IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Marriage of LYNETTE KATARE, Respondent, v. BRAJESH KATARE, Petitioner.	No. 85591-9 En Banc Filed August 16, 2012

J.M. JOHNSON, J.—This case concerns a marriage dissolution and foreign travel restrictions imposed as part of a parenting plan under RCW 26.09.191(3). The restrictions were imposed by the trial court based on evidence that the father made threats to abscond with his children to India.[1]

[1] India is not a signatory to the Hague Convention on the Civil Aspects of International Parental Abduction—a multilateral treaty that provides for summary proceedings in cases of international child abduction. *International Parental Child Abduction India*, U.S. Dep't of State (Dec. 2011), http://travel.state.gov/abduction/country/country_4441.html (last visited July 27, 2012).

The father denies making such threats and claims the restrictions are not supported by the trial court's findings. He further argues the court committed prejudicial error by allowing improper expert testimony regarding "risk factors" for child abduction. The Court of Appeals affirmed the trial court's parenting plan and travel restrictions, concluding the admission of risk factor evidence was improper but not prejudicial. We affirm the Court of Appeals except for its conclusion that the trial court erred by admitting the expert testimony. We uphold the travel restrictions because the trial court's findings are supported by substantial evidence and admission of the expert testimony was not an abuse of discretion.

Facts

Petitioner Brajesh Katare was born and raised in India. In 1989, he moved to Florida where he met respondent Lynette. The two were married in November 1995. Brajesh and Lynette relocated to Washington State in 1999 when Brajesh was hired by Microsoft. While in Washington, Brajesh and Lynette had two children: A.K. (born May 27, 2000) and R.K. (born Sept. 20, 2001).

In May 2002, Brajesh was offered employment in India for two years. Lynette strongly objected to moving

to India with the children, fearing isolation and deleterious effects on the children's health. Lynette claims Brajesh threatened to take the children to India without her, but Brajesh denies making such threats.

In July 2002, Brajesh traveled to India to make arrangements to move. While he was gone, Lynette filed for dissolution. Brajesh and Lynette eventually agreed to a temporary parenting plan allowing Brajesh biweekly supervised visits with the children. They also agreed to appoint Margo Waldroup, a parenting evaluator, to conduct an assessment and make a parenting plan recommendation to the court.

Waldroup recommended the children remain in Lynette's custody. She noted that two witnesses corroborated the allegation that Brajesh had threatened to take the children to India. However, Waldroup could not predict with certainty whether Brajesh would actually attempt to abduct the children. Waldroup recommended that Brajesh have three days of visitation with the children each month. She recommended supervised visitations until the children's passports were secured. She also suggested Brajesh's passport, as well as those belonging to the children, be placed on a watch list. Based on Waldroup's report, Brajesh moved to modify the temporary parenting plan to allow him

unsupervised visitation. The court granted his motion subject to the requirement his attorney hold his passport during visitations.

Procedural History

1. *Katare* I

A five-day dissolution hearing was held in June 2003. Lynette asked the court to impose restrictions on Brajesh's visitation time. Lynette testified that Brajesh on multiple occasions threatened to take the children to India without her. Brajesh allegedly told her she would have no recourse if he took the children to India and she would not "stand a chance" in the Indian court system. Verbatim Report of Proceedings (VRP) (June 16, 2003) at 36. During discovery, Brajesh requested copies of the children's passports, Indian tourist visas, and immunization records, which Lynette claimed showed his intent to take the children to India. Lynette was especially concerned because India is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention), which provides for mandatory summary proceedings in cases of international child abduction. The treaty provides a remedy only if both countries are signatories. Therefore, it would be especially difficult for Lynette to get the children back to the United States if

they were taken to India.

Waldroup testified that although Lynette's concerns were "justified" and "not out of proportion to the situation," it was difficult to predict whether Brajesh would abduct the children. VRP (June 17, 2003) at 103. She testified that the court would have to decide whether the risk justified imposing restrictions.

Brajesh categorically denied making any threats. He represented he did not want to return to India and would never take the children away from their mother.

The trial court imposed restrictions in the parenting plan even though it found RCW 26.09.191(3) inapplicable.[2] In its oral decision, the court stated:

> I gave a long and careful consideration to the issue of the risk of abduction and confess today being concerned about this. I'm not persuaded, based on all the evidence presented . . . that Mr. Katare presents a serious threat of abducting the children. Nonetheless, if I'm wrong on this the consequences are incredibly serious and I'm mindful about that. I'm going to impose some restrictions in the parenting plan that will be designed to address this issue, and I hope that everything that

---

[2] RCW 26.09.191(3) provides, in pertinent part:

> A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:
>
> > . . . .
> >
> > (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

> has been brought to this Court, which I think indicates that there is not a serious risk of abduction turns out to be the truth.

