might reasonably be questioned by a reasonable person who knows all the relevant facts. In re Marriage of Davison, 112 Wn. App. 251, 257, 48 P.3d 358 (2002) (quoting Sherman v. State, 128 Wn.2d 164, 206, 905 P.2d 355 (1995)). Without evidence of actual or potential bias, a claim of judicial bias is without merit. Post, 118 Wn.2d at 619. Additionally, the appearance of fairness doctrine requires that judges not only actually be unbiased, but that they also appear to be unbiased. State v. Gamble, 168 Wn.2d 161, 187, 225 P.3d 973 (2010) (quoting State v. Madry, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972)).

Here, a reasonably prudent and disinterested observer would conclude that all parties received a fair, impartial, and neutral hearing. See Davison, 112 Wn. App. at 257. Most of the trial judge's comments are taken out of context in the briefing presented. Considered in context, they do not demonstrate bias. For example, Brook argues that the judge's comment during a pretrial proceeding that "[i]t may -- just may not be in the children's best interest to spend a lot of time with you," RP (May 30, 2008) at 50, is evidence of bias. However, this statement was not lodged as a personal attack on Brook but, rather, was made in the course of responding to Brook's questions and explaining that evidence at trial might reveal reasons to limit Brook's residential

time with the children. None of the trial court's statements indicate bias.

Brook also argues that the trial judge's bias is evident in his rulings at the end of trial, in which the trial judge found that Brook "is one of the most controlling people I've ever seen. . . . He is clearly using his ability to bully people to drive his personal relationships, here." RP (Dec. 3, 2008) at 1618. However, the trial judge was not signaling his own personal bias or gratuitously expressing a personal opinion. Rather, he was making necessary rulings regarding the reason for imposing restrictions on Brook's time with the Lang children. The judge was describing on the record the evidence of Brook's problematic behavior and the determinations that the judge had made based on the evidence presented and the court's personal observations made during the dissolution proceeding.

Judges are paid to be judgmental. Trial judges occasionally do not personally like litigants at the end of a trial. Often, during the course of trial proceedings, judges become convinced that a party is a liar, or a thief, or suffers from some other moral failing. However, this does not constitute bias. Here, significantly, there is no evidence that the trial judge had any preconceived preference for either of the parties or any opinions about Brook or the legal issues presented prior to the beginning of the case. See Borchert, 57 Wn.2d at 722. Any adverse opinions that the trial judge developed during the proceedings were based on knowledge gained of the parties during the litigation. The record

does not reveal any instance suggesting that the trial judge developed a personal dislike for Brook that resulted in bias or the appearance of unfairness. None of the trial court's comments or rulings demonstrate judicial bias or suggest a potential for bias. Rather, they underscore the judge's knowledge of Brook's conduct and awareness of the potential negative impact of Brook's behavior on the Lang children. See In re Dependency of O.J., 88 Wn. App. 690, 697, 947 P.2d 252 (1997). A trial judge's job is to decide cases. It is not the judge's responsibility to make the litigants happy. This trial judge acted properly by candidly, directly, and honestly explaining the bases for the court's rulings—no matter how unflattering to Brook the judge's reasons may have been.[7]

V

Tracie cross-appeals from the trial court's parenting plan, contending that the trial court erred by imposing in the parenting plan mediation as the process for dispute resolution. She argues that this was erroneous because she believes that the trial court found that Brook committed acts of domestic violence encompassed within RCW 26.09.191(1) and (2). However, as discussed above, the trial court did not find that Brook committed domestic violence in its original

[7] Brook moved this court to supplement the record on appeal with two posttrial verbatim reports of proceedings, from September 24, 2009, and January 28, 2010. These additional transcripts purportedly "provide further evidence of [the trial judge's] bias against Brook." Tracie originally objected to supplementation of the record, but she later withdrew her objection. We grant Brook's motion. RAP 9.11. The supplemental transcripts do not change our analysis. We assign no significance to them or to the other supplemental transcripts that were submitted by the parties. They do not support Brook's claim of bias.

orders and such a finding would not have been supported by the record. Thus, the trial court was not required to impose the judicial dispute resolution required by RCW 26.09.191(1). Accordingly, the trial court did not err by requiring the parties to engage in mediation.

VI

Tracie next contends that the trial court erred by not monetarily valuing the Montavo stock. We find that the trial court's decision was invited by Tracie's counsel and, thus, appellate relief is precluded.

The doctrine of invited error prohibits a party from setting up an error by adopting a position that induces the trial court to take an action and then complaining of the trial court's action on appeal. Casper v. Esteb Enters., Inc. 119 Wn. App. 759, 771, 82 P.3d 1223 (2004) (quoting Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S., 112 Wn. App. 677, 681, 50 P.3d 306 (2002)).

Tracie encouraged the trial court's decision to divide the stocks without valuing the stocks. At trial, Tracie's attorney stated:

> I don't know what Montavo's worth, but I don't think you have to make a finding. Divide the shares. Of course there are restrictions and that's a problem. They are not liquid. I agree completely, whole-heartedly with Mr. Lang that if someone tries to sell those shares on the over-the-counter market, you try to dump a bunch, the price will plummet. It's a problem. You can't solve that problem. All you can do is divide the shares.

RP (Dec. 3, 2008) at 1572.

The trial court did not enter any findings regarding the actual value of the

Montavo shares, although the trial court indicated that the Montavo stock was the parties' only significant asset. The trial court divided it equitably, awarding 45 percent to Brook and 55 percent to Tracie. The percentage variation was intended to compensate Tracie for outstanding judgments for attorney fees and maintenance that Brook had not yet paid. The trial court divided the stock between the parties without making any finding regarding its value. Tracie fostered this decision. Accordingly, she may not now challenge the trial court's decision to fairly and equitably divide the stock without valuation.

Affirmed.[8]

Dwyer, C.J.

We concur:

Leach, A.C.J.

Cox, J.

[8] Tracie requests an award of attorney fees on appeal. When a trial court's order pursuant to a dissolution proceeding is appealed, an award of attorney fees is within the sound discretion of this court. In re Thompson, 34 Wn. App. 643, 648, 663 P.2d 164 (1983). The trial court did not award attorney fees or costs below, choosing to address the situation in a different manner. Neither party to this appeal prevails on its affirmative claims. We see no persuasive basis to award either party attorney fees on appeal. Accordingly, Tracie's request is denied.