IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:		**No. 27545-1-III**
CHANTEL NILLES,	)	
Appellant,	)	**Division Three**
and	)	
ANDREW NILLES,	)	
Respondent.	)	**UNPUBLISHED OPINION**

Sweeney, J. — A trial court's discretion in dissolution matters is structured by statute. If a court finds an incident of domestic violence, it must restrict or otherwise structure custody and visitation, RCW 26.09.191(2)(a)(iii), unless the court finds that the abusive conduct was remote and that contact with the child will not harm the child, RCW 26.09.191(2)(n). Here, the court awarded the father unrestricted visitation, despite a history of domestic violence, based on findings that the mother's request for restrictions was based on what happened in the past and her request for further restrictions were not supported by the evidence. We conclude this finding adequately supports the court's

refusal to restrict the father's residential time with the child. And we affirm the court's findings of fact and conclusions of law, parenting plan, and decree of dissolution.

FACTS

Andrew and Chantel Nilles married in August 2006 and had one child, a son. They separated in June 2007. Ms. Nilles claimed that Mr. Nilles was violent. So the trial court entered an ex parte restraining order and then a temporary restraining order against Mr. Nilles.

The Nilleses' son got hives and was also diagnosed with gastroesophageal reflux disease (GERD) while their dissolution was pending. A nurse practitioner recommended that Mr. and Ms. Nilles keep a food diary to determine which foods caused their son's hives. And a physician recommended restricting the child's diet to prevent overfilling his stomach and to identify which foods prompted the GERD.

Ms. Nilles asked Mr. Nilles to keep a food diary and to limit their son's diet to milk and water during his visits with the child. Ms. Nilles testified that neither Mr. Nilles nor his mother kept a diary or limited the child's food intake during visits supervised by Mr. Nilles's mother. She testified that Mr. Nilles's and his mother's failure to monitor and limit the child's diet harmed and endangered the child.

The trial court entered findings of fact and conclusions of law, a final parenting plan, and a decree of dissolution after trial. The court found, in pertinent part, that keeping a food diary was not important to

the health and well-being of the child. It found no evidence that Mr. Nilles's mother harmed or would harm the child. And it found that Mr. Nilles had failed to perform parenting functions. But the trial court concluded that Mr. Nilles's decision-making authority over and residential time with the child should not be limited because the court did not find sufficient evidence of domestic violence or the failure to perform parenting functions.

The parenting plan allocated decision-making authority over the child's religious upbringing to both parents. It also awarded Mr. Nilles supervised overnight visits with his son every other weekend and required Mr. Nilles's mother to supervise the visits.

Finally, the court refused to enter a continuing restraining order against Mr. Nilles because it did not find "evidence of additional incidents of domestic violence [against Ms. Nilles] occurring after filing the Petition of Dissolution and entry of a Temporary Restraining Order." Clerk's Papers (CP) at 115, 118.

Ms. Nilles appeals.

DISCUSSION

Challenged Findings of Fact – Child's Health

Ms. Nilles first argues that the record does not support the court's finding that her son's food diary was not important. The challenged finding states, "the Court finds that keeping track of the child's food is not of great importance to the child's health and

wellbeing." CP at 117 (finding of fact 6).

We review challenged findings of fact for substantial evidence. *In re Marriage of Bernard*, 165 Wn.2d 895, 903, 204 P.3d 907 (2009). And we defer to the trial court's evaluation of the persuasiveness of the evidence. *In re Marriage of Rich*, 80 Wn. App. 252, 259, 907 P.2d 1234 (1996). The question for us is whether evidence in this record supports the court's finding. The court rejected the recommendations of the health care practitioners and, instead, chose to accept the testimony of Mr. Nilles's mother. She testified that she witnessed her grandson eating without restrictions at day care. Moreover, the judge ordered Mr. Nilles's mother to keep a detailed food diary of her grandson's diet, despite the challenged finding:

> The Grandmother shall keep an accurate, complete, and contemporaneous list of all food and beverages fed to the child, and all products applied to the child's skin. This list must be specific. (For example: entries of "Dominoes [sic] Pepperoni Pizza," "Apple Juice," and "Jergens Hypoallergenic Lotion" are acceptable; entries of "Pizza," "juice," and "lotion" are not.) The paternal grandmother shall provide this list to [Ms. Nilles] at the end of each visit, until otherwise instructed by [Ms. Nilles] or the child's doctor.

CP at 107 (restriction 5). The court's finding here is supported by the evidence and, even if it were not, the court required that a diary be kept.

Ms. Nilles also challenges the trial court's finding that Mr. Nilles's mother will not harm the child. She contends that the record shows Mr. Nilles's mother supervised

several visits where Mr. Nilles violated the doctor's and nurse's feeding instructions. She argues that this evidence shows Mr. Nilles's mother failed to adequately supervise Mr. Nilles.

But this child has had hives and GERD whether he has been with Ms. Nilles or has been supervised by Mr. Nilles's mother. And the child has not been hospitalized as a result of a visit supervised by Mr. Nilles's mother. The record, therefore, adequately supports the trial court's finding.

Parenting Plan – Residential Time Restrictions

Ms. Nilles next argues that the trial court erred by failing to restrict Mr. Nilles's residential time with the parties' son. We review the trial court's decisions in a final parenting plan for abuse of discretion. *In re Marriage of Mansour*, 126 Wn. App. 1, 8, 106 P.3d 768 (2004). A trial court abuses its discretion when its findings of fact are not supported by the record or when it applies an incorrect legal standard. *Id.*

Again, the court awarded Mr. Nilles supervised overnight visits with his son every other weekend. Ms. Nilles asserts that Mr. Nilles's residential time should not include overnight visits because Mr. Nilles had been violent, substantially refused to perform parenting functions, and did not request overnight visits. Mr. Nilles did request overnight visits with his son. Report of Proceedings (RP) at 171.

A trial court must limit a child's residential time with a parent who has "a history of acts of domestic violence." RCW

26.09.191(2)(a)(iii). But the court need not do so if it finds that contact will not harm the child and any harmful or abusive conduct was so remote that the limitations are not likely to be in the child's best interest. RCW 26.09.191(2)(n). The trial court here did "not find sufficient evidence [of] domestic violence" and, therefore, did not limit Mr. Nilles's residential time with his son under RCW 26.09.191(2). CP at 117; *see* CP at 107. Indeed, it found that the request for ongoing restrictions was not supported by the evidence. CP at 117.

The court found that Mr. Nilles had not committed "additional incidents of domestic violence" since the earlier restraining order. CP at 115; *see* RP at 235. The court found that the request for ongoing restrictions was "based on what happened in the past." CP at 117. And it found that the evidence was not sufficient to support restrictions based on "domestic violence, failure to perform parenting functions, medical neglect of the child, lack of emotional ties with the child, emotional impairment, and impairment from drugs/alcohol." CP at 117. These findings satisfy those required by the statute to avoid limiting visitation despite a history of domestic violence. RCW 26.09.191(2)(n).

A trial court also must restrict a child's residential time with a parent who has "substantial[ly] refus[ed] to perform parenting functions." RCW 26.09.191(2)(a)(i). The trial court here found that Mr. Nilles "has failed to provide adequate financial support and perform parenting functions." CP at 116. But it later concluded that the evidence did not show Mr. Nilles failed to perform parenting

functions:

> The Court does not find sufficient evidence to support the Petitioner's proposed restrictive factors . . . , which included . . . failure to perform parenting functions.

CP at 117. The court did not limit Mr. Nilles's residential time with his son based on a failure to perform parenting functions under RCW 26.09.191(2)(a)(i). We read this finding and conclusion together to support the notion that Mr. Nilles had neglected his parenting functions in the past but he did not do so now or, at least, to the extent that the court needed to restrict his residential time. And the court refused to do so. We will not disturb that exercise of discretion.

Parenting Plan – Religious Upbringing

Ms. Nilles next contends that the trial court erred by awarding both parties mutual decision-making authority over their son's religious upbringing. She maintains that she should have sole decision-making authority because, again, Mr. Nilles has a history of domestic violence and has substantially refused to perform parenting functions.

A trial court must enter a parenting plan that allocates decision-making authority to one or both parents over a child's religious upbringing. RCW 26.09.184(5)(a).

The trial court generally may not require mutual or joint decision-making authority in a final parenting plan where one parent has a history of domestic violence or has substantially refused to perform parenting functions. RCW 26.09.191(1)(a), (c). However, even if the court finds domestic

violence or failure to perform parenting functions, it may not restrict one parent's authority over a child's religious upbringing unless (1) the record substantially shows the parent's religious influence has harmed or could harm the child; and (2) the trial court has found specific evidence of harm and specific needs of the child. *Mansour*, 126 Wn. App. at 11-12; *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 491-92, 899 P.2d 803 (1995).

Mr. Nilles's decision-making authority over his son's religious upbringing should not be restricted based on the record here. Ms. Nilles cites no evidence in this record, and the trial court did not find, that Mr. Nilles's religious influence has harmed or could harm the child. The court, then, appropriately ordered that Mr. and Ms. Nilles share decision-making authority over their son's religious upbringing. *Mansour*, 126 Wn. App. at 11-12.

Continuing Restraining Order

Ms. Nilles next contends that the trial court erred by denying her request for a continuing restraining order against Mr. Nilles. A trial court has broad discretion to grant a continuing restraining order where appropriate in a final decree of dissolution: "In entering a decree of dissolution of marriage . . . the court shall . . . make provision for *any necessary continuing restraining orders*." RCW 26.09.050(1) (emphasis added); 20 Kenneth W. Weber, Washington Practice: Family and Community Property Law § 41.3, at 524 (1997). Here, then, we review

the trial court's decision denying Ms. Nilles's request for an abuse of discretion. *In re Marriage of Kowalewski*, 163 Wn.2d 542, 553, 182 P.3d 959 (2008).

Ms. Nilles first argues the trial court's decision is erroneous because it is based on an improper legal standard—additional, recent acts of domestic violence. She argues that a trial court properly grants a continuing restraining order where the record establishes only a history of domestic violence. RCW 26.09.050(1) does not require proof of a history of domestic violence or proof of recent, additional acts of domestic violence. The statute requires only a determination that the order is necessary. RCW 26.09.050(1). We will not read either a past or recent act requirement into the statute.

Next, Ms. Nilles claims that the statute's use of the term "necessary" is ambiguous. She relies on a definition of "necessary" from *Black's Law Dictionary* for support:

> "This word must be considered in the connection in which it is used, as it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, or conducive to the end sought."

Appellant's Br. at 25 (quoting Black's Law Dictionary 928 (5th ed. 1979)).

No court has interpreted the continuing restraining order portion of RCW 26.09.050(1). Our object here is to effectuate the legislature's intent. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004). We derive legislative intent and

the statute's meaning from the language of a statute that is clear on its face. *Id.* And we give a term its standard dictionary definition if the legislature does not supply one. *Id.* A statutory provision is ambiguous if it has two or more reasonable interpretations but not if "'different interpretations are conceivable.'" *Cerrillo v. Esparza,* 158 Wn.2d 194, 201, 142 P.3d 155 (2006) (quoting *Agrilink Foods, Inc. v. Dep't of Revenue,* 153 Wn.2d 392, 396, 103 P.3d 1226 (2005)).

The statutory language here is plain. A trial court must enter "any necessary continuing restraining orders" in a dissolution decree. RCW 26.09.050(1). "Necessary," as it is used in this part of the statute, is an adjective. And the dictionary defines "necessary" as something that is "logically required" or "absolutely required." Webster's Third New International Dictionary of the English Language 1510-11 (1993). The term is unambiguous. We, then, read RCW 26.09.050(1) to require a continuing restraining order only when logically or absolutely required. *See Am. Cont'l Ins.*, 151 Wn.2d at 518.

Here, the trial court denied Ms. Nilles's request for a continuing restraining order because it found "insufficient evidence of additional incidents of domestic violence occurring after filing the Petition for Dissolution and entry of a Temporary Restraining Order." CP at 115. This is a tenable reason for concluding that an order was not necessary. The trial court, then, did not abuse its discretion.

We affirm the trial court's judgment.

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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Sweeney, J.

WE CONCUR:

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Schultheis, C.J.

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Kulik, J.