IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Parentage of B.W., A minor child.	)	No. 67578-8-I
	)	DIVISION ONE
JAMES ARTHUR WHITE, Appellant,	)	UNPUBLISHED OPINION
v.	)	
TRENA LOUISE FRYE, NKA TRENA STEENSLAND, Respondent.	)	FILED: June 11, 2012

Grosse, J. — James White and Trena Steensland are the parents of B.W., born on April 20, 1995. White and Steensland have a long history of contested hearings and mutual allegations of parental deficiency and misconduct. This appeal is the second time this parentage matter has been before this court. On appeal this time is the superior court's order denying White's motion for revision of a commissioner's ruling denying White's motion to hold Steensland in contempt. Because we conclude that the superior court did not abuse its discretion in denying White's motion for revision and that the court's findings are supported by substantial evidence in the record, we affirm the superior court's order. We award Steensland her attorney fees incurred on appeal pursuant to RCW 26.09.160(7).

White's motion for revision involves an earlier motion for contempt White filed. With regard to the earlier motion, the superior court found, in a May 2,

2011 order:

> Respondent/mother has failed to comply with the terms of the Parenting Plan (Final Order) and the Order entered on January 11, 2011, by not cooperating with the visitation supervisor (Bridget Llewellyn) regarding supervised visitation for the father, and by not cooperating with Dr. Nyman regarding reintegration therapy for the father and child.

The court ordered that White was to have residential time with B.W. twice per week for up to four hours at a time.

On May 23, 2011, White filed another motion for contempt, which is the subject of this appeal. In that motion, White asked the court to find Steensland in contempt for her failure to comply with the court's May 2, 2011 order and also asked the court to change the visitation supervisor. White alleged that Steensland refused to schedule visits between B.W. and White and that, at Steensland's urging, the current visitation supervisor also refused to set up visits.

A court commissioner denied White's motion to hold Steensland in contempt and his motion to change the visitation supervisor. As to contempt, the commissioner found:

> The court will not address the old issues. This hearing is a review of the contempt. The court will not find contempt at this time. From the materials submitted for the hearing, the court finds that the mother is attempting to take the child to the visits with the father, but she has no control if the child chooses to leave rather than visit with the father. The mother is again instructed that she is required to take the child to the visits.

White moved for revision of the commissioner's order.[1] The superior

[1] White's motion for revision is not in the record.

court denied White's motion, finding that B.W. "is source of bad attitude, not mother." The court also denied White's motion to change the visitation supervisor. In its oral ruling, the court noted that "even though the mother does have an attitude, the child has his own mind at the age of 16, and the source of the bad attitude that is interfering with the visitation is not the mother, but rather the son himself." White appeals.

In an appeal from an order denying revision of a court commissioner's ruling, we review the superior court's decision, not the commissioner's ruling.[2] Our review of the superior court's decision is for abuse of discretion.[3] We review the superior court's findings as to contempt to determine whether they are supported by substantial evidence.[4]

The superior court's sole finding in its order denying White's motion for revision and to change the visitation supervisor is that B.W., not Steensland, "is source of bad attitude," apparently meaning, as the commissioner found: "[T]he mother is attempting to take the child to the visits with the father, but she has no control if the child chooses to leave rather than visit with the father." The superior court's finding is supported by substantial evidence. For example, Don Layton, the therapeutic supervisor, stated in a declaration that at a meeting he set up between White and B.W., B.W. "bolted after 20 minutes, walking a couple of blocks to where his mother and grandmother were waiting." It is apparent from this statement that Steensland did all she was required to do by bringing

[2] In re the Marriage of Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010).
[3] Williams, 156 Wn. App. at 27.
[4] Williams, 156 Wn. App. at 28.

B.W. to the scheduled meeting and that it was B.W.'s own, independent decision to cause the meeting to end after only 20 minutes. Layton said of B.W.:

> Even when advised that he will be held responsible for disrespecting a court order, he allows his emotions to control his decisions and walks away. His behavior during the twenty minutes I observed him with his father was rejecting and rude, culminating in his decision to remove himself from a stressful – no matter how court ordered – situation.

Also, attached to Layton's declaration is a letter written in June 2011 from B.W. to Steensland in which B.W. explains why he ran away, stating:

> Sorry mom for running away but I don't want to have to visit him and the caurts [sic] and counsalers [sic] just aren[']t listening to me also all this stress is going to give me a heart attack I just can[']t do this anymore its [sic] making me depressed and this was the lesser of the 2 choices so I picked this one I didn't want to have to do this but I will be back when this is all over.

Lisa Glendenning, the reunification therapist, stated in a report she prepared shortly before the hearing on White's motion for revision that B.W. "is a typical teenager who doesn't like to be told what he has to do."

White, as the party seeking to hold Steensland in contempt, has the burden of establishing Steensland's bad faith by a preponderance of the evidence.[5] He has failed to meet this burden. In his brief, White simply alleges that Steensland is not allowing B.W. to visit with him, but cites to no evidence in the record in support of his assertion. Indeed, absent from the record is any evidence that Steensland failed to comply with the court's May 2, 2011 order. The evidence shows, as the superior court found, that the reason the visits between B.W. and White have not occurred as ordered is that B.W. does not

[5] See Williams, 156 Wn. App. at 28.

want to visit with White.

The sole authority White cites is In re the Marriage of Rideout.[6] In that case, the Supreme Court held:

> [W]here a child resists court-ordered residential time and where the evidence establishes that a parent either contributes to the child's attitude or fails to make reasonable efforts to require the child to comply with the parenting plan and a court-ordered residential time, such parent may be deemed to have acted in "bad faith" for purposes of [the contempt statute].[7]

Rideout does not support White's position because here the evidence does not establish that Steensland contributed to B.W.'s attitude or failed to make reasonable efforts to require him to comply with court-ordered residential time. Rideout is distinguishable from this case and does not compel the reversal of the superior court's order.

In sum, the superior court was correct in finding that B.W. is the source of the "bad attitude," not Steensland. The superior court did not abuse its discretion in denying White's motion for revision of the commissioner's order denying his contempt motion and motion to change the visitation supervisor.[8]

Both parties request an award of attorney fees. Because we affirm the superior court's order, White is not entitled to an award of attorney fees.

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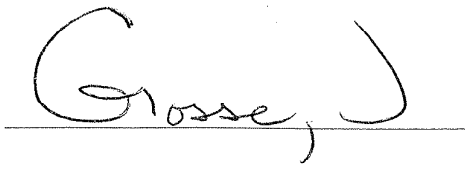
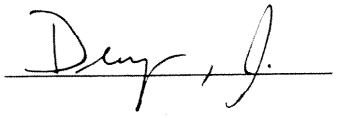
[6] 150 Wn.2d 337, 77 P.3d 1174 (2003).
[7] Rideout, 150 Wn.2d at 356.
[8] White provides no argument regarding the superior court's denial of his request to change the visitation supervisor. Accordingly, we do not address it. See Jenkins v. Palmer, 116 Wn. App. 671, 66 P.3d 1119 (2003). Also, White argues that the superior court violated his right to equal protection of the law by "not forwarding this case to the prosecutor for Domestic Violence Custodial Interference." This issue is not before us on White's appeal from the order on the motion for revision, and we do not address it.

Steensland requests an award of attorney fees under RCW 26.09.160(7), which provides that upon a motion for contempt, "if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party, all costs, reasonable attorneys' fees, and a civil penalty of not less than one hundred dollars." A statute allowing for an award of attorney fees at the superior court also supports an award of attorney fees on appeal.[9] We award Steensland her attorney fees on appeal pursuant to RCW 26.09.160(7).[10] Because Steensland did not request an award of attorney fees in the superior court, we deny her request for an award of attorney fees incurred in the superior court.[11]



WE CONCUR:



[9] CHD, Inc. v. Boyles, 138 Wn. App. 131, 141, 157 P.3d 415 (2007), review denied, 162 Wn.2d 1022 (2008).

[10] We deny White's motion to strike Steensland's financial declaration. Because we award Steensland her attorney fees on appeal, her financial declaration is not frivolous.

[11] Because we award Steensland her attorney fees on appeal under RCW 26.09.160(7), we do not address her request for an award of fees under CR 11.

Cox, J.