IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

In the Matter of the Parenting and Support of M.S., A Minor Child. BRYAN HENRY SHADEL, Appellant, and JENNIFER ANNE NAULING, Respondent.	No. 67060-3-I DIVISION ONE UNPUBLISHED OPINION FILED: July 30, 2012

Leach, C.J. — Acting pro se, Bryan Shadel appeals trial court orders dissolving his and Jennifer Nauling's committed intimate relationship, establishing a parenting plan for their child, awarding Nauling sole ownership of the parties' condominium, and providing for child support. Shadel claims that the trial court imposed an unconstitutional restriction on his right to possess firearms and violated an automatic bankruptcy stay. Because statutory authority permitted the firearm restriction and because Shadel has not shown that the bankruptcy stay was in place at the time the trial court divided the parties' property, Shadel fails to establish error. Shadel makes several additional arguments but fails to support them with citations to the record and legal

authority. Thus, we do not address them on the merits. We affirm.

Background

Shadel and Nauling began dating in 2003. In January 2004, they bought a condominium in Monroe, where they lived until June 2005. Although Shadel and Nauling were "separated" between June and December 2005, Nauling became pregnant with their child, M.S., in September.[1] Also in September, Shadel quitclaimed a one-half interest in the condominium to Nauling. Nauling moved back into the condominium with Shadel that December. M.S. was born in June 2006. A month later, Shadel and Nauling separated for the final time.

In 2007, Shadel filed two separate lawsuits against Nauling: a quiet title action and a petition concerning the support and parenting of M.S. In 2008, Nauling filed a petition for dissolution and property distribution, claiming that she and Shadel had been in a "meretricious relationship." The cases were consolidated, and trial was held in January 2011.

On January 28, the trial court issued its oral rulings, designating a parenting plan for M.S. and awarding Nauling the condominium. The court limited Shadel's contact with M.S. to reunification therapy until he complied with various parenting plan provisions. Additionally, the trial court restricted both parties' ability to possess firearms. The trial court entered written orders memorializing its rulings on March 31. Shadel appealed. Nauling subsequently

[1] The trial court found that Shadel and Nauling bought the condominium together but, for financial reasons, only Shadel's name appeared on the title.

decided to move to Florida with M.S. and filed a motion to modify the parenting plan. The trial court approved the relocation and entered a modified parenting plan on October 31.

After filing her respondent's brief, Nauling moved under RAP 18.9(c) to dismiss Shadel's appeal. A clerk of this court referred Nauling's motion to the panel for determination under RAP 17.2(b).

Standard of Review

Generally, we review challenges to the provisions of a parenting plan for an abuse of discretion.[2] A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds.[3]

Analysis

As an initial matter, we consider Nauling's motion to dismiss. Under RAP 18.9(c), we may dismiss an appeal that is frivolous, moot, or filed solely to delay. Nauling offers two arguments why Shadel's appeal meets this standard. First, she contends the appeal is frivolous because it lacks citation to the record and legal authority. Second, Nauling claims the appeal is moot because the March 2011 parenting plan identified in Shadel's notice of appeal has been superseded by the October 2011 parenting plan. We disagree with both contentions.

"An appeal is frivolous if, considering the entire record, [it] presents no debatable issues upon which reasonable minds might differ and . . . is so devoid

[2] In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997).
[3] Littlefield, 133 Wn.2d at 46-47.

of merit that there is no possibility of reversal."[4] When considering if an appeal is frivolous, we resolve all doubts in the appellant's favor.[5] Here, viewing the record as a whole, the appeal has some merit. As discussed below, Shadel's argument regarding the firearm restriction is at least debatable. "Raising at least one debatable issue precludes finding that the appeal as a whole is frivolous."[6]

Second, "[an] appeal is moot where it presents purely academic issues and where it is not possible for the court to provide effective relief."[7] The issues in this case are not moot. The challenged limitations in the parenting plan entered in March 2011 continue in the modified parenting plan.[8] Therefore, we can still provide effective relief should we find any challenged provisions to be an abuse of discretion.[9] We deny Nauling's motion to dismiss the appeal.

Turning to the appeal, Shadel first claims that the trial court abused its discretion by ordering that M.S. live a majority of the time with Nauling. We disagree. A court has considerable discretion to decide a child's residential placement.[10] Thus, "[a] trial court's ruling dealing with the placement of children is reviewed for abuse of discretion."[11]

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[4] Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 906, 151 P.3d 219 (2007).

[5] Kinney v. Cook, 150 Wn. App. 187, 195, 208 P.3d 1 (2009).

[6] Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010).

[7] Klickitat County Citizens Against Imported Waste v. Klickitat County, 122 Wn.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993).

[8] The October 2011 parenting plan states, "All conditions of the March 30, 2011 Parenting Plan remain the same, with the exceptions of the sections in bold."

[9] See Klickitat County Citizens, 122 Wn.2d at 631-32.

[10] In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

RCW 26.09.187(3) lists the factors a trial court must consider in providing a residential schedule for a child in a parenting plan, including the "relative strength, nature, and stability of the child's relationship with each parent."[12] Here, the trial court decided to place M.S. with Nauling because "she's provided the primary care for [M.S.] throughout his life." Further, the trial court found that Shadel voluntarily chose not to see M.S. for almost two and a half years before trial. Additionally, Shadel's lack of a "stable, suitable residence" and his refusal to give the guardian ad litem (GAL) necessary background information on his roommates contributed to the trial court's placement of M.S.

Shadel does not demonstrate why, given these circumstances, the trial court abused its discretion. Rather, Shadel contends that the trial court failed to consider both the GAL's recommendations and the psychological report on Shadel. Shadel also appears to claim that the trial court improperly stated that it was Shadel's fault that he had not seen M.S for a considerable time. Shadel does not support these contentions with legal argument or citation to the record, as required by RAP 10.3(a)(6). The law does not distinguish between litigants who elect to proceed pro se and those who seek an attorney's assistance.[13] Both must comply with the applicable procedural rules, and a failure to do so may preclude review.[14] We cannot determine whether the trial court abused its

[11] Kovacs, 121 Wn.2d at 801.
[12] RCW 26.09.187(3)(a)(i).
[13] In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).
[14] Olson, 69 Wn. App. at 626.

discretion based on Shadel's bald claims.[15] Because Shadel fails to demonstrate that the trial court abused its discretion by entering the parenting plan for M.S., we will not disturb the trial court's determination on appeal.

Second, Shadel argues that the trial court abused its discretion by choosing a different reunification counselor than the one he and the GAL proposed. Again Shadel does not support his argument with citation to the record or legal authority. Therefore, we decline to consider his argument further.

Third, Shadel claims that the parenting plan's firearm restriction unconstitutionally interferes with his right to bear arms. He cites article I, section 24 of the Washington State Constitution, which reads, "The right of the individual citizen to bear arms . . . shall not be impaired." The right to bear arms, however, is not absolute and is subject to reasonable regulation.[16]

The challenged portion of the parenting plan reads, "The Petitioner/Father shall be restricted from possessing and/or using any type of firearms whatsoever or from keeping firearms at his residence until the court determines that the child is not at risk." The trial court based this restriction on a 2004 incident where Nauling called the police after Shadel threatened to "'blow his brains all over the wall.'"

A trial court may restrict a parent's actions under a parenting plan if it

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[15] RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (noting that an appellate court does not consider argument unsupported by citation to the record or authority).

[16] State v. Krzeszowski, 106 Wn. App. 638, 641, 24 P.3d 485 (2001).

finds that the parent's conduct may have an adverse effect on the child's best interests and if any of the following factors exist:

> (a) A parent's neglect or substantial nonperformance of parenting functions;
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> (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
>
> (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
>
> (d) The absence or substantial impairment of emotional ties between the parent and the child;
>
> (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
>
> (f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or
>
> (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.[17]

Here the trial court determined that the parenting plan should include a temporary restriction on Shadel's ability to possess a firearm based on his previous threat. Substantial evidence in the record supports this discretionary determination. We see no grounds for reversal, especially where Shadel has not supported his constitutional claim with argument or citation to authority. Additionally, on the record we have before us, Shadel failed to object to the restriction below, and he has not explained why we should consider his claim for the first time on appeal.[18] For these reasons, we reject his article I, section 24

[17] RCW 26.09.191(3); Littlefield, 133 Wn.2d at 54-55.

[18] See RAP 2.5(a) (providing that issues generally may not be raised for the first time on appeal).

claim.[19]

Fourth, Shadel claims the trial court violated his right to due process by depriving him of an opportunity to be heard. Shadel contends that he was not provided an interpreter and was not allowed to properly review proposed orders. However, Shadel fails to cite to the record in support of these claims. Again, the Rules of Appellate Procedure require an appellant to support his or her arguments with reference to the record. Therefore, we decline to consider Shadel's argument further.

Fifth, Shadel broadly claims that the trial court violated the appearance of fairness doctrine. A judicial proceeding must have an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.[20] To prevail on his claim, Shadel must identify evidence of the judge's actual or potential bias.[21] Shadel asserts that the trial judge "predetermined" the case's outcome without citing any specific instance of the judge's alleged actual or potential bias. Because Shadel has offered no evidence demonstrating the judge's bias, his claim is meritless.

Finally, Shadel claims that contrary to federal law, the trial court violated an automatic stay in place while his estate was in bankruptcy. He claims three separate violations but fails to identify these occasions with specificity.

[19] Shadel may, of course, file a motion with the superior court to modify this portion of the parenting plan.

[20] In re Marriage of Meredith, 148 Wn. App. 887, 903, 201 P.3d 1056 (2009).

[21] Skagit County v. Waldal, 163 Wn. App. 284, 287, 261 P.3d 164 (2011).

Regardless, the evidence in the record indicates that such a violation would have been impossible. 11 U.S.C. § 362(c) states that a bankruptcy stay "continues until such property is no longer property of the estate." A property is no longer property of an estate once a case is either granted or denied a discharge.[22] Here, Shadel was discharged from bankruptcy in July 2009, nearly two years before trial. Therefore, the trial court could not have violated the stay by entering the challenged orders in 2011, and Shadel's claim fails.

Nauling requests attorney fees under RAP 18.9. Again, resolving all doubts in Shadel's favor, as we must, we conclude that the appeal is not frivolous, making an award of fees inappropriate. We deny Nauling's request.

Conclusion

We do not consider Shadel's arguments not supported by citation to the record or legal authority. And because statutory authority permitted the firearm

[22] 11 U.S.C. § 362(c)(2).

restriction and because Shadel has not shown that the bankruptcy stay was in place at the time of trial, Shadel fails to establish error. We affirm.

Leach, C.J.

WE CONCUR: