No. 102909-8

Court of Appeals No. 39222-8

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Parentage of: I.D.H.O.

SHAWN JETT,

Appellant,

v.

JASMINE R. CAREY (NKA Sandberg),

Respondent.

ANSWER TO PETITION FOR REVIEW

MASTERS LAW GROUP, P.L.L.C.

Shelby R. Frost Lemmel, WSBA 33099
Mail: 321 High School Road NE, D-3 #362
Office: 241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
shelby@appeal-law.com

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

INTRODUCTION

Father's Petition is premised on the false accusation that Mother does not affirm the child's gender identity. That is simply untrue. Mother loves her son unconditionally. She uses the name and pronouns he has asked her to use, "he/him." She desires only to be there to support her son. When Father claims otherwise, he ignores Mother's sworn declaration in favor of his own despite the appellate court's clear and correct holding that it would not reweigh the evidence, where the trial court plainly believed Mother.

Father also omits that he never raised this argument at trial, which the appellate court noted at oral argument. This is no doubt why the appellate court did not address this issue.

In short, Father's Petition is based entirely on false accusations and unpreserved arguments. This Court should deny review and award Mother fees.

RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Father presents two issues for review, both based on the false premise that Mother does not affirm the child's gender identity. Pet. at 3. But Mother does affirm the child's gender identity, uses the name and pronouns he has asked her to use, loves him unconditionally, and desires deeply to know and understand her child so she can support him further. The real issues are these:

> 1. Where Father remained at the exchange location for hours, chatting with J., laughing, providing him a fan on a hot afternoon, and attempting to negotiate with Mother to buy them both lunch; while never once encouraging J. to go with Mother or disabusing him of the incorrect notion that at 14 he can do whatever he wants; did the appellate court correctly affirm the trial court's discretionary rulings finding Father in contempt?
>
> 2. Where the parties had discussed counseling for J. in the past and Father knew Mother was in agreement, and where Father secreted J.'s counseling from Mother cutting her out of the process and preventing her from helping J., did the appellate court correctly affirm the trial court's discretionary ruling finding Father in contempt?

FACTS RELEVANT TO ANSWER

Since the trial court found Mother credible, the appellate court took the facts from her declarations. ***In re Parentage of I.D.[H.]O.***, No. 39222-8 at 2 n.1 (2024). On appeal, "Father contest[ed] Mother's evidence by citing his own declarations." *Id*. at 10-11. Here too, Father relies largely on his own declarations to spin a false narrative about Mother's alleged lack of support for their child's gender identity. Pet. at 3-11. But as the appellate court correctly noted, "the trial court already weighed the parties' competing declarations and found Mother's credible. Once the trial court weighs evidence, our court will neither reweigh that evidence nor reassess its credibility." No. 39222-8 at 11. Thus, this Answer adopts the appellate court's statement of the case, with which Father takes no issue, attached as Appendix A.

REASONS THIS COURT SHOULD DENY REVIEW

A. Father's Petition is premised on an outright lie.

Father's entire Petition is premised on the false contention that he affirms J.'s gender identity and Mother does not. Pet. at 1, 3, 4, 18. This, Father claims, is the reason J. does not want to have visits with Mother, and the reason Father refuses to encourage visits. *Id*.

Father did not make this claim in his opening brief, in which he never once claimed that Mother does not support J.'s gender identity or fails to use the name and pronouns corresponding to that identity. Instead, he argued that he encouraged visitation by taking J. to the exchange location and waiting there. BA 1-2, 23-26. Father did not raise this issue in his reply brief either, instead repeating his assertions that all he had to do was take J. to the exchange location. Reply 1-18.

When the appellate court notified the parties that it would decide this matter without oral argument, Father

requested argument, which the court granted. Father then changed course completely, leading off with the assertion that Father affirms J.'s gender identity and Mother does not, excusing Father's refusal to encourage the court-ordered residential time. Wash. Ct. of Appeals oral arg., ***In re Parentage of I.D.H.O.***, No 39222-8-III (December 5, 2023), at 1 min. 40 sec. – 2 min. 10 sec.

Perhaps surprised by this new approach, the appellate court asked whether the trial court made findings to the effect the one parent was gender-affirming and the other was not, stating its belief that this issue had not been argued below. *Id*. at 2 min. 22 sec. – 2 min. 39 sec. Father agreed there are no such findings. *Id*. at 2 min. 40 sec. – 2 min. 43 sec. He claimed this issue was raised in "sealed documents." *Id*. at 2 min. 43 sec. – 3 min. 06 sec.

The appellate court interjected again, acknowledging the importance of J.'s gender identity and that while this "could have been the issue" around missed visitation, the

exchanges "went fine until the Father unsuccessfully moved for a [DVPO]" at which point it seemed Father and J. were "somewhat working together to frustrate Mother's visitations." *Id*. at 4 min. 23 sec. – 5 min. 20 sec. Father had no real answer. *Id*.

Still Father persists, citing nothing other than a few of his own declaration statements where he falsely claimed that Mother misgenders J., uses his birth name rather than the name he has chosen, and refuses to use his pronouns "he/him." Pet. at 1, 3, 4, 18 (*citing* CP 24-25). This is a reference to Father's August 19, 2022 declaration, in which he attempted to justify his failure to inform Mother about J.'s mental health treatment. CP 22-26. The following is taken from Mother's responsive declaration, dated August 25, 2002, which Father completely ignores (CP 41-44):

> While [Father] claims he couldn't ignore our son's 'urgent needs' there remains no excuse or explanation as to why his mental health treatment has been secreted from me for an extended period

of time. 2 years of ongoing mental health treatment does not equate to emergency medical care.

[Father] continues to claim that our son suffers from suicidal ideations and self harm behaviors. In no way am I saying this isn't true, but I have not witnessed these behaviors in my home and have not seen scars etc. on J[.] … While J[.] has spoken up clearly about being unsure of who he is at this point in his life (by first coming out as Pan, then Demi followed by Lesbian and now Queer and going by a different name) it speaks volumes to me that J[.] is a teenager desperately trying to figure out who he is and as his parent, I should have been given the opportunity to provide the level of support he needed. Being denied such important information – like his diagnosis, treatment plan, medication prescriptions etc[.], ultimately negatively impacts J[.] because if I don't have the information, I can't help.

[Father] makes numerous references to saving J[.]'s life by seeking emergency care for him without my knowledge or consent. However, he has NOT sought any emergency services for J[.] and even canceling some routine counseling appointments. …

…

I am also very proud of our child. It is unfortunate that [Father] seems to discount my role as a coparent … I believe this … only affirms [Father's] true intention of trying to cut me out of our child's life.

…

> I am not purposefully misrepresenting [J.'s] gender by calling him B[.]. J[.] has gone through a variety of stages in this process – asking to be referred to by different pronouns and now a name. I am doing my best to call him by his requested name, but a lifetime of referring to J[.] as 'B[.]' is not easily changed and I admit I have reverted automatically at times. … Perhaps if I was given the appropriate information and allowed to be involved in the counseling process, I could have learned some ways to better understand and support J[.] through this.
>
> …
>
> I love J[.] unconditionally. Our entire family loves J[.] and want to be there to support him. My other children are very upset that J[.] is suddenly missing and absent from our home. We all have such a good time together, they don't understand why this is happening. I have supported J[.] emotionally and encouraged him through struggles. When J[.] came out initially as not being 'straight' I stopped communicating with other family members who were unsupportive with his decision. I try to always make J[.] know he is welcome and an important part of our family and home.

In short, the entire premise of Father's Petition is simply false. Thus, the issues Father asks this Court to review are not presented. Pet. at 3. This Court should deny review.

B. The appellate decision is correct.

1. Contempts 2, 3, and 4 are supported by substantial evidence.

The appellate court first addressed the second, third, and fourth contempt findings, all relating to Father's failure to encourage J. to go on his court-ordered visits with Mother. No. 39222-8 at 9-11. Father acknowledged that ***Marriage of Rideout*** is controlling and that under it a "parent may be held in contempt, pursuant to RCW 26.09.160, for failure to make reasonable efforts to require a child to visit the other parent as required by a parenting plan." BA 21 (*citing* 150 Wn.2d 337, 341, 77 P.3d 1174 (2003)). As this Court stated it (150 Wn.2d at 356-57):

> Where 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 RCW 26.09. 160(1).

Aside from unsupported and incorrect child-hearsay arguments[1], Father's arguments on appeal were that he did all he could do to encourage visitation by bringing J. to the exchange location and remaining there, rather than immediately returning home with J. BA 24-25; CP 137-40 (Contempt 2), 166-69 (Contempt 3).[2] That is, Father effectively argued that all he had to do was bring J. to the exchange location and not leave right away. *Id*.

As to the second contempt, the trial court declined to find Father in contempt for the incident where J. ran off with a friend, finding insufficient evidence of collusion. RP 33. But the court found Father in contempt for his behavior the following weekend, ruling that Father remained at the

---

[1] *See* No. 39222-8 at 11 n.4.

[2] Father failed to address Contempt 4 in his opening brief, thus waiving appellate review. BR 24 (*citing* ***Howell v. Spokane & Inland Empire Blood Bank***, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991)). The appellate court nonetheless reached the issue, holding that contempt 4 is supported by substantial evidence. No. 39222-8 at 10-11.

exchange location for a 6-hour "showdown" refusing to do anything to correct J.'s mistaken belief that he "gets to dictate visitation." RP 34; *see also* CP 138. That is, Father implicitly encouraged J.'s recalcitrance. RP 33-34. As to the third and fourth contempts, the court found that Father did nothing to encourage the visits, instead making J. "more comfortable" as he refused visits. CP 167, 202-05.

The appellate court's analysis of contempts 2, 3, and 4, is as straightforward as it is correct: (1) appellate courts review contempt rulings for an abuse of discretion; (2) where a trial court reviews competing declarations and determines the facts, the appellate court will uphold those findings supported by substantial evidence; (3) the parties agree that the matter is controlled by this Court's decision ***Rideout***, *supra*, in which this Court held "that a 'parent may be held in contempt, pursuant to RCW 26.09.160, for failure to make reasonable efforts to require a child to visit the other parent as required by a parenting plan'"; (4) the

second, third, and fourth contempt orders are supported by Mother's declarations, which the trial court found credible; and (5) Father's reliance on his own declarations is misplaced, where the appellate court will not "reweigh that evidence nor reassess its credibility." No. 39222-8 at 9-11.

2. Contempt 1 is legally correct.

As to the first contempt, the appellate Court rejected Father's argument that "he was excused from notifying Mother of J.'s mental health counseling because there is no evidence J. desired to have his counseling information released to her." No. 39222-8 at 12. Father misplaced reliance on RCW 70.02.265(1)(a), "which prevents providers from releasing, without patient consent, the medical information of adolescents who seek their own treatment." *Id*. The appellate court correctly held that this statute "binds only providers. It does not empower a parent to withhold medical information from another parent in violation of a parenting plan." *Id*.

While Father's Petition does not address the appellate court's holding on this point, he repeats this argument. Pet. at 25-27. Mother addresses this argument below. *Infra*, §C.

3. No purge provisions were required for these compensatory contempt sanctions.

The appellate court correctly rejected Father's argument that "the trial court's failure to include purge provisions in its coercive contempt orders invalidated those orders." No. 39222-8 at 12. The court correctly held that a "trial court imposing compensatory sanctions under RCW 26.09.160 need not preserve the contemnor's opportunity to purge those sanctions." *Id*. at 13 (*citing* ***Marriage of Lesinski***, 21 Wn. App. 2d 501, 514-15, 506 P.3d 1277 (2022)). Father's Petition ignores this correct holding.

4. Fees are required by statute.

Finally, the appellate court awarded Mother attorney fees under the contempt statute, RCW 26.09.160. No. 39222-8 at 13-14. Father ignores this correct decision. *See*

Rideout, 150 Wn.2d at 358-59 (holding that RCW 26.09.160(1) "and a similar subsection, RCW 26.09.160(2)(b)(ii), requires a contemnor to pay reasonable attorney fees and costs even on appeal …").

In short, the appellate decision is correct and largely uncontested. This Court should deny review.

C. Father fails to present any persuasive legal argument.

Father does not address the appellate decision. Pet. at 11-27. He largely ignores the trial court's contempt orders, too. *Id*. Instead, Father principally addresses the importance of respecting and protecting transgender youth. *Id*. Mother obviously agrees.

Father's argument is that he had a "reasonable excuse" for failing to comply with the parties' residential schedule so cannot be in contempt under RCW 26.09.160(4). Pet. at 22-25. But again, Father's "reasonable excuse" is his **false** accusation that Mother

refuses to affirm J.'s gender. And again too, Father did not raise this issue below, and the trial court did not rule on it. That is, Father's Petition is premised on false facts and unpreserved arguments.

In any event, the law already protects parents who provide a "reasonable excuse" for failing to follow the residential schedule in a parenting plan, and protecting a transgender child from a non-affirming parent would certainly be reasonable. RCW 26.09.160(4); ***Rideout***, 150 Wn.2d at 352-53. But again, that is not the issue here.

Finally, Father argues that Chapter 71.34 RCW permitted him to withhold information about J.'s counseling, despite the parenting plan's joint decision-making provision. Pet. at 25-27. He has no answer to the appellate court's correct conclusion that RCW 70.02.265(1)(a), which prohibits mental health professionals from "proactively" releasing an adolescent's mental health records to a parent without their consent,

"binds only providers [and] does not empower a parent to withhold medical information from another parent in violation of a parent plan." No. 39222-8 at 12.

This argument is also premised on the same falsehood as the rest of the Petition: that Mother does not affirm J.s gender identity. Again, Mother loves J. unconditionally, has and continues to support his journey of self-discovery through all its many phases, and wants only to be involved in his mental health care so that she can learn, understand, and support J. CP 41-44.

D. This Court should award Mother fees.

The appellate court awarded Mother attorney fees under the contempt statute, RCW 26.09.160, which requires an award of attorney fees when a contempt motion is brought with reasonable basis. RCW 26.09.160(1); No. 39222-8 at 13-14. Thus, this Court should deny review and award Mother fees incurred in responding to this Petition. RAP 18.1(j).

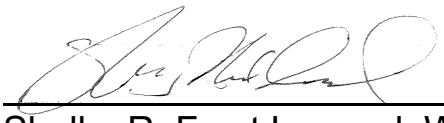
CONCLUSION

Father's Petition is based on a misrepresentation of the facts and on arguments that he never raised. It simply does not present the issue for which he seeks review. This Court should deny review and award Mother fees.

The undersigned hereby certifies under RAP 18.17(2)(b) that this document contains 2735 words.

RESPECTFULLY SUBMITTED this 25th day of April 2024.

MASTERS LAW GROUP, P.L.L.C.



Shelby R. Frost Lemmel, WSBA 33099
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
shelby@appeal-law.com

Attorneys for Respondent

FILED
JANUARY 23, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In re Parentage of:	)	No. 39222-8-III
	)	
I.D.O.†	)	
	)	
Minor child,	)	
	)	
SHAWN M. JETT,	)	
	)	
Appellant,	)	UNPUBLISHED OPINION
	)	
v.	)	
	)	
JASMINE R. CAREY,	)	
	)	
Respondent.	)	

LAWRENCE-BERREY, A.C.J. — Shawn Jett appeals four contempt orders, premised on his violations of a parenting plan. He challenges the sufficiency of the evidence and the trial court's failure to include a purge provision in each order. We affirm and award Jasmine Carey her reasonable attorney fees and costs on appeal.

---

† To protect the privacy interests of the minor child and because the minor child prefers to use the name "J[ ], we shall use that initial throughout this opinion. Gen. Order for Court of Appeals, *In re Changes to Case Title* (Wash. Ct. App. Aug. 22, 2018) (effective September 1, 2018), http://www.courts.wa.gov/appellate_trial_courts.

FACTS[1]

First contempt order

Shawn Jett (Father) and Jasmine Carey (Mother) are the parents of J., a young teenager. The parties' parenting plan orders joint decision-making for all nonemergency healthcare decisions. In June 2020, the parties mediated issues related to the parenting plan. While they discussed counseling for J., Father's only stated basis for counseling was he thought J. had ADHD.[2] Mother and Father agreed to counseling with a specified provider and Mother made J. an appointment. Father cancelled that appointment. The parties did not discuss counseling again. Unbeknownst to Mother, Father unilaterally changed J.'s primary care provider in December 2020.

In February 2021, the parties again mediated parenting issues. Father did not tell Mother he thought J. needed counseling, nor did he disclose that he had changed J.'s primary care provider or that the new provider recommended counseling.

In March 2021, J. started seeing a mental health counselor. Father did not share this information with Mother.

---

[1] The parties agree that the challenged findings of fact must be sustained if they are supported by substantial evidence. Given that the trial court found Mother's evidence credible, we take the statement of facts from her declarations.

[2] Attention deficit hyperactivity disorder.

On August 8, 2022, Mother brought her first motion against Father for contempt. The trial court found Father in contempt, ruling that he violated the parenting plan by "failing to notify/inform/involve the mother in the child's mental health counseling and medical decision making." Clerk's Papers (CP) at 58. It additionally found that Father was capable of following the parenting plan and that his failure to do so was intentional, where Father "secreted the knowledge that the child was in counseling . . . from the mother." CP at 58. This concealment was intentional notwithstanding the parties' earlier discussions about the possibility of J. entering counseling. Being intentional, the court deemed the concealment in bad faith. The court found that Father was able but unwilling to follow the parenting plan, as he "continue[d] to fail to notify the mother of counseling appointments and [was] not involving her in the process." CP at 59. Pursuant to its contempt finding, the court ordered Father to pay a $100 civil penalty into the court's registry and awarded Mother $835 in attorney fees and costs.

Second contempt order

After abiding by the parenting plan's visitation schedule for several years, Father filed for a domestic violence protection order against Mother. Although the court denied Father's request, J. began refusing to attend visits with Mother.

Mother was scheduled to pick up J. on August 4, 2022, at 5:00 p.m. at an Ace Hardware parking lot. Mother arrived early, between 4:00 and 4:30 p.m. When J. told her that he needed to use the restroom inside the store, Mother agreed. When Mother began to follow J. into the store, Father's brother stopped her to serve her with court papers. It was then that Mother saw J. run to an adjacent parking lot where he got into a car with an 18-year-old female, Aurora. Father watched the two drive off and then left.

Mother had previously expressed concern about J. spending time with Aurora. Acting on that concern, Mother called the police, who told her to wait in the parking lot. She then texted Father, asking for J.'s and Aurora's cell phone numbers. Father did not respond. When Mother texted again to ask Father if he knew where J. had gone, he said he did not know. When Mother again asked for the cell phone numbers, Father again did not respond. Mother again texted Father, stating that if he did not know where Aurora had taken J., then this was a kidnapping and they should pursue charges. Father texted a screen shot of the message back to Mother, apparently thinking he was sending it to J. Father claimed he was out looking for J. but when Mother drove by his home, his van and truck were parked in the driveway.

At 8:46 that evening, Father texted Mother that J. had returned home and he would take J. to his counselor the next day. Father asked Mother if she would be willing to

come to the appointment, and Mother responded that she would take J. since it was her residential time, and she still wanted J. to be with her. She offered to meet with them both to assure J. he was not in trouble and to express both parents' mutual support. She asked that Aurora not be at the drop-off and asked for the counselor's telephone number. Father did not respond.

Mother texted Father the following morning to ask when and where she should pick up J. for his counseling appointment. Father never responded. Mother missed her entire long-weekend visit.

The parties did not communicate until Mother's next regular long-weekend visit, beginning August 11, 2022. Two-and-one-half hours before the scheduled exchange, Father texted Mother, claiming J. was sick, but negative for COVID. Mother told Father she would be at the Ace Hardware at 5:00 p.m.

When Father arrived with J., J. sat on a cart rack in the parking lot, insisting he did not have to visit Mother because he was sick. J. told Mother he was not going with her because "he was told that he did not need to [go]," and because Father "told him that there was nothing the police would do to make him [go]." CP at 29. J. "insisted his dad told him that he should not have to come over because he was sick." CP at 29.

Mother and Father then began discussing J.'s counseling and medications, but Father claimed he did not know the name of the counselor or what medications J. took. After Mother reassured J. that both parents loved and supported him, even suggesting a joint weekly dinner, J. again refused to comply with visitation and said because he was 14, "he [got] to make all of the decisions for himself and . . . [could] do whatever he want[ed]." CP at 30. Father did not refute J.'s statement.

After talking to Serenity, Mother's daughter, J. agreed to come over. Yet after briefly being alone with Father, J. changed his mind, again insisting he would not go with Mother. Father never encouraged J. to go with Mother and excused J.'s behavior as "stubborn." CP at 30.

J. then insisted Mother take him to lunch instead of their court-ordered visit. Father told Mother that he too would be available for lunch any day over her residential time. Father and J. insisted they would only do lunch, no visitation. Father and J. resisted the visitation for more than five hours before Father left with J.

Mother texted Father the next day, a Friday, stating she would meet Father and J. at noon to take them both to lunch, while making clear the lunch would not substitute for her weekend visit. Father agreed, but arrived 45 minutes late. J. then insisted he was not going with Mother. After 30 minutes, J. again left with Father, who never once

encouraged J. to go with Mother. Father instead claimed he was "doing the right thing as a parent by telling [J.] not to [go] over." CP at 30.

On August 23, 2022, Mother brought her second contempt motion against Father. The trial court declined to find Father in contempt for when J. left with Aurora, finding insufficient evidence of collusion between Father and J. However, the court found Father in contempt for his behavior the following weekend, when he remained in the Ace Hardware parking lot for a six-hour "standoff," "not doing anything to disabuse [J.] of the notion that [he] gets to dictate visitation." Rep. of Proc. (RP) at 34. By failing to correct J.'s mistaken belief that J. had the right to refuse visitation, Father was "implicitly encouraging [J.] to defy visitation" and contributing to his "bad attitude." RP at 34. Simply stated, Father failed to "explicitly tell the child, 'You must go.'" RP at 34.

The court's contempt order found that Father was able to follow the parenting plan but was unwilling to do so, and found bad faith where Father knew J. was hesitant to attend visits, but made no effort to encourage J. to attend. The court ordered Father to pay $250 into the court registry, and awarded Mother $835 in attorney fees and costs, along with compensatory visitation.

Third contempt order

On August 18, 2022, Mother arrived at Ace Hardware for another visitation exchange. J. got out of Father's van and told Mother he would not go with her. Father sat in his van, waiting, and did not encourage J. to leave with Mother. J. eventually left with Father.

On September 8, 2022, Mother brought her third contempt motion against Father. The court again found Father in contempt, ruling that he "made no effort to encourage [J.] to attend visitation . . . ." CP at 167. Again, the court found Father able but unwilling to follow the parenting plan. The court concluded that Father acted in bad faith where he knew J. was hesitant to attend visits but made no effort to encourage J. to attend. It ordered Father to pay $250 into the court registry and awarded Mother $835 in attorney fees and costs, along with compensatory visitation.

Fourth contempt order

On September 9, 2022, the parties arrived at Ace Hardware for another visitation exchange. J. got out of Father's truck and sat in the cart return area near Mother's car. The two talked for a while, and Mother asked J. a few times to leave with her. J. refused. During the entire time, Father sat in his truck without encouraging J. to leave. J. returned to Father's truck, where they laughed together and left.

On September 22, 2022, Mother filed her fourth contempt motion against Father. The court again found Father in contempt. Specifically, the court found that Father just "sat in his vehicle nearby," making no effort to encourage visitation. CP at 203. The court found that Father was able but unwilling to follow the parenting plan. It concluded that Father's actions were in bad faith, where he knew J. was hesitant, but rather than ensure the visit, he did the opposite. The court ordered Father to pay $250 into the court registry and awarded Mother $835 in attorney fees and costs, along with compensatory visitation.

ANALYSIS

Father raises three arguments on appeal: (1) he made reasonable efforts to comply with the parenting plan, and substantial evidence does not support the findings of bad faith, (2) Mother failed to show that J. desired his counseling information to be released to her, and (3) the contempt orders should have included a purge provision.

1. Sufficient evidence supports the second, third, and fourth findings of contempt[3]

This court reviews a trial court's contempt rulings for abuse of discretion. *In re Marriage of James*, 79 Wn. App. 436, 439-40, 903 P.2d 470 (1995). A trial court

[3] Father's sufficiency challenge to the first finding of contempt is discussed in the next section.

operates within its discretion when its findings derive from the factual record, its conclusions apply sound law, and its decisions are not manifestly unreasonable. *In re Marriage of Bowen*, 168 Wn. App. 581, 586-87, 279 P.3d 885 (2012).

Where a trial court reviews competing declarations in determining the underlying facts, its findings of fact will be upheld if they are supported by substantial evidence. *In re Marriage of Rideout*, 150 Wn.2d 337, 350-51, 77 P.3d 1174 (2003); *see also In re Determination of Rights to Use of Surface Waters of Yakima River Drainage Basin*, 177 Wn.2d 299, 340, 296 P.3d 835 (2013) (applying substantial evidence standard after trial court made factual findings from documentary evidence). Substantial evidence is that quantum of evidence sufficient to persuade a fair-minded person of the truth of the premises. *Surface Water Rights*, 177 Wn.2d at 340.

Both parties agree that *Marriage of Rideout* controls the disposition of the first issue. There, the court held that a "parent may be held in contempt, pursuant to RCW 26.09.160, for failure to make reasonable efforts to require a child to visit the other parent as required by a parenting plan." 150 Wn.2d at 341.

Here, the second, third, and fourth contempt orders are supported by evidence sufficient to persuade a fair-minded person that Father failed to make reasonable efforts to require J. to visit Mother, as required by the parenting plan. Father contests Mother's

evidence by citing his own declarations. However, the trial court already weighed the parties' competing declarations and found Mother's credible. Once the trial court weighs evidence, our court will neither reweigh that evidence nor reassess its credibility.

In Mother's declarations, she stated that Father failed to facilitate visitations when he did nothing at the Ace Hardware exchanges to encourage J. to leave with her.[4] According to Mother, Father on one occasion even obstructed her visitation by expressly supporting J.'s decision to dictate the terms of visitation himself. On another occasion, Father laughed with J. before leaving the parking lot with him. We conclude that the trial court's challenged findings are supported by substantial evidence.

2. Sufficient evidence supports the first finding of contempt, notwithstanding that J. may have initiated mental health treatment on his own

A parent who refuses to comply with a parenting plan has acted in bad faith and shall be held in contempt of court. RCW 26.09.160(1). A parent with a reasonable excuse for not complying with a parenting plan or who is not able to comply must demonstrate that excuse or inability by a preponderance of the evidence.

[4] Father argues that statements made by J. to Mother are inadmissible hearsay. Father does not identify which of J.'s statements he challenges on appeal nor does he meaningfully argue this point. We decline to review this issue due to a lack of reasoned argument. *Timson v. Pierce County Fire Dist. No. 15*, 136 Wn. App. 376, 385, 149 P.3d 427 (2006).

RCW 26.09.160(4).

Father argues he was excused from notifying Mother of J.'s mental health counseling because there is no evidence J. desired to have his counseling information released to her. In support of his argument, Father cites RCW 70.02.265(1)(a), which prevents providers from releasing, without patient consent, the medical information of adolescents who seek their own treatment. This statute does not support Father's argument. RCW 70.02.265(1)(a) binds only providers. It does not empower a parent to withhold medical information from another parent in violation of a parenting plan.

Here, Father withheld from Mother the fact that J. was receiving counseling, including the name of the counselor. This violated the parenting plan, and the trial court did not abuse its discretion by finding Father in contempt.

3. Purge provisions were not required

Father argues the trial court's failure to include purge provisions in its coercive contempt orders invalidated those orders. Because purge provisions do not apply to compensatory contempt sanctions, such as those here, we affirm.

The determination of whether contempt orders under RCW 26.09.160 require purge provisions is a question of statutory interpretation we review de novo. *In re Parentage of J.D.W.*, 14 Wn. App. 2d 388, 396, 471 P.3d 228 (2020).

Chapter 7.21 RCW distinguishes between punitive contempt, which upholds a court's authority, and remedial contempt, which coerces compliance from the contemnor. RCW 7.21.010(2), (3). When a court imposes remedial contempt, the contemnor "can avoid the sanction by doing something to 'purge' the contempt." *In re Interest of Mowery*, 141 Wn. App. 263, 275, 169 P.3d 835 (2007). However, a court imposing remedial contempt may separately order the contemnor to compensate another party for losses suffered as a result of the contemptuous behavior. RCW 7.21.030(3); *see also Gronquist v. Dep't of Corr.*, 196 Wn.2d 564, 571-72, 475 P.3d 497 (2020) (A court may impose compensatory sanctions irrespective of whether it imposes remedial sanctions.).

Because the attorney fees and costs provided for in RCW 26.09.160(7) inure to the aggrieved parent, they are compensatory sanctions. *In re Marriage of Lesinski*, 21 Wn. App. 2d 501, 514-15, 506 P.3d 1277 (2022). A trial court imposing compensatory sanctions under RCW 26.09.160 need not preserve the contemnor's opportunity to purge those sanctions. *Id.* Accordingly, the trial court did not err by omitting purge provisions from the contempt orders it imposed on Father.

4. Attorney fees and costs

In her responsive brief, Mother devotes a section to supporting her argument for reasonable attorney fees and costs on appeal. She cites RCW 26.09.160 and decisional

authority in support of her argument.

RCW 26.09.160(1) provides in relevant part:

> An attempt by a parent . . . 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 in bringing a motion for contempt of court.

In *Rideout*, the Supreme Court concluded that this subsection, and a similar subsection, RCW 26.09.160(2)(b)(ii), requires a contemnor to pay reasonable attorney fees and costs even on appeal, notwithstanding the failure of the statute to say so expressly. 150 Wn.2d at 358-59. We conclude that Mother is entitled to recover her reasonable attorney fees and costs on appeal.

Affirmed.

A majority of the panel has determined 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.

Lawrence-Berrey, A.C.J.
Lawrence-Berrey, A.C.J.

WE CONCUR:

Staab, J.
Staab, J.

Cooney, J.
Cooney, J.

CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **ANSWER TO PETITION FOR REVIEW** on the 25th day of April 2024 as follows:

Counsel for Petitioner

Western Washington Law Group, PLLC
Dennis J. McGlothin
Robert J. Cadranell, II
10485 Northeast Sixth St., #1820
Bellevue, WA 98004
dennis@westwalaw.com
robert@westwalaw.com
docs@westwalaw.com

___ U.S. Mail
_x_ E-Service
___ Facsimile

Shelby R. Frost Lemmel, WSBA 33099
Attorney for Respondent

MASTERS LAW GROUP

April 25, 2024 - 2:18 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,909-8
Appellate Court Case Title:	In re the Parentage of: I.D.H.O.
Superior Court Case Number:	14-5-00043-8

The following documents have been uploaded:

- 1029098_Answer_Reply_20240425141602SC723410_9767.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petition for Review wEx.pdf

A copy of the uploaded files will be sent to:

- dennis@westwalaw.com
- docs@westwalaw.com
- kara@appeal-law.com
- ken@appeal-law.com
- robert@westwalaw.com

Comments:

Sender Name: MLG Paralegal - Email: paralegal@appeal-law.com
Filing on Behalf of: Shelby R Frost Lemmel - Email: shelby@appeal-law.com (Alternate Email: office@appeal-law.com)

Address:
241 Madison Ave. North
Bainbridge Island, WA, 98110
Phone: (206) 780-5033

Note: The Filing Id is 20240425141602SC723410