IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of	)	NO. 66855-2-I
	)	
JOEL J. COHN,	)	DIVISION ONE
	)	
Respondent,	)	
	)	
and	)	
	)	
PAULA R. COHN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 4, 2012

Lau, J. — Paula Cohn appeals an order finding her intransigent and awarding Joel Cohn attorney and guardian ad litem fees. We conclude the record supports the court's intransigence finding and the court did not abuse its discretion by awarding fees.

FACTS

Following trial, the court entered an amended parenting plan for Joel and Paula Cohn's ten-year-old daughter on February 11, 2009.[1] The plan stated, "The father has issues with sexual compulsivity and lack of boundaries," but that after "outpatient treatment for sexual deviancy . . . treatment providers concluded he was not a

[1] We refer to the parties by first name for clarity.

pedophile." Accordingly, the plan contained "steps" that gradually increased the father's visitation with the child. At first, Joel would have "partially supervised" overnight visits. As the child became "comfortable" with overnight visits, she would eventually have three unsupervised overnight visits per week.

On November 11, 2009, the court ordered reintegration therapist wrote a letter to the court[2] stating, "As [the child's] therapist, I see no reason why [the child] should resist overnights besides the obvious fear and repulsion expressed by [Paula] which is either overtly or non-verbally conveyed to [the child.]" On November 12, 2009, Joel filed a motion for an order to show cause re contempt and a petition to modify the parenting plan. Joel alleged that Paula alienated his daughter from him and prevented successful implementation of the court's plan. The court found Paula "minimally cooperative with the parenting plan (PP) but is not found in contempt" and "the Mother has not been supporting of Father's overnights with the child and that if she believes she is keeping her feelings from the child she is delusional/misguided." The court also [found it did] not believe [that] Judge Trickey thought reintegration of full 3/4 day split plan would take 10 months." The court ordered "no sanctions or legal fees at this time." The court also appointed a guardian ad litem (GAL). The order stated, "The Father is to advance 100% of the GAL costs and Mother shall reimburse Father when financially able. The portion to be determined later." The court ordered no change in custody.

Paula filed a complaint against the reintegration therapist on February 4, 2010. Joel's attorney filed a response supporting the therapist. The Department of Health

[2] This letter was addressed "to whom it may concern," but Paula does not dispute Joel's contention it was provided to the court.

found that "the evidence does not support a violation." The therapist removed herself from the case and the court appointed a new therapist.

The GAL issued a report on July 24, 2010. The report states:

> At the very least, Paula harbors a great deal of anger/distrust/disrespect for Joel and has unwittingly [(the father believes this is not done "unwittingly")] communicated this to [the child], making it untenable for [the child] to fully embrace a relationship with her father. More likely, given the level of professional input Paula has received over time in this case, Paula has these feelings about Joel and is knowingly and directly sharing them with [the child] and encouraging [the child's] rejecting behavior.

The GAL also made recommendations about how to further implement the parenting plan. The father filed a motion to implement the GAL recommendations. Paula objected. The parties agreed to an amended final parenting plan on December 8, 2010.

On February 22, 2011, Joel moved for a finding of intransigence and reimbursement of legal fees and GAL fees. To support the motion, he attached over 100 pages of documents, including a police report, earlier court orders, a guardian ad litem report, the reintegration therapist's letter, the Department of Health's investigation results, and his own declaration, documenting Paula's intransigence. Joel described the procedural history above and noted several other incidents. He requested that the court find "that the mother has engaged in destructive, sabotaging, intransigent behavior that has resulted in his needlessly having to spend many thousands of dollars that were caused by the mother's direct behavior and in serious damage to his relationship with his daughter who continues to rebel against time with her father." Joel requested all fees from his November 12, 2009 contempt motion to the present. He

attached a copy of all billing between November 7, 2009, until December 1, 2010, minus the time spent preparing the final parenting plan. This amount constituted $9,461. Joel also attached the GAL bill for $4,926 and asserted Paula was responsible for the whole bill "given her highly inappropriate behavior as noted above." In response, Paula filed a 10 page declaration and financial declaration. Joel filed a reply declaration with exhibits.

The trial court considered the parties' submissions and entered an order re motion for finding of instransigence and reimbursement of legal and GAL fees. The order found Paula "to have engaged in destructive, sabotaging, intransigent behavior, which resulted in the Petitioner, Joel Cohn, having to needlessly spend thousands of dollars on attorney and GAL fees caused by the mother's direct behavior, and sustained serious damage to his relationship with his daughter." The court awarded $9,461 in attorney fees and $4,926 in GAL fees. Paula appeals.

ANALYSIS

Paula challenges the court's attorney and GAL fee award, arguing insufficient evidence to support the intransigence[3] finding.[4] Joel responds that the record supports the intransigence finding and the fee award.

We review a trial court's decision on attorney fees for abuse of discretion.[5] In re

[3] Paula's briefing uses the term "recalcitrance" rather than "intransigence." Because the court's order and the cases generally use the term "intransigence," we use that term.

[4] Paula asserts that intransigence is a conclusion of law rather than a finding of fact. But our cases clearly treat intransigence as a finding of fact.

[5] Because no hearing occurred on the fees motion, Paula argues that our review

Marriage of Burke, 96 Wn. App. 474, 476, 980 P.2d 265 (1999). The party challenging the decision must demonstrate that the trial court exercised its discretion in a manner that was "'clearly untenable or manifestly unreasonable.'" In re Marriage of Crosetto, 82 Wn. App. 545, 563, 918 P.2d 954 (1996) (quoting In re Marriage of Knight, 75 Wn. App. 721, 729, 880 P.2d 71 (1994)). We review challenged findings of fact for substantial evidence, which is evidence "sufficient to persuade a rational, fair-minded person of the truth of the finding." In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004).

A court has discretion to award attorney fees when one parent's intransigence causes the other parent to incur additional legal services, regardless of financial abilities. In re Marriage of Foley, 84 Wn. App. 839, 846, 930 P.2d 929 (1997). Intransigent conduct includes "foot-dragging" or obstructionist behavior, repeatedly filing unnecessary motions, or making a trial unduly difficult with increased legal costs. In re Marriage of Greenlee, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). Trial courts must exercise their discretion on articulable grounds, making an adequate record so the appellate court can review a fee award. Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632 (1998).

The record amply supports the intransigence finding. After the reintegration therapist wrote a letter to the court indicating that Paula was responsible for the child's

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should be de novo. She cites no authority supporting that contention. To the extent Paula also challenges the court's failure to conduct a hearing, Paula cites no authority requiring a hearing. See Beal for Martinez v. City of Seattle, 134 Wn.2d 769, 777 n.2, 954 P.2d 237 (1998) ("The City cites no authority for this proposition and, thus, it is not properly before us.").

hesitance to stay overnight at Joel's home, Joel filed a motion for contempt. While denying the contempt motion, the court noted Paula was "minimally cooperative" with the parenting plan's implementation and found, "[T]he Mother has not been supporting of Father's overnights with the child and that if she believes she is keeping her feelings from the child she is delusional/misguided." Paula later filed a complaint against the reintegration therapist, which the Department of Health found to be unsupported by evidence. The therapist removed herself from the case.

The GAL's July 24, 2010 report further supports the intransigence finding. The report states, "Paula has objected formally and objected through her behaviors since the court's rulings by attempting to impugn [the reintegration therapist] and by failing to actively support the intentions of the court order over many months." The report also states that Paula likely knowingly and directly shared her feelings with the child and encouraged the child's rejecting behavior. Because Paula obstructed implementation of the court's parenting plan, we conclude substantial evidence supports the court's intransigence finding and the record supports the amount of fees and costs awarded.[6] We find no abuse of discretion.[7]

Joel requests appellate attorney fees on appeal but cites no authority nor identifies any intransigence by Paula during the appeal. In re Marriage of Hoseth, 115

[6] To the extent Paula challenges the amount awarded, we decline to address the issue because it is inadequately briefed and argued. 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 inadequately briefed argument).

[7] Because ability to pay is not relevant to an intransigence finding, we need not address Paula's argument that she has insufficient means to pay. See In re Marriage of Foley, 84 Wn. App. 839, 846, 930 P.2d 929 (1997).

Wn. App. 563, 575, 63 P.3d 164 (2003) (party citing no authority for appellate attorney fees not entitled to fees). We decline to award appellate attorney fees.

Affirmed.

WE CONCUR: