

**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**

In the Matter of the Marriage of:

ARADHNA LUTHRA,

Respondent,

and

VIKAS LUTHRA,

Appellant.

No. 66572-3-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: January 23, 2012

Leach, J. — Vikas Luthra appeals from court orders enforcing his compliance with a final parenting plan and denying his request for reconsideration. He contends the court's orders improperly modified the final parenting plan and decree of dissolution by (1) restricting him from visiting or volunteering at his son's school and (2) imposing greater restrictions on his contact with Aradhna Luthra. The first restriction does not modify the parenting plan; the second improperly modifies the restraint contained in the decree of dissolution. We affirm in part and reverse in part.

**Background**

Vikas and Aradhna Luthra<sup>1</sup> divorced in July 2010. The final parenting plan entered by the court for the couple's seven-year-old son, Akshay, recited,

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<sup>1</sup> Aradhna has since remarried and now goes by the name Aradhna Forrest. For clarity, this opinion refers to both parties by their first names. No disrespect is intended.

“The father’s involvement or conduct has an adverse effect on the child’s best interests under RCW 26.09.191(3)(g).” The temporary parenting plan, entered while the dissolution was pending, provided Vikas with residential time with Akshay on Wednesday afternoons from 3:00 to 9:00 p.m. The final parenting plan discontinued the midweek visitation until Vikas made progress in treatment for his severe obsessive-compulsive disorder. Because the court entered the parenting plan in July, while Akshay was on a summer schedule, the court ordered that the midweek visitation provision would change when Akshay returned to school in the fall. In the decree of dissolution, the court restrained Vikas from “knowingly coming within or knowingly remaining within 500 feet” of Aradhna’s home or workplace.

Less than one week after classes started in September, Vikas began visiting Akshay at his elementary school, eating lunch with his son and volunteering in the classroom, sometimes several days a week. Additionally, after Aradhna told Vikas she and Akshay would attend weekday school open house, Vikas showed up and followed them as they met Akshay’s teachers. Vikas continued to follow Aradhna as she spoke with friends at the event. After these incidents, Aradhna moved to enforce the parenting plan limitations on Vikas’s midweek contact with Akshay and the restraining order. In its order to enforce compliance, the court, acting on its own motion, stated that it was clarifying the relevant provisions of the plan. It ordered Vikas to immediately cease visits with Akshay at school or any other time and place not specifically

awarded in the final parenting plan but also gave him the right to chaperone one field trip per year and participate in one classroom cultural event, provided Aradhna would not be present. The court also ordered Vikas to “remain at least 500 feet from [Aradhna], with the exception of the residential transfers.”

### Standard of Review

We generally review a trial court’s ruling dealing with the provisions of a parenting plan for abuse of discretion.<sup>2</sup> A trial court abuses its discretion if its decision is manifestly unreasonable or is based on untenable grounds or untenable reasons.<sup>3</sup> A court's decision is manifestly unreasonable if “it is outside the range of acceptable choices, given the facts and the applicable legal standard.”<sup>4</sup> A decision 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.”<sup>5</sup>

### Analysis

Vikas contends that the court modified the final parenting plan without following mandatory statutory procedures. An order modifies a party's visitation rights when it either extends or reduces them from the scope originally intended in the decree.<sup>6</sup> RCW 26.09.260 governs modification proceedings. This statute

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<sup>2</sup> In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997).

<sup>3</sup> In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

<sup>4</sup> In re Marriage of Fiorito, 112 Wn. App. 657, 664, 50 P.3d 298 (2002).

<sup>5</sup> Fiorito, 112 Wn. App. at 664.

<sup>6</sup> Rivard v. Rivard, 75 Wn.2d 415, 418, 451 P.2d 677 (1969).

authorizes a modification to nonresidential provisions upon a showing of a substantial change in circumstances of either parent or child, if the adjustment is in the child's best interest.<sup>7</sup> A trial court abuses its discretion when it fails to follow the statutory procedures for modifying a parenting plan.<sup>8</sup> A clarification, on the other hand, is "merely a definition of the rights which have already been given."<sup>9</sup> It may define the parties' respective rights and obligations if they cannot agree on the meaning of a particular provision.<sup>10</sup> It is not subject to the same procedural requirements that govern modification proceedings.

Vikas argues that the court's purported clarification is an improper modification that essentially imposes a restraining order against him for his son. Contrary to his contention, the court's order does not expand or restrict either parent's rights. It simply spells out the intended scope of visitation granted in the original plan. Vikas assumes that the final parenting plan allows any contact not expressly prohibited by it. Because he cites no authority for this extreme view, we assume there is none.<sup>11</sup> The final parenting plan provides that Akshay shall reside with his mother except for days and times specifically described in the plan. The residential schedule grants Vikas only the right to be with his child at the times and places specified and nothing beyond those times and places.

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<sup>7</sup> RCW 26.09.260(10).

<sup>8</sup> In re Marriage of Watson, 132 Wn. App. 222, 230, 130 P.3d 915 (2006).

<sup>9</sup> In re Marriage of Christel, 101 Wn. App. 13, 22, 1 P.3d 600 (2000) (quoting Rivard, 75 Wn.2d at 418).

<sup>10</sup> Rivard, 75 Wn.2d at 419.

<sup>11</sup> DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

To hold otherwise would ignore the plan language of the parenting plan.

The temporary parenting plan allowed Vikas midweek residential time and reserved on finding statutory limiting factors on his visitation. In stark contrast, the final parenting plan identified three limiting factors based on Vikas's obsessive-compulsive disorder and his abusive use of conflict in the past. Based on these findings, the court eliminated contact between Vikas and Akshay during the school week, at least so long as Vikas's obsessive-compulsive disorder was not under control.

Alternatively, Vikas argues that if the court's orders did not modify the parenting plan, the court erroneously included the clarified restrictions in the plan because they were not reasonably calculated to address the court's concerns about Akshay's exposure to Vikas's obsessive-compulsive behaviors.<sup>12</sup> At the core, Vikas argues that the court's concerns about Akshay's exposure to Vikas's home-cleansing rituals justifies only restrictions limiting the time Akshay spends at Vikas's home. But this argument essentially challenges the court's original findings of fact and the finding of statutory-limiting factors during the original proceedings. Vikas did not appeal the court's findings or the limitations in the final parenting plan. We will not consider such a challenge here. The order Vikas now challenges appropriately interprets and clarifies restrictions contained in the final parenting plan.

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<sup>12</sup> To begin however, Vikas misstates the standard of review for parenting plans and encourages this court to apply a more rigorous de novo standard. The abuse of discretion standard clearly applies to parenting plan reviews. See Littlefield, 133 Wn.2d at 46.

Vikas relies heavily upon In re Marriage of Katare,<sup>13</sup> where a father appealed restrictions in a parenting plan that prevented him from taking his children out of state. While the Court of Appeals held that the trial judge's findings of fact did not support some of the restrictions imposed,<sup>14</sup> that holding has no application here because Vikas never challenged the court's original findings or restrictions.

Next, Vikas challenges the court's imposition of additional restrictions on his contact with Aradhna. He contends that additional restriction also is an unauthorized modification. The decree of dissolution requires that Vikas remain at least 500 feet from Aradhna's home and office. The court's order to enforce requires him to remain 500 feet from her at all times, except residential transfers. Neither party moved to modify this restraint or argued that its terms were unclear. Indeed, the language of the restraining order is quite clear. Though the court may have wished to prevent Vikas and Aradhna from having direct contact—a possibility supported by other provisions requiring the parties to communicate mostly by e-mail and to use a mediator—the restraining order's language is unequivocal. Therefore, the change to the restraining order is a modification, not a clarification. Because neither party sought a modification of the decree of dissolution, the court lacked authority to do so. The court abused its discretion by imposing these new restrictions on Vikas's contact with Aradhna.

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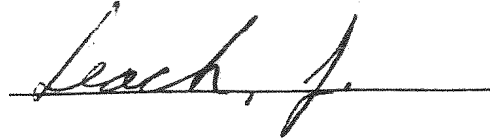
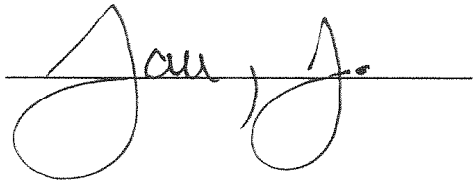
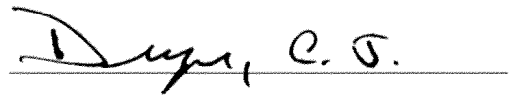
<sup>13</sup> 125 Wn. App. 813, 822, 105 P.3d 44 (2004).

<sup>14</sup> Katare, 125 Wn. App. at 832.

Conclusion

Because the court properly clarified the parenting plan's visitation provisions but improperly modified the restraining order against Vikas, we affirm in part and reverse in part.

WE CONCUR:

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