IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Marriage of,	)	NOS. 66615-1-I
	)	66910-9-I
KARI P. MAYO,	)	(Consolidated Cases)
	)	
Respondent,	)	DIVISION ONE
and	)	
	)	
MARK B. MAYO,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: April 30, 2012

Lau, J. — Mark Mayo appeals a final parenting plan entered by the trial court after a three-day trial and several pretrial orders. Finding no abuse of discretion, we affirm.

FACTS

Kari and Mark Mayo[1] were married in 2004. They separated on July 24, 2009. On December 7, 2010, the parties participated in a settlement conference on a parenting plan for their two young children. At the time, Mark was incarcerated and participated by telephone. Attorneys for Kari and Mark signed a proposed parenting plan ("negotiated plan"). Kari, however, asserted shortly after that she disagreed with

[1] We use the parties' first names for clarity.

the negotiated plan. The parties continued to negotiate the plan's terms. Mark filed a motion to enforce the plan signed by each party's attorney. Kari and her attorney filed declarations in opposition. The court denied the motion. The order denying the motion states:

> This matter came before the court on respondent's motion to enforce settlement agreement and for terms, and the court having considered the moving, opposition and in reply materials and briefs, and having reviewed the legal file, now, hereby orders that respondent's motion is denied. Although both attorneys signed the proposed parenting plan, petitioner asserts that she did not agree and advised counsel of the same within minutes. She also asserts that respondent continued to negotiate terms even after the attorneys signed the proposed parenting plan. The record is insufficient for the court to enforce this proposed plan, as there was no final agreement.
>
> Respondent's motion to strike reply memo is denied.

(Capitalization omitted.)

Following a three-day bench trial, the court made findings of fact and conclusions of law and entered a dissolution decree and permanent parenting plan. The findings incorporate the parenting plan by reference. Mark appeals.[2]

ANALYSIS

Mark argues the court erred by failing to enforce the parenting plan signed by the parties' attorneys after the settlement conference. He also challenges evidentiary rulings and the final parenting plan entered by the court after trial.

We review a trial court's parenting plan decisions for an abuse of discretion. In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). A trial court abuses

[2] Mark moved for discretionary review of several pretrial orders. We consolidated that appeal with his appeal of the final parenting plan entered by the court.

its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Littlefield, 133 Wn.2d at 46-47. Because of its "unique opportunity to observe the parties to determine their credibility and to sort out conflicting evidence," the trial court's discretion in this regard is broad, In re Marriage of Woffinden, 33 Wn. App. 326, 330, 654 P.2d 1219 (1982), and appellate courts are reluctant to disturb a trial court's child placement decisions. In re Marriage of Kovacs, 121 Wn.2d 795, 801 n.10, 854 P.2d 629 (1993) (citing In re Marriage of Murray, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981)). Determining the credibility of witnesses and the weight to assign conflicting testimony is for the trial judge, whose findings are reviewed only to determine whether they are supported by substantial evidence. In re Marriage of Pennington, 142 Wn.2d 592, 602-03, 14 P.3d 764 (2000).

We first address Mark's motion to supplement the record with transcripts of the settlement discussions that took place during the settlement conference. Kari objects on the grounds that the transcripts are partial and their admission would violate ER 408[3] and RCW 5.60.070.[4] We agree. In addition, Mark fails to satisfy RAP 9.10.

[3] ER 408 provides: "In a civil case, evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."

[4] RCW 5.60.070 provides: "(1) If there is a court order to mediate, a written

agreement between the parties to mediate, or if mediation is mandated under RCW 7.70.100, then any communication made or materials submitted in, or in connection with, the mediation proceeding, whether made or submitted to or by the mediator, a mediation organization, a party, or any person present, are privileged and confidential and are not subject to disclosure in any judicial or administrative proceeding except:

"(a) When all parties to the mediation agree, in writing, to disclosure;

"(b) When the written materials or tangible evidence are otherwise subject to discovery, and were not prepared specifically for use in and actually used in the mediation proceeding;

"(c) When a written agreement to mediate permits disclosure;

"(d) When disclosure is mandated by statute;

"(e) When the written materials consist of a written settlement agreement or other agreement signed by the parties resulting from a mediation proceeding;

"(f) When those communications or written materials pertain solely to administrative matters incidental to the mediation proceeding, including the agreement to mediate; or

"(g) In a subsequent action between the mediator and a party to the mediation arising out of the mediation.

"(2) When there is a court order, a written agreement to mediate, or when mediation is mandated under RCW 7.70.100, as described in subsection (1) of this section, the mediator or a representative of a mediation organization shall not testify in any judicial or administrative proceeding unless:

"(a) All parties to the mediation and the mediator agree in writing; or

"(b) In an action described in subsection (1)(g) of this section.

"(3) Beginning on January 1, 2006, this section governs only mediations pursuant to a referral or an agreement made before January 1, 2006. Mediations pursuant to a referral or an agreement made on or after January 1, 2006, are governed by chapter 7.07 RCW."

