IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

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| In re the Marriage of: | | |
| LAURIE RENNE n/k/a JUEDES, | ) | No. 29937-6-III |
| Appellant, | ) | |
| and | ) | |
| SCOTT RENNE, | ) | UNPUBLISHED OPINION |
| Respondent. | ) | |

Siddoway, J. — Laurie Juedes appeals the superior court's order holding her in contempt of a parenting plan provision restraining the parties from making disparaging comments about one another "in the presence of the child." She argues that a text message sent by her to her 13-year-old daughter could not reasonably have been found to violate the order, characterizing the provision as forbidding only face-to-face disparagement. We reject her unreasonably narrow reading of the provision, affirm the contempt order, and award Mr. Renne his attorney fees on appeal.

## FACTS AND PROCEDURAL BACKGROUND

Laurie Juedes, formerly Laurie Renne, was divorced from Scott Renne in 2009. They agreed to a parenting plan that designated Ms. Juedes as the primary residential parent of their two daughters, then ages 11 and 14. The children live in King County with Ms. Juedes, while Mr. Renne lives in Whatcom County. Mr. Renne's visitation provided by the plan is periodic weekend visitation with three full weeks' visitation during the summer. Among provisions of the parenting plan is the following:

> Neither party shall make any disparaging comments to or about the other parent in the presence of the child.

Clerk's Papers (CP) at 178. The agreed provisions were adopted and approved as an order of the superior court.

In February 2011, Mr. Renne filed a motion seeking to hold Ms. Juedes in contempt, arguing that she was violating the parenting plan provision restraining the parties from making disparaging comments about the other parent in the presence of the child and was interfering with his ability to communicate with the children while they were residing in her home. At issue in this appeal is the single comment found by the superior court to violate the provision: a text message sent by Ms. Juedes to the younger of the girls that stated, speaking of Mr. Renne, "Oh well, sneaky [S]cott is what he is, sneaky." CP at 151. The court concluded that Ms. Juedes' other communications

complained of by Mr. Renne, the gist of which was to commiserate with the girls for having to spend time with their father,[1] did not violate the order.

The superior court found "there is substantial evidence that [Ms. Renne] generated a text message to her daughter on July 1st, 2010, calling the father sneaky," and that she "had the ability to comply with the court order and that she will comply in the future and she may purge the contempt by not using such language in describing the father in the future." Report of Proceedings at 43, 44. It held Ms. Juedes in contempt. She appeals.

ANALYSIS

Ms. Juedes argues that this appeal is controlled by the principles that in contempt proceedings an order will not be expanded by implication and the facts found must constitute a plain violation, for the severe results of a finding of contempt require strict construction of the court's order. *Johnston v. Beneficial Mgmt. Corp.*, 96 Wn.2d 708, 712-13, 638 P.2d 1201 (1982). She asserts that a text message entered remotely is not a comment "in the presence of the child" because it is not face-to-face.

Mr. Renne responds that the principles of strict construction are applied with reference to "the meaning of [the order's] terms when read in light of the issues and the

[1] For example, Mr. Renne complained that when he returned the children to Ms. Juedes after their summer residential time, their mother presented the girls with flowers marked "'SURVIVOR,'" and said, "'Here girls, this is for surviving,'" referring to the weeks they had spent with their father. CP at 150.

purposes for which the suit was brought." *Id.* at 713. Mr. Renne argues that the court's order does not require that a statement be made face-to-face with a child to violate the order.

We review a trial court's decision on contempt for an abuse of discretion. *In re Marriage of Davisson*, 131 Wn. App. 220, 224, 126 P.3d 76 (2006). The trial court abuses its discretion if its decision was based on untenable grounds or untenable reasons. *Id.* In reviewing a contempt finding we look for facts constituting a plain order violation and strictly construe the order. *Id.* A finding of contempt will be upheld on review if we find the order is supported by a "'proper basis.'" *Id.* (internal quotation marks omitted) (quoting *State v. Hobble*, 126 Wn.2d 283, 292, 892 P.2d 85 (1995)).

RCW 26.09.160(1) provides that an attempt by a parent, in the performance of a parenting plan, "to refuse to perform the duties provided in the parenting plan . . . shall be deemed bad faith and shall be punished by the court by holding the party in contempt of court and by awarding to the aggrieved party reasonable attorneys' fees and costs incidental to bringing a motion for contempt of court." The duty Ms. Juedes is accused of refusing to perform is, again, the provision that:

> Neither party shall make any disparaging comments to or about the other parent in the presence of the child.

CP at 178. The "issue and purpose" against which we determine the meaning of these

terms is clearly the objective, identified at RCW 26.09.184(1)(e), of minimizing the child's exposure to harmful parental conflict.

Ms. Juedes insists that she literally did not make a disparaging comment in her daughter's presence. But that is because she treats "making a disparaging comment" as implicating only one location: her location in conveying the comment. It is inherent in the concept of disparaging a person that information is communicated to someone else, however. The second location implicated when one "makes a disparaging comment" is the location of the person to whom the comment is conveyed. By analogy, libel and slander take place where a defamatory statement is communicated, not in the place where offending material is sent or where it originates. *See, e.g.*, *Crane v. N.Y. Zoological Soc'y*, 282 U.S. App. D.C. 295, 894 F.2d 454, 457 (1990) (citing *Howser v. Pearson*, 95 F. Supp. 936, 938 (D.D.C. 1951)).

Ms. Juedes' narrower construction of the provision makes no sense in light of the issues and purposes surrounding entry of the order. Under Ms. Juedes' construction—tying her daughter's required presence not to where the disparagement is communicated but to the arbitrary consideration of whether Ms. Juedes and her daughter happen to be in the same location—Ms. Juedes *would* violate the parenting plan provision if, while sitting in the same room with her daughter (and entirely unbeknownst to her daughter) she disparaged Mr. Renne in a text message sent to a third person. On the

other hand, she has not violated the order by sending the same disparaging comment from her home in King County directly to her daughter's telephone in Mr. Renne's home in Whatcom County. Clearly, the required "presence" is the daughter's presence at the receiving end of the communication. Only Mr. Renne's proposed reading, which is not a strained reading, but a natural one, makes sense in light of the issues and purposes of the disparagement provision. The trial court did not abuse its discretion in finding Ms. Juedes in contempt.

Mr. Renne requests an award of attorney fees. Having successfully defended the contempt order on appeal, he is entitled to recover his fees under RCW 26.09.160(1). Although the statute does not speak directly to attorney fees on appeal, a party is entitled to an award of attorney fees on appeal to the extent the fees relate to the issue of contempt. *In re Marriage of Rideout*, 150 Wn.2d 337, 359, 77 P.3d 1174 (2003); *In re Parentage of Schroeder*, 106 Wn. App. 343, 353-54, 22 P.3d 1280 (2001). We award Mr. Renne attorney fees upon his compliance with RAP 18.1.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Siddoway, J.

WE CONCUR:

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Korsmo, C.J.

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Brown, J.