VRP (July 7, 2003) at 10.

The court's parenting plan allowed Brajesh three days with the children each month. Brajesh was prohibited from taking the children out of the country until they turned 18. Brajesh was also denied access to the children's passports or birth certificates and was required to surrender his passport to a neutral party during visitation periods.

Brajesh filed a motion for reconsideration challenging the visitation restrictions and passport controls. The court denied his motion. Brajesh appealed. He argued the trial court erred when it imposed restrictions without expressly finding factors justifying the restrictions under RCW 26.09.191(3).

The Court of Appeals held restrictions entered in a parenting plan pursuant to RCW 26.09.191(3) must be supported by an express finding that the parent's conduct is adverse to the best interest of the child. *In re Marriage of Katare,* 125 Wn. App. 813, 826, 105 P.3d 44 (2004) (*Katare* I). While most of the restrictions imposed by the trial court were supported by the court's findings, the court's order stating that RCW 26.09.191(3) "'does not apply'" created an ambiguity. *Id.* at 831 (quoting trial court clerk's papers at 615). For that reason, the

Court of Appeals remanded to clarify the legal basis for the foreign travel restrictions. *Id.*

2. *Katare* II

On remand, the trial court amended the parenting plan to list factors justifying the restrictions under RCW 26.09.191(3)(g). The amended parenting plan provided:

> "Based on the evidence, including the testimony of expert witnesses, the husband appears to present no serious threat of abducting the children. Nonetheless, under the circumstances of this case, given the ages of the children, the parties' backgrounds, ties to their families and communities, and history of parenting, and the fact that India is not a signator to the Hague Convention on International Child Abduction, the consequences of such an abduction are so irreversible as to warrant limitations on the husband's residential time with the children. The risk of abduction is a factor justifying limitations under RCW 26.09.191(3)(g)."

In re Marriage of Katare, noted at 140 Wn. App. 1041, 2007 WL 2823311, at *2-3 (*Katare* II) ("By basically restating its earlier findings as the justification for imposing limitations on Brajesh's residential time with the children under RCW 26.09.191(3)(g), the trial court does not resolve the ambiguity and does not expressly address whether the evidence supports the limitations under RCW 26.09.191(3).").

The Court of Appeals found

this recitation deficient as it still contained the phrase "'the husband appears to present no serious threat of abducting the children.'" *Id.* at *3 (quoting parenting plan). The appellate court remanded a second time for clarification. *Id.*

3. *Katare* III

In January 2009, the trial court conducted a two-day hearing to address whether the evidence supported the foreign travel restrictions and passport controls. The court heard testimony from Brajesh and Lynette and considered a number of hostile e-mail exchanges between the two.

Lynette also identified an expert witness, Michael C. Berry, an attorney with 17 years of experience with child abduction cases, to testify regarding risk factors for child abduction and the consequences of abduction to India. Brajesh filed a motion in limine to exclude Berry's testimony. He argued Berry was not qualified as an expert and that risk factor evidence was inadmissible under *Frye.*[3] The court allowed Berry to testify, noting his testimony would "assist [the court] in understanding the status of the literature on these topics." VRP (Jan. 14, 2009) at 81.

[3] *Frye v. United States,* 54 App. D.C. 46, 293 F. 1013 (1923).

Through Berry's testimony, Lynette introduced literature citing "risk factors" for child abduction.[4] *Id.* Berry observed that several of the risk factors applied to Brajesh specifically: Brajesh had previously threatened to abscond with the children to India. He had strong ties to India and no family in the United States other than the children. Brajesh engaged in planning activities evidencing his intent to move to India, including selling a car and attempting to obtain the children's passports and immunization records. He accused Lynette of lying and abuse. He plainly felt disenfranchised by what he called the "biased" legal system. Finally, there was a clear lack of cooperation between the parents.

The trial court entered detailed findings of fact and conclusions of law on second remand.[5] The court eliminated its earlier finding that Brajesh

[4] The risk factors included, inter alia, (1) whether the parent has threatened to abduct or has abducted previously; (2) whether the parent has engaged in planning activities that could facilitate removal of the child from the jurisdiction; (3) whether the parent has engaged in domestic violence or abuse; (4) whether the parent has refused to cooperate with the other parent or the court; (5) whether the parent has strong familial, financial, or cultural ties to another country that is not a party to or compliant with the Hague Convention; (6) whether the parent lacks strong ties to the United States; (7) whether the parent is paranoid delusional or sociopathic; (8) whether the parent believes abuse has occurred; and (9) whether the parent feels alienated from the legal system. *See* Janet R. Johnston et al., *Developing Profiles of Risk for Parental Abduction of Children from a Comparison of Families Victimized by Abduction with Families Litigating Custody*, 17 Behav. Sci. & L. 305 (1999); *see also* Unif. Child Abduction Prevention Act § 7, 9 pt. 1A U.L.A. 50 (Supp. 2011).

[5] The trial court found, in part, "[T]he father threatened to take the children to India

appeared to pose no serious threat of abducting the children. Instead, the "extreme anger, abuse, unreasonableness, and poor judgment" that Brajesh demonstrated convinced the court "[t]he risk of abduction ha[d] not abated," but had perhaps increased. Clerk's Papers (CP) at 154. Accordingly, the court concluded it was in the best interest of the children to maintain the travel restrictions.

Brajesh appealed, arguing the trial court erred by maintaining the travel restrictions and denying his motion to exclude Berry's expert testimony. The Court of Appeals found the restrictions were supported by substantial evidence. *In re Marriage of Katare,* noted at 159 Wn. App. 1017, 2011 WL 61847, at *10 (*Katare* III). It held the trial court abused its discretion by admitting Berry's testimony because there was not an adequate foundation and Lynette did not establish that the risk factor evidence met the *Frye* standard. *Id.* at *12. The Court of Appeals nonetheless found the error

without the mother[;] . . . [T]he mother's testimony that the father made threats was credible, when viewed in conjunction with the testimony of others[;] . . . The father sought information for the children in discovery, . . . which would assist in removing the children from the country[;] . . . The children were too young to seek help if the father improperly retained them in India[;] . . . The father's emails demonstrate extreme anger, abuse, unreasonableness, and poor judgment[;] . . . The father demonstrated his willingness to punish the children in response to the parenting plan[;] . . . India is not a signator to the Hague Convention[;] . . . [and] [T]here is no guarantee of enforcing a U.S. parenting order in India." Clerk's Papers (CP) at 152-57.

harmless because the trial court did not adopt Berry's risk factor analysis as its own. *Id.* Instead, the trial court had noted the restrictions were supported by Brajesh's "testimony and conduct alone." *Id.* at *9.

Brajesh petitioned this court for review, which was granted. *In re Marriage of Katare,* 171 Wn.2d 1021, 257 P.3d 662 (2011).

Analysis

1. Standard of Review

A trial court's parenting plan is reviewed for an abuse of discretion. *In re Marriage of Littlefield,* 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). An abuse of discretion occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Id*. at 46-47. The trial court's findings of fact will be accepted as verities by the reviewing court so long as they are supported by substantial evidence. *Ferree v. Doric Co.,* 62 Wn.2d 561, 568, 383 P.2d 900 (1963). Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted. *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.,* 142 Wn.2d 543, 561, 14 P.3d 133 (2000).

2. The Foreign Travel Restrictions Imposed by the Trial Court Are Supported by Substantial Evidence

A trial court wields broad

discretion when fashioning a permanent parenting plan. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). The court's discretion must be guided by several provisions of the Parenting Act of 1987, namely RCW 26.09.187(3) (enumerating factors to be considered when constructing a parenting plan), RCW 26.09.184 (setting forth the objectives of the permanent parenting plan and the required provisions), RCW 26.09.002 (declaring the policy of the Parenting Act of 1987), and RCW 26.09.191 (setting forth factors which require or permit limitations upon a parent's involvement with the child). *Id.* Relevant to this case, RCW 26.09.191(3)(g) allows the trial court to limit the terms of the parenting plan if it finds a parent's conduct is "adverse to the best interests of the child." Imposing such restrictions "require[s] more than the normal . . . hardships which predictably result from a dissolution of marriage." *Littlefield*, 133 Wn.2d at 55.

Brajesh first contends foreign travel restrictions were improperly imposed because the trial court only found a "risk" of abduction. According to Brajesh, absent actual harmful conduct toward the child, restrictions cannot be levied. However, the trial court need not wait for actual harm to accrue before imposing restrictions on visitation. *In re Marriage of Burrill*, 113 Wn. App. 863, 872, 56 P.3d 993 (2002) (

"evidence of actual damage is not required"). "Rather, the required showing is that a danger of . . . damage exists." *Id.* Because the trial court found a danger of serious damage (abduction) here, restrictions were appropriate even though Brajesh had not yet attempted abduction. *See also Lee v. Lee*, 49 So. 3d 211, 215 (Ala. Civ. App. 2010) ("[A] number of cases in American jurisdictions recognize the propriety of [limited] visitation when the noncustodial parent is shown to pose a risk of abduction." (citing *Shady v. Shady,* 858 N.E.2d 128, 143 (Ind. Ct. App. 2006); *Moon v. Moon,* 277 Ga. 375, 377, 589 S.E.2d 76, 79-80 (2003); *Monette v. Hoff,* 958 P.2d 434, 436 (Alaska 1998))).[6]

Brajesh next contends the Court of Appeals' decision in this matter conflicts with *In re Marriage of Wicklund*, 84 Wn. App. 763, 932 P.2d 652

[6] The dissent analogizes this case to *Abouzahr v. Matera-Abouzahr,* 361 N.J. Super. 135, 824 A.2d 268 (2003), to support its position that travel restrictions were improper. The two cases are factually different, however. In *Abouzahr,* the mother repeatedly stated she trusted her ex-husband: "[The mother] said she did not believe [the father] would retain [their child] in Lebanon beyond the agreed time." *Id.* at 140. The mother became concerned only when she learned that Lebanon is not a signatory to the Hague Convention and that the status of Lebanese law on child abduction was unfavorable. *Id.* at 143. Unlike Brajesh, the father in *Abouzahr* made no specific threats to abduct his child. Instead, the trial court "found credible [the father's] testimony that he had no intention of abducting [his daughter] or refusing to return her." *Id.* at 149. The court declined to impose travel restrictions while noting the difficulty of retrieving an abducted child from a nonsignatory country "is a major factor for the court to weigh . . . [b]ut it is not the only factor." *Id.* at 156.

(1996), and *In re Marriage of Watson,* 132 Wn. App. 222, 130 P.3d 915 (2006). According to Brajesh, these cases establish that abduction must be *likely* before his visitation time may be limited. But *Wicklund* and *Watson* simply indicate that restrictions cannot be imposed for unfounded reasons.

In *Wicklund,* 84 Wn. App. at 769, the trial court restricted a father's ability to display affection with his partner in front of his children because the children were having difficulty adjusting to his homosexuality. The Court of Appeals held the restrictions were an abuse of discretion because "[p]roblems with adjustment are the normal response to any breakup of a family. . . . If the problem is adjustment, the remedy is counseling." *Id.* at 771. Unlike adjustment issues, the threat of abduction goes well beyond "the normal response to any breakup of a family." Therefore, *Wicklund* does not support Brajesh's position.

In *Watson,* 132 Wn. App. at 227-28, the trial court imposed restrictions on a father's visitation time based solely on the mother's unfounded allegation that he had abused their daughter. The Court of Appeals reversed because "the unproven allegation of sexual abuse [did] not provide substantial evidence in support of the visitation restrictions" and the remaining evidence weighed in favor of the father. *Id.* at

233. In contrast, Lynette's allegations have been corroborated. Two witnesses heard Brajesh's threats and submitted sworn statements to that effect. The parenting evaluator found Lynette's fears "justified." Moreover, the trial court considered additional evidence of Brajesh's conduct, including eyewitness testimony and e-mail exchanges. After weighing all the available evidence, the court found Brajesh's "pattern of abusive, controlling, punishing behavior put[] the children at risk of being used as the tools to continue this conduct." CP at 156. Thus, substantial evidence—evidence sufficient to persuade a fair-minded person that Brajesh posed a risk of abduction—justified the passport restrictions under *Watson.*[7]

3. *The Trial Court Did Not Abuse Its Discretion by Admitting Berry's Expert Testimony Regarding Risk Factors for Parental Child Abduction*

Generally, a party may introduce expert testimony as long as the expert is qualified, relies on generally accepted theories, and assists the trier of fact. ER 702. Determining the admissibility of expert evidence is largely within a trial court's discretion. *Philippides v. Bernard*, 151 Wn.2d 376, 393, 88 P.3d

[7] The dissent concludes the foreign travel restrictions are not supported by substantial evidence by deconstructing each piece of evidence. Certainly no one piece of evidence alone supports the restrictions. But in the *aggregate,* and combined with corroborated evidence of Brajesh's repeated threats to abduct the children, it was not an abuse of discretion for the trial court to conclude Brajesh posed a risk of abduction.

939 (2004). "'[T]he exercise of [such discretion] will not be disturbed by an appellate court except for a very plain abuse thereof.'" *Hill v. C&E Constr. Co.,* 59 Wn.2d 743, 746, 370 P.2d 255 (1962) (quoting *Wilkins v. Knox*, 142 Wash. 571, 577, 253 P. 797 (1927)).

Brajesh alleges Berry, the expert called by Lynette at the second remand hearing, was not qualified to testify as an expert on risk factors for child abduction or to attest to the consequences of abduction to India. An expert may not testify about information outside his area of expertise. *Queen City Farms, Inc. v. Cent. Nat'l Ins. Co. of Omaha*, 126 Wn.2d 50, 104, 882 P.2d 703, 891 P.2d 718 (1994). While Berry's formal education was not related to child abduction, an expert may be qualified by experience alone. ER 702. Berry had 17 years of experience in the field of child abduction, during which he participated in related organizations, attended numerous conferences, consulted with governmental entities, and testified as an expert in other abduction cases. Given the length and range of Berry's experience, it was not an abuse of discretion for the court to have concluded that his testimony would be helpful.

Brajesh also argues Berry's testimony lacked an adequate foundation because Berry had never been to

India and had never interacted with Brajesh personally. Expert opinions lacking an adequate foundation should be excluded. *Walker v. State,* 121 Wn.2d 214, 218, 848 P.2d 721 (1993). But, an expert is not always required to personally perceive the subject of his or her analysis. ER 703 ("The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by *or made known to* the expert at or before the hearing." (emphasis added)). That an expert's testimony is not based on a personal evaluation of the subject goes to the testimony's weight, not its admissibility. Since Berry's testimony was based on information made known to him before the hearing, the court did not abuse its discretion by admitting his testimony without establishing his personal familiarity with Brajesh or India.

The Court of Appeals held the risk factor evidence was improperly admitted, analogizing the risk factors to propensity evidence. *Katare* III, 2011 WL 61847, at *12. But, deciding whether to impose restrictions based on a threat of future harm necessarily involves consideration of the parties' past actions. By its terms, RCW 26.09.191(3) obligates a trial court to consider whether "[a] parent's involvement or conduct *may* have an adverse effect on the child[ren]'s best

interests." (Emphasis added.) To make this determination, the court must engage in a form of risk assessment.

This court approved the use of risk assessments to predict the future dangerousness of sexually violent predators in *In re Detention of Thorell*, 149 Wn.2d 724, 72 P.3d 708 (2003). While recognizing that predictions of future dangerousness are necessarily prejudicial, we nonetheless held such testimony is admissible because the probative value is "high and directly relevant" to whether an offender should be civilly committed. *Id.* at 758. We explicitly stated such assessments are "not profile evidence." *Id.* Similarly, the risk factor evidence at issue here was "directly relevant" to whether visitation restrictions were necessary—a determination that unavoidably involved prediction. Therefore, as in *Thorell*, the risk factor evidence in this case was not inadmissible "profile evidence," but was properly admitted and utilized.[8]

[8] The dissent asserts that the risk factor evidence was improper "because there was no individualization of the risk factors to Mr. Katare." Dissent at 26. But the factors considered by the trial court *were* individualized to Mr. Katare. The trial court acknowledged that several risk factors applied specifically to Brajesh but others did not. CP at 156. The dissent fails to offer any insight into what a "proper" method of individualization would look like. Furthermore, even if some of the evidence presented by Mr. Berry was inadmissible—as the dissent posits—in a bench trial, the court is presumed to disregard improper evidence when making its findings. *See State v. Miles,* 77 Wn.2d 593, 601, 464 P.2d 723 (1970) (noting that in a bench trial there is "a presumption on appeal that the trial judge, knowing the applicable rules of evidence, will not consider

4. *The Trial Court Did Not Commit a Constitutional Violation by Considering the Risk Factor Evidence or by Imposing Reasonable Foreign Travel Restrictions as Part of a Parenting Plan*

Brajesh's principal arguments over the life of this case have shifted to take on constitutional overtones. In his petition for review, Brajesh cites no authority for his assertion "this Court should . . . declare that, whenever a Washington trial court relies on racial profiling evidence to impose restrictions, the usual deference to the trial court's decisions will be subject to the strictest scrutiny. . . ." Pet. for Review at 20. But, "'naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.'" *In re Pers. Restraint of Williams,* 111 Wn.2d 353, 365, 759 P.2d 436 (1988) (internal quotation marks omitted) (quoting *In re Rozier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986)). Brajesh's quasi-constitutional arguments do not warrant an extensive discussion.

Firstly, the risk factors considered by the trial court cannot conceivably be regarded as "racial profiling evidence." The vast majority of the factors considered had nothing to do with race or national origin, including, (1) whether there has been a prior threat of abduction, (2) whether the parent

---

matters which are inadmissible when making his findings").

has engaged in planning activities that could facilitate removal of the child from the jurisdiction, (3) whether the parent has engaged in domestic violence or abuse, (4) whether the parent has refused to cooperate with the other parent or the court, (5) whether the parent is paranoid delusional or sociopathic, (6) whether the parent believes abuse has occurred, (7) whether the parent feels alienated from the legal system, and (8) whether the parent has a financial reason to stay in the area. The only factor that could arguably implicate race or national origin is whether the parent has strong ties to another country. Yet, even this factor does not necessarily hinge on ethnicity and could apply to a range of circumstances. The factor is relevant merely to determine whether the parent in question could easily relocate.

Brajesh next asserts the trial court interfered with his "fundamental right to travel abroad with his child." Pet. for Review at 2. There is no such fundamental right. The "fundamental" right to travel extends only to *interstate* travel. The United States Supreme Court has explicitly stated foreign travel can be constitutionally limited. *Califano v. Aznavorian*, 439 U.S. 170, 176, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978).

Lastly, Brajesh argues the restrictions interfere with his "fundamental constitutional right to parent his

children without state interference" because he is unable to "take his children to India so they can learn about their Indian heritage." Suppl. Br. of Pet'r at 6. For support, he relies on *In re Custody of Smith,* 137 Wn.2d 1, 18, 969 P.2d 21 (1998), in which we held state interference with the right to rear one's child requires proof of "some harm [that] threatens the child's welfare." As discussed at length above, the trial court explicitly identified the harm involved in this case on the second remand: Brajesh's credible threats to abscond with the children and his pattern of abusive behavior.

Furthermore, *Smith* involved the due process right of a parent against a court's award of visitation to a *nonparent*. *Id.* We have long recognized a parent's right to raise his or her children may be limited in dissolution proceedings because the competing fundamental rights of both parents and the best interests of the child must also be considered. *In re Marriage of King*, 162 Wn.2d 378, 388, 174 P.3d 659 (2007) ("[F]undamental constitutional rights are not implicated in a dissolution proceeding."); *Momb v. Ragone*, 132 Wn. App. 70, 77, 130 P.3d 406 (2006) ("[N]o case has applied a strict scrutiny standard when weighing the interests of two parents."). As the Court of Appeals aptly stated below, a parenting plan that "complies with the statutory

requirements to promote the best interests of the children" does not violate a parent's constitutional rights. *Katare* I, 125 Wn. App. at 823. Because the restrictions imposed by the trial court ultimately complied with RCW 26.09.191(3) and served the best interests of the children, and because the trial court had to balance the constitutional rights of both parents, Brajesh's constitutional rights as a parent were not violated.

5. *Attorney Fees*

Lynette requests attorney fees under *In re Marriage of Greenlee*, 65 Wn. App. 703, 829 P.2d 1120 (1992), due to Brajesh's intransigence. "Awards of attorney fees based upon the intransigence of one party have been granted when the party engaged in 'foot-dragging' and 'obstruction' . . . or simply when one party made the trial unduly difficult and increased legal costs by his or her actions." *Id.* at 708 (citation omitted) (quoting *Eide v. Eide*, 1 Wn. App. 440, 445, 461 P.2d 562 (1969)). Lynette argues fees are justified because this is the third appeal in this case and Brajesh has raised variations of the same arguments on every appeal. While we in no way condone Brajesh's obstinacy, Lynette has not shown his conduct crossed the line to intransigence. We decline to award fees.

Conclusion

We uphold the travel restrictions imposed by the trial court as they are supported by substantial evidence. Furthermore, the trial court did not abuse its discretion by admitting Berry's expert testimony regarding risk factors for child abduction. We therefore affirm the Court of Appeals insofar as it upheld the trial court's parenting plan.

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Justice Debra L. Stephens

Gerry L. Alexander, Justice Pro Tem.

Justice Susan Owens

Justice Mary E. Fairhurst