[5] RAP 9.10 provides: "If a party has made a good faith effort to provide those portions of the record required by rule 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision or administrative adjudicative order certified for direct review by the superior court because of the failure of the party to provide the appellate court with a complete record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits or administrative records and exhibits certified by the administrative agency, or (2) correct, or direct the supplementation or correction of, the report of proceedings. The appellate court may impose sanctions as provided in rule 18.9(a) as a condition to correcting or supplementing the record on review. The party directed or permitted to supplement the record on review must file either a designation of clerk's papers as provided in rule 9.6 or a statement of arrangements as provided in rule 9.2

[5]

We next address Mark's evidentiary challenges. We review evidentiary rulings for abuse of discretion. City of Spokane v. Neff, 152 Wn.2d 85, 91, 93 P.3d 158 (2004). A court is presumed to rely only on admissible evidence. In re Marriage of Morrison, 26 Wn. App. 571, 575 n.2, 613 P.2d 557 (1980). In response to Mark's motion to enforce, Kari and her attorney submitted their declarations indicating the mediation efforts resulted in no final agreement on the parenting plan issues. Mark filed a motion to strike these declarations on the grounds that the signatures "do not comply with the requirements of GR 30(d)(2)(A) and (B)," that the declarations violated RCW 7.07.070, which protects the confidentiality of mediations, lacked foundation, and were irrelevant. The court denied the motion to strike.

Mark failed to object below on the "hearsay" or "extrinsic evidence" grounds he now argues. And even though he objected to improper signatures below, Mark fails to cite any relevant legal authority supporting any of his evidentiary objections on appeal. He also fails to provide meaningful legal analysis. Procedural rules apply equally to litigants represented by counsel and litigants proceeding pro se. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). We generally do not address arguments made for the first time in this court. RAP 2.5. We do not address arguments that are not supported by cited authorities. RAP 10.3(a)(6); In re Marriage of Fiorito, 112 Wn. App. 657, 669, 50 P.3d 298 (2002). These claims fail.

---

within the time set by the appellate court."

Mark also contends the court erred by denying his motion to enforce the negotiated plan. He assigns error on the ground that "the court erred by considering a condition precedent" and that the court erroneously found the contract rescinded. Appellant's Br. at 10. The court need not enforce a parenting plan that is not "knowing[] and voluntary[]." See RCW 26.09.187(2)(a)(ii), (3)(a)(ii). In opposition to the motion to enforce, Kari testified that, "I informed both attorneys that I rejected the plan and halted the mediation." It is undisputed that Kari never signed the negotiated plan. The court acted well within its discretion when it denied the motion to enforce. The record fails to support Mark's claim that the court erroneously interpreted the negotiated plan as containing a condition precedent because the court correctly determined Kari did not agree to the negotiated plan. Likewise, the court did not find rescission because Kari never signed the plan.

Mark moved for discretionary appeal of several other pretrial orders, including an order denying motions for additional findings and reconsideration and an order denying a motion for a continuance. We consolidated those issues with this appeal. But Mark makes no argument in his opening brief about why the court erred in denying these motions. We decline to consider these issues. See First Am. Title Ins. Co. v. Liberty Capital Starpoint Equity Fund, LLC, 161 Wn. App. 474, 486, 254 P.3d 385 (2011) (declining to consider an inadequately briefed argument).

Mark also argues the court should have entered the negotiated plan after trial and that the court prevented him from "an[] equitable opportunity to defend [himself]." Appellant's Br. at 11 (boldface omitted). Mark also asserts that Kari and her attorney

made false or incorrect statements in the proceedings. Based on our review of the record, which includes no trial transcript, Mark fails to demonstrate error.

Mark also challenges the following provision in the final parenting plan limiting his contact and decision making:

> 2.2 Other Factors (RCW 26.09.191(3))
> The respondent's involvement or conduct may have an adverse effect on the children's best interests because of the existence of the factors which follow:
> A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.

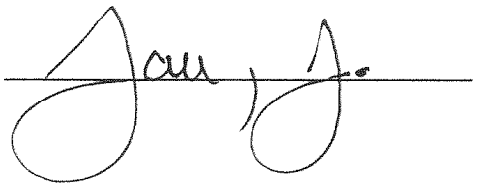
But Mark candidly admitted to problems with alcohol in his declaration in response to Kari's proposed permanent parenting plan. Mark admitted that alcohol contributed to a 2007 car accident and "a criminal act" that took place on September 8, 2009 for which he eventually was incarcerated. Even though Mark asserts he now receives treatment for alcohol abuse, the court properly considered that his long term alcohol impairment may interfere with parenting functions.

Except for the provision discussed above, Mark assigns error to none of the court's findings of fact, and they are therefore verities on appeal. The court's findings incorporate the final parenting plan. The court considered proposed parenting plans and evidence from both parties. The residential schedule set forth in the final order allows Mark substantial contact with the children upon his release from incarceration. Mark will receive Friday through Sunday visitation every other week, as well as mid week visitation on Thursdays on alternate weeks. The children will also reside with Mark during many vacations and holidays. Mark identifies nothing in the record that indicates the court prevented him from submitting evidence or that the court abused its

discretion when it entered a final parenting plan. Mark's claim fails.

Mark requests attorney fees on appeal. Because he is not the prevailing party, he is entitled to no fees. RAP 18.1.

Affirmed.



WE CONCUR: