IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	
	)	No. 66277-5-I
TAMMY J. TRIPLETT,	)	
	)	DIVISION ONE
Respondent,	)	
	)	
and	)	UNPUBLISHED OPINION
	)	
STEPHANIE L. CASE,	)	FILED: December 12, 2011
	)	
Appellant.	)	
_____	)	

Becker, J. — Stephanie Case appeals the trial court's order refusing to hold her former spouse, Tammy Triplett, in contempt for alleged violations of a parenting plan. Case also challenges the trial court's order providing that their 16 year old son will not be forced to have contact with Case without his consent. Because Case fails to demonstrate any abuse of discretion in the orders before this court on review, we affirm.

In February 2000, the trial court dissolved the marriage of Stephanie Case and Tammy Triplett and entered a parenting plan providing for the care of the couple's two children, S.C., born in August 1994, and A.C., born in January 1996. The parenting plan provides that the children will reside with Triplett

except for residential time with Case:

> Every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. Provided, that due to [Case's] current work schedule, [Case] shall have the children the third weekend of every month, from Friday at 8:00 p.m. until Sunday at 6:00 p.m. If [Case's] schedule changes to where [Case] has weekends off, [Case's] residential time shall go back to the previous every other weekend schedule.

In nearly every year following entry of orders dissolving the marriage and providing for the care and support of the children, Case has filed some kind of motion in this matter, seeking modifications of the parenting plan or support order, initiating contempt proceedings based on Triplett's alleged failure to mediate disputes and alleged concealment of information regarding day care costs, and challenging prior orders.

In late 2004, after suffering an injury leading to the loss of her job and home, Case filed motions to modify child support and for a contempt finding against Triplett. In early 2005, a commissioner entered an order denying the motion for a finding of contempt and stating, "Parties will strictly follow the parenting plan." On January 28, 2005, Judge Laura Middaugh modified the commissioner's order as follows:

> Pending agreement in mediation or modification of the Parenting Plan, [Case] shall have the children the 3rd weekend of every month from [Saturday] 10 [a.m.] to Sunday at 6[p.m.] [and] other times as the parties may agree.

Also on January 28, 2005, Judge Middaugh signed an order transferring the matter to the Family Court Department for mediation regarding "Adjustment of [Case's] time with the children until [Case] has her own residence and is able to

resume the regular schedule under ¶ III or until the Parenting Plan is modified." In March 2005, the trial court granted a temporary modification of Case's child support obligation. King County Family Court Services issued a case closure notice on November 30, 2005, indicating that the parties completed mediation. There is no indication in the record that the mediation resulted in any orders modifying the residential schedule.

In 2007 and 2008, Case filed additional motions regarding child support and to vacate orders entered in 2002, 2005, and 2007. In May 2009, based on a finding that Case filed certain motions in bad faith between October 2008 and March 2009, Judge George Mattson enjoined Case from bringing legal proceedings against Triplett based on facts occurring before May 2009 without prior approval of the court.

In September 2010, Case asked the trial court to order Triplett to appear and show cause why she should not be found in contempt for failing to comply with the parenting plan. In particular, Case claimed Triplett should be held in contempt for "Denying residential time with both children and failing to engage in joint decision making regarding medical decisions and educational decisions." In the same motion, Case sought reimbursement of $3,789 paid for day care from July 1, 2009, through September 30, 2010.

On October 19, 2010, at the show cause hearing on Case's allegations of contempt, Triplett filed a motion to amend Judge Middaugh's January 28, 2005, order regarding residential time with Case and a motion to shorten time to allow

consideration of the matter at the same hearing. Triplett contended that S.C., now 16, had had "an explosive emotional episode" at school, had been expelled, had been hospitalized for mental health treatment, and had subsequently received counseling, psychiatric care and medication allowing him to return to school. Triplett provided the declaration of Dr. Jack Reiter, S.C.'s treating psychiatrist, to support her request that the provision in Judge Middaugh's 2005 order regarding residential time with Case be amended to apply only to the couple's daughter.

At a hearing on October 19, 2010, Judge Deborah Fleck granted Triplett's motion to shorten time, reviewed all the provided materials, and considered both parties' motions and arguments. Judge Fleck found that Triplett had complied with court orders and was not in contempt. In an order regarding the contempt action, Judge Fleck found that Triplett "has complied, and is presently willing to comply, with the court's orders dated 2/28/00 (Parenting Plan) as modified by the Order on Civil Motion signed by Judge Middaugh on 1/28/05 to the extent it modifies the Parenting Plan." Judge Fleck ordered Triplett to "specifically comply with the joint decision making provisions of the Parenting Plan unless or until modified by a court order. Both parents shall be self-informed about the children's schooling." In a separate order, Judge Fleck addressed Case's motion regarding day care expenses, granting Case "a credit of $3,789.00 plus $735.00 against her unpaid, past due child support for her portion of day care charged July 1, 2009 through September 30, 2010."

In an "Order Amending Order on Civil Motion, dated 1-28-2005," Judge Fleck found "that forcing contact between the parties' son, [S.C.], and . . . Stephanie L. Case, at this time is likely to cause irreparable harm to [S.C.]" The court ordered that "effective immediately, the Order on Civil Motion, dated 1-28-2005 is modified in that [S.C]. shall have contact with . . . Stephanie Case, only to the extent that [S.C.] chooses to have that contact, pending further order of this court." Judge Fleck denied Case's motion for reconsideration on November 10, 2010.

Case filed a notice of appeal of the November 10, 2010, order denying reconsideration of the October 19, 2010, orders regarding contempt and amendment of the 2005 order. The notice of appeal also seeks "review of the January 28, 2005 order pursuant to RAP 2.4(b)."

ANALYSIS

Our consideration of Case's claims is controlled by well-settled principles of appellate review. Our review is limited to orders properly before us based on a timely notice of appeal. RAP 5.2(a). We consider only the evidence that was before the trial court at the time a decision was made. See RAP 9.1; RAP 9.11. This is because "[t]he function of ultimate fact finding is exclusively vested in the trial court." Edwards v. Morrison-Knudsen Co., 61 Wn.2d 593, 598, 379 P.2d 735 (1963). We do not weigh conflicting evidence or substitute our judgment for that of the trial court. In re Marriage of Rich, 80 Wn. App. 252, 259, 907 P.2d 1234, review denied, 129 Wn.2d 1030 (1996). The trial court is the judge of

credibility of witnesses, and we review challenged findings of fact only for substantial evidence in the record before the trial court. See Dodd v. Polack, 63 Wn.2d 828, 829, 389 P.2d 289 (1964). Unchallenged findings are verities on appeal. In re Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). This court generally will not consider claims not supported by citation to authority, references to the record, or meaningful analysis. RAP 10.3(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

In this appeal, Case lists 10 assignments of error but does not specifically address those issues in a coherent manner in the argument section of her brief. She has not assigned error to any finding of fact or any conclusion of law. She requests review of several orders that she did not timely appeal. Case also seeks review of an order dismissing a separate action for damages she filed against Triplett under a different cause number. She has attached documents to her brief that were not before the trial court at the time of the orders on appeal. She also refers repeatedly in her briefing to the dispute with Triplett regarding day care expenses despite the fact that Judge Fleck granted Case her requested relief on that issue in a separate order that Case has not appealed.

The deficiencies in Case's briefing are sufficient to preclude review. Nevertheless, to the extent possible, we have addressed the essence of her claims regarding the following orders by Judge Fleck: the October 19, 2010,

order denying Case's request to hold Triplett in contempt and the October 19, 2010, order conditioning Case's contact with S.C. on S.C.'s consent.[1]

Under RCW 26.09.160(2)(b), a court shall find a party in contempt based on a written finding, after a hearing, "'that the parent, in bad faith, has not complied with the order establishing residential provisions for the child.'" In re Marriage of James, 79 Wn. App. 436, 440, 903 P.2d 470 (1995), quoting RCW 26.09.160(2)(b). A parent alleging contempt must establish the offending parent's bad faith by a preponderance of the evidence. James, 79 Wn. App. at 442. The trial court balances competing testimony and documentary evidence, weighs credibility, and ultimately makes determinations regarding bad faith. James, 79 Wn. App. at 442. See also In re Marriage of Rideout, 150 Wn.2d 337, 351-52, 77 P.3d 1174 (2003). When no finding is entered on a material issue, it is a finding against the party having the burden of proof. Pacesetter Real Estate, Inc. v. Fasules, 53 Wn. App. 463, 475, 767 P.2d 961 (1989). We review a trial court's factual findings in a contempt proceeding to determine whether they are supported by substantial evidence in the record. Rideout, 150 Wn.2d at 352.

Essentially, as to the order denying a finding of contempt, Case claims that the trial court ignored the evidence she presented to establish that Triplett had prevented the children from spending residential time with Case, concealed

[1] Although Case also appealed and assigned error to Judge Fleck's November 10, 2010, order denying reconsideration of the two October 19 orders, she fails to present any cogent argument or relevant authority to establish any error. We therefore do not address the denial of reconsideration.

information from Case regarding health care, education, and day care expenses, prevented Case from participating jointly in decision making regarding health care and education, and intentionally interfered with Case's relationship with the children. Rather than assign error to findings of fact or conclusions of law, Case criticizes the trial court's analysis of the prior orders, attempts to retry the matter before this court, and appears to claim that by mentioning Judge Mattson's order, the trial court somehow refused to consider some evidence or argument. Case argues that Judge Middaugh's 2005 order has "self-terminated" or is no longer enforceable and that Triplett has violated the parenting plan by refusing to allow Case to have residential time with the children every other weekend.

But Judge Fleck stated that she considered all the evidence and argument presented by each party. Judge Fleck mentioned Judge Mattson's order when assessing credibility of the parties and persuasiveness of the evidence, indicating that she had to balance the appearance that Triplett did not confer with or notify Case as promptly as she should have with the concern that Case repeatedly raised the same issues in court. Based on Dr. Reiter's declaration describing S.C.'s rage and blackouts at school while having troubles with a teacher, as well as other evidence provided by both parties, Judge Fleck was entitled to find Triplett's version of the facts regarding S.C.'s expulsion from school and hospitalization more credible than Case's claim that Triplett orchestrated the events to interfere with Case's relationship with S.C. Also, given Dr. Reiter's statement that "[S.C.] denied being influenced adversely

toward [Case] by [Triplett] who avoided speaking about [Case] in [S.C.]'s presence," Judge Fleck could legitimately find that Triplett did not act in bad faith to prevent S.C. from visiting Case. Cf. Rideout, 150 Wn.2d at 353-57 (finding of bad faith may be appropriate where child resists court ordered residential time and evidence establishes parent either contributes to child's negative attitude to other parent or fails to make reasonable efforts consistent with child's age and maturity to require child to comply with court ordered residential time).

As to the provisions in the parenting plan and in Judge Middaugh's 2005 orders regarding Case's residential time with the children, Judge Fleck properly determined that the referral to mediation did not constitute an order requiring any particular result from mediation. Because no other order had been entered since 2005 addressing Case's residential time with the children, Judge Fleck determined that Triplett was not acting in bad faith by following Judge Middaugh's 2005 order providing residential time for Case on the third weekend of every month. And Case admitted that the couple's daughter had been spending the third weekend per month with her. In sum, substantial evidence in the record supports the trial court's finding that Triplett did not violate the parenting plan in bad faith.

Next, Case contends that Judge Fleck improperly modified the parenting plan, preventing her from contacting her son. The court may change a parenting plan by agreement, by petition to modify, and by temporary order. In re Marriage of Christel, 101 Wn. App. 13, 22, 1 P.3d 600 (2000). Generally, the court must

find a "substantial change in circumstances" to modify a parenting plan. RCW 26.09.260(1); Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 807, 929 P.2d 1204 (1997). A modification occurs "when a party's rights are either extended beyond or reduced from those originally intended." Christel, 101 Wn. App. at 22. A clarification is "merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary." Rivard v. Rivard, 75 Wn.2d 415, 418, 451 P.2d 677 (1969). We review a clarification of a parenting plan for abuse of discretion. Rivard, 75 Wn.2d at 419.

Here, Judge Fleck did not extend or reduce the parties' rights. Judge Fleck did not make any findings regarding Case's circumstances or behavior and did not restrict Case's contact with S.C. Instead, based on Dr. Reiter's declaration, Judge Fleck found that "forcing contact" between 16 year old S.C. and Case would cause irreparable harm to S.C. Although Case objected to "some of the comments by" Dr. Reiter, she does not dispute this finding. Having reviewed Dr. Reiter's declaration, which is included in the sealed record submitted to this court, we conclude the finding of irreparable harm is amply supported by the declaration.

Observing that S.C.'s situation was "scary" and "frightening," Judge Fleck offered to set the matter over for another hearing to allow Case to have "an opportunity to reflect on" Dr. Reiter's opinion. Case disagreed and did not object to entry of an order. Instead, Case stated she wanted "custody of [her] daughter." Noting that Case had not filed a petition for modification, Judge Fleck

stated, "[Y]ou have the original parenting plan from 2000 as modified . . . by Judge Middaugh's one order. That is where you stand. So if you want to modify the custody of your daughter, you can file a Petition for Modification." Returning to the question of visitation with S.C., Judge Fleck asked Case whether she agreed to "an order that does not require visits between you and [S.C.] . . . at least on an emergency basis." Case did not object.

We do not perceive Judge Fleck's order to be a modification under the circumstances here. Instead, the order clarifies that the parenting plan does not entitle a parent to have a troubled 16-year-old forced to have contact with the parent against the child's will and at the risk of irreparable harm to the child. Case fails to establish any abuse of discretion in this order.

Finally, both parties request attorney fees on appeal. Triplett claims Case's appeal is frivolous and, therefore, brought in bad faith. RAP 18.9(a); RCW 4.84.185; RCW 26.09.260(13). Case claims she has a financial need and Triplett has the ability to pay. RCW 26.09.140. Because we do not find that Case necessarily filed her appeal in bad faith, we exercise our discretion and deny both requests for attorney fees on appeal.

Affirmed.

WE CONCUR:

Schindler, J

Grosse, J