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Case #: 1029098

Court of Appeals Cause No. 39222-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Parentage of
I.D.H.

SHAWN JETT

Petitioner,

v.

JASMINE R. CAREY (n/k/a Sandberg),

Respondent.

PETITION FOR REVIEW

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INTRODUCTION

Some children identify with a gender different than the one they were assigned at birth. When this occurs, the first parent to affirm their child's gender identity should not be punished. Civil contempt, with its severe remedies that include incarceration, should not be an available sword to coerce an affirming parent to require their transgendered child to spend residential time with the other parent who is not affirming. Statistics show this is a life-or-death matter for the transgendered child. While most families do not have these challenges, that does not make this issue any less deserving of being considered a matter of great public interest because it is. Review should be accepted, and the Court of Appeals' decision affirming the trial court's four contempt orders should be reversed.

A. IDENTITY OF PETITIONER

The child, J[1], is the real party in interest. J's father is the Petitioner. He requests this Court review and reverse the opinion identified in Part B.

B. COURT OF APPEALS DECISION

Petitioner requests this Court review the Washington State Court of Appeals' Unpublished Opinion in *In Re Parentage of I.D.H.O.,* Case No. 39222-8-III, Washington Court of Appeals, Division Three (January 23, 2024) (the "Opinion"),[2] reconsideration denied, February 27, 2024.[3]

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[1] To its credit, Division Three of the Washington State Court of Appeals recognized the sensitivity of this matter and addressed the pseudonym naming convention in the challenged opinion in its footnote †. Agreeing with the panel's reasoning, Petitioner will also use the same pseudonym naming convention in this Petition.

[2] **Appendix** at A-001 through A-014.

[3] *Id.* at A-015.

C. ISSUES PRESENTED FOR REVIEW

1. Whether an Affirming Parent has met their Burden to Show a Reasonable Excuse for a Recalcitrant Transgendered Child to Spend Court-Ordered Residential Time with the Other Parent who has yet to Affirm the Child's Gender Identity when the Child is Expressing Suicidal Ideation and is Engaging in Self-Harm.

2. Whether an Affirming Parent has a Duty to Reveal Mental Healthcare Information to the Other Parent who has yet to Affirm the Child's Gender Identity when the Child is Expressing Suicidal Ideation and is Engaging in Self-Harm.

D. STATEMENT OF THE CASE

The parties are the common parents of a teenager identified as I.D.H.O., and herein referred to as their "Child." On June 24, 2014, the Benton County Superior Court entered a parenting plan, including a residential schedule, for the Child. CP 58.

1. The First Contempt Motion.

On August 8, 2022, the Mother brought a motion for contempt hearing (CP 1–4) and obtained an order to show cause for a contempt hearing (CP 5--6). She complained that although the parenting plan orders joint decision making for non-emergency healthcare, the Father had established a new primary care

provider for the Child and also taken the Child to counseling, without making the Mother aware. CP 2. She requested that the Father provide her with the name and contact information for all of the Child's healthcare providers and provide notice in advance of any and all appointments for the Child. CP 3.

The Father's response included an August 19, 2022 declaration. CP 22–26. While acknowledging the parenting plan's joint decision-making provision for healthcare decisions (CP 22), he pointed out that given the Child's suicidal ideations and self-harming, it was urgent to see a healthcare provider. CP 22–23. The Father also pointed out that since turning 13, under Washington law, the Child could initiate evaluation and treatment for mental health services without parental consent, citing a statute in chapter 71.34 RCW. CP 23. He pointed out that the Child had enrolled in counseling on the Child's own, and that the Mother refused to use the Child's preferred name and pronouns, which was damaging to the Child emotionally. CP 24. The father denied hiding any healthcare from the

Mother. CP 26. The Mother replied with a declaration claiming that in fact the Father had withheld information from her. CP 41–54.

A contempt hearing was held on August 30, 2022, and the court entered an order on contempt. CP 57–60. The court found that the Father was in contempt and had failed to notify, inform, or involve the Mother in the child's mental health counseling and medical decision making; that the failure to follow the parenting plan was intentional; and made a finding of bad faith, citing a failure to confer or advise the Mother when the Child started and continued counseling. CP 58–59. The court ordered the Father to "immediately disclose all mental health providers of the child to the mother, and notify the mother of all appointments immediately when they are made." CP 60.

2. The Second Contempt Motion

On August 23, 2022, before the first contempt hearing had been held, the Mother filed a second Motion for Contempt

Hearing. CP 27–32. This time, she alleged violation of the residential provisions of the parenting plan. CP 28–31.

The Mother recounted an incident that took place on August 4, 2022, when she arrived at the exchange location to pick up the Child for her residential time. When the Father arrived with the Child, the Child stated a need to use the restroom inside the Ace Hardware store. CP 28. However, instead of going inside the store, the Child went to a nearby parking lot and got into a waiting black car driven by an older teenager, who then drove off. CP 28. The Mother called the police and accused the Father of having planned the incident, which he denied. CP 28. The sheriff later informed the Mother that the Child was in Oregon. CP 29. The Child returned to the Father's house later that evening. CP 29.

The Mother next addressed the exchange that was to have taken place on August 11, 2022. CP 29. That weekend, the Child was sick. CP 29. Nevertheless, by about 5:00 pm that day, all family members were at the exchange location. CP 29.

A police officer was summoned, who spoke to the Father and the Child. CP 29. After more than five hours, the Child again refused to go home with the Mother, finally got in the van with the Father, and they drove off about 10:20 pm. CP 30. The Father argued that he did not just leave the Child in the parking lot this week because he was afraid that the Child would run away again, and that he did try to persuade the Child to go home with the Mother. CP 76-77. The Father insisted that he had done all he could to encourage the Child to spend the required residential time with the Mother. *Id.* He referenced the child's suicidal ideation and self-harming, and the Child's threat to either commit suicide or kill the Mother. CP 78-80.

The next day (August 12, 2022), the Father once again drove the Child to the exchange location, and the Child once again refused to go to the Mother's home. CP 30.

A contempt hearing was held on September 27, 2022. CP 138. An order was entered finding the Father in contempt. CP 137–140. The order said that he failed to follow the visitation

schedule for the August 11, 2022 – August 14, 2022 weekend visitation. CP 138. The court made findings that the Father "made no effort to encourage the child to attend visitation with" the Mother, and found bad faith because the Father "knew the child was hesitant to attend visits, and has taken no affirmative action to ensure the child attends as court ordered." CP 138. The court also found that the Father "continues to fail to ensure the visitation schedule is followed." CP 138–139.

3. The Third Contempt Motion

On September 8, 2022, the Mother filed a third Motion for Contempt Hearing. CP 103–107. In this motion, the Mother described the exchange that was to have taken place on August 18, 2022. CP 104. On that day, the Father brought the Child to the exchange location. According to the Mother, the Child got out of the Father's van "and said that he was not coming to visitation because I wouldn't do lunch the previous weekend." CP 104. According to the Mother, the Father "did not

encourage [the Child] to visit and did not leave the parking lot," and that again her scheduled visitation did not occur. CP 104.

The Father filed a declaration in response, explaining that the Child still refused to spend time with the Mother. CP 132–133. He explained that he had taken the Child to every scheduled pick-up and drop-off at the exchange location, Ace Hardware, and that both parents had encouraged the Child to leave with the Mother. CP 132. He stated that he had explained the importance of visitation to the Child, and the importance of a relationship with the Mother and other family members. CP 133. Finally, he stated that the Child had no privileges at home if not visiting the Mother. CP 133.

A hearing was held on October 4, 2022, and the trial court entered another Order on Contempt, finding the Father in contempt. CP 166–169.

4. The Fourth Contempt Motion

On September 22, 2022, the Mother filed a fourth Motion for Contempt Hearing. CP 123–127. In this filing, she described

what occurred at the exchange that was to take place on September 9, 2022, at Ace Hardware. CP 124. She described how the Child exited the Father's truck, took a seat in the shopping cart return, and spoke with her. *Id.* She stated, "I asked for him to come with me a few times, but he said he did not want to and refused to enter my vehicle." *Id.* She stated, "Despite my attempts to encourage [the Child] to come with me for visitation, [the Child] returned to [the Father]'s truck." *Id.*

On September 30th, 2022, the Father brought the Child to the exchange location and, despite his fears that the Child would run away again or self-harm, drove away after dropping the Child off, so as to comply with Judge Ruff's order. CP 154-65. Per the Mother's account, the Child then walked into traffic, and the Mother escorted the Child out of the roadway and called the police. CP 192. The Father was called back to the scene, and the police took the Child to the hospital, where a doctor and Crisis Response became involved, although Crisis Response did not arrive until hours later, after midnight. CP

193. The Father's Supplemental Declaration with attached exhibits, including the police report, describes these events in more detail. CP 154-65. Finally, the Mother suggested that she forgo her residential time that weekend and that the Child instead stay with a grandmother. CP 194.

Despite the Father's argument that he had been remaining at the exchange location only out of his well-founded concern for the Child's safety, and not because he wanted to foil the parenting plan, nevertheless on October 18, 2022, the court entered another Order on Contempt finding the Father in contempt. CP 202–205.

E. ARGUMENT

Neither this Court nor the Court of Appeals has squarely dealt with the unique parenting issues presented when their common child identifies with a gender that is different than the one they were assigned at birth. The time to do so has come, and this case presents the issue for this Court's review.

The Ninth Circuit has held that "heightened scrutiny applies to laws that discriminate on the basis of transgender status, reasoning that gender identity is at least a 'quasi-suspect class.' " (citing *Karnoski v. Trump*, 926 F.3d 1180, 1200–01 (9th Cir. 2019)). To withstand heightened scrutiny, classification by sex or transgender status "must serve important governmental objectives and must be substantially related to achievement of those objectives." *Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976).

It is beyond dispute that transgendered children face discrimination and harassment. The United States District Court for the Western District of Washington when deciding whether parents of transgendered children have a right to proceed under pseudonyms has keenly observed that "[t]he potential harm to transgender children if their identities are exposed can be severe as they could be exposed to retaliation by peers and the public." *Int'l Partners for Ethical Care Inc. v. Inslee*, No. 3:23-CV-05736-DGE, 2023 WL 7017765, at *1 (W.D. Wash. Oct. 25, 2023).

In Arizona, when three transgendered children challenged a state law requiring people diagnosed with gender dysphoria to have gender reassignment surgery before the state would change the gender on their birth certificates, the U.S. District Court for the District of Arizona struck down the law as unconstitutional. In doing so, it found, "The ongoing involuntary exposure of a child's transgender status is akin to a death by a thousand cuts as being continuously outed unnecessarily exposes this child to stigma, bullying, fear, and violence. *D.T. v. Christ*, 552 F. Supp. 3d 888, 897 (D. Ariz. 2021). The court not only recognized the discrimination transgendered children face on a day-to-day basis, but it also recognized the importance that affirming a child's gender identity has on the child's well-being and that not affirming their gender identity is detrimental to their mental and physical health.

> …amending important identity-related documents (such as birth certificates) to coincide with a transgender child's gender identity (as opposed to

> their external genitalia) is vital to their mental and physical well-being; and (4) that failure to amend such documents (such as birth certificates) improperly reveals a transgender child's transgender status to school officials and classmates, which results in discrimination and harassment based on their transgender status, and this is detrimental to a transgender child's mental and physical health.

D.T. at 896

The detriment to a transgendered child's general well-being and their physical and mental health was well documented by the United States Fourth Circuit Court of Appeals' in a school bathroom case. In *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, (4th Cir. 2020), as amended (Aug. 28, 2020), a child student who identified as being male but was assigned the female gender at birth challenged his school's refusal to allow him to use the boys restroom. Due to the school's refusal the child practiced restroom avoidance and developed repeated urinary tract infections. *Grimm* at 600. But that was not the worst of it. The court then described the harrowing experience that followed. "During his junior year, Grimm was hospitalized for suicidal

ideation resulting from being in an environment where he felt "unsafe, anxious, and disrespected." *Id. at* 601. It then contrasted the child's treatment by his school with his treatment when he was hospitalized. "In a moment of affirmation, the hospital admitted him to the boys ward." *Id.*

Respecting a transgendered person's gender identity is not, however, without its detractors. The tension between affirming and not affirming a person's gender identity has recently erupted in out sister state to the east- Idaho. In *Poe by & through Poe v. Labrador*, No. 1:23-CV-00269-BLW, 2023 WL 8935065, at (D. Idaho Dec. 26, 2023), a U.S. District Court Judge properly applied a heightened scrutiny analysis to Idaho's Vulnerable Child Protection Act's prohibition on the use of puberty blockers, hormones and other treatments, and it preliminarily enjoined those prohibitions from taking effect. *Poe*, at *12 (citing *Hecox v. Little*, 79 F.4th 1009, 1026 (9th Cir. 2023)). In response, Idaho's attorney general appealed to the Ninth Circuit Court of Appeals on January 9, 2024. Ninth

Circuit Case No. 24-142. He then filed a motion to stay the injunction, but the District Court denied his request. *Poe by & through Poe v. Labrador*, No. 1:23-CV-00269-BLW, 2024 WL 170678, at *1 (D. Idaho Jan. 16, 2024). Now, most recently, on February 21, 2024, he has made application to the United States Supreme Court for direct review. U.S. Supreme Court Case No. 23A763.

As the gender identity battle rages on nationwide, the real-life challenges facing transgender children in Washington, and elsewhere, continue. Day-by-day those challenges take their toll on these vulnerable children's well-being and sometimes that toll results in a transgendered child's untimely death. One child's preventable death is a matter of great public importance and justifies this Court exercising its discretion and accepting review.

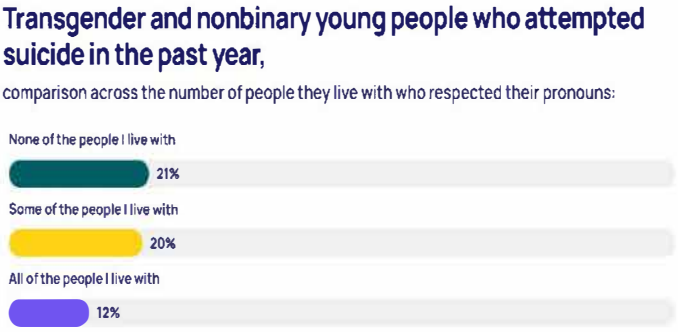
Other state appellate courts agree. In *A.A. v. Nita A.*, __ N.E. 3d ___, 2023 IL App (1st) 230011, 2023 WL 8103459 (November 22, 2023), the intermediate appellate court decided

to review a moot issue involving a trial court issuing a domestic violence protection order that protected an adult transgendered child from his mother's non-affirming electronic communications because they caused "significant stress, including depression, anxiety, [and that they had] difficulty engaging with school." *A.A.*, 2023 IL App (1st) 230011, ¶¶ 4-5. Even though the protection order had expired when the appellate court considered the issue, the appellate court chose to exercise its discretion to review the issues presented despite their being moot. *A.A.* at ¶ 25. The appellate court exercised its discretion based upon the public interest exception and concluded, "Protecting transgender individuals from abuse by family members is a matter of public interest, and unfortunately, it is likely that transgender individuals will face abuse from family members in the future." Id.

This case has no less public interest than *A.A.* Here, a transgender child common to both Respondent ("Mother') and Petitioner ("Father") was expressing suicidal ideation, engaging

in self-harm, and was suffering from body dysmorphia. CP 22-23. While parents are oftentimes not well-equipped to accept a child's gender identity when it differs from the one that they assumed since the child's birth, Father was the first parent to affirm J's gender identity. CP 22. Mother, on the other hand, continued to misgender the child by using pronouns and the child's birthname, which were inconsistent with the gender to which the child identified. CP 24-25.

Studies show that a parent's misgendering their transgender or nonbinary child increases the suicide risk by 40% nationwide.[4]



[4] The Trevor Project, 2023 U.S. National Survey on the Mental Health of LGBTQ Young People, Pg. 24.

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Yet only 27% of the people surveyed reported that all of the people they live with respect their pronouns.[5] Moreover, 78% of those surveyed identified "Gender Identity" and 74% identified "Pronouns" as topics that would be helpful for the people in their lives to know more about. This problem is real and it needs to be addressed, as do all parenting decisions, consistent with the best interests of the child. RCW 26.09.002.

Mental health issues are also caused or amplified by the stigmatization and discrimination toward transgender children.

> *Further, transgender children will often also feel unaccepted by their family and peers, resulting in lowered self-esteem and self-isolation.*
>
> This social stigmatization also accounts, to some degree, for the high prevalence of comorbid disorders among the transgender population. For example, *transgender children suffer staggeringly high rates of depression, anxiety, self-harm, and suicidal ideation or attempts*. Shockingly, a reported forty-one percent of transgender adults have attempted suicide at some point in their life. *Further, transgender* children *are at a "2- to 3-fold increased risk" of developing comorbid disorders, like depression and anxiety, than their cisgender counterparts*.

[5] *Id*. at 23.

> *Caden Pociask, In the Best Interests of Whom?: An Analysis of Judicial Bias in Custody Disputes Involving Transgender Children, 98 Ind. L.J. 1275,* 1289 (2023)

In this case, J was truly recalcitrant and would not spend the court-ordered residential time with his Mother. On August 4, 2022, he texted Father stating, "If I have to go to [Mother]'s, I kill myself of her, I can't fucking deal with her anymore." Father's motivations could not have been more clear. "The last thing I was to do is bury our son because that's what it's going to come down to. I had to take action." CP 66-67.

This is where this Court's holdings in *In re Marriage of Rideout*, 150 Wn.2d 337, 77 P.3d. 1174 (2003) *as corrected* (Oct. 27, 2003), needs further clarification from this Court. RCW 26.09.160(4), codifies the required burden shifting analysis. It states,

> …the parent shall be deemed to have the present ability to comply with the order establishing residential provisions unless he or she establishes otherwise by a preponderance of the evidence. The parent shall establish a reasonable excuse for failure to comply with the residential provision of

> a court-ordered parenting plan by a preponderance of the evidence.

In *Rideout*, this Court approved using this burden shifting analysis when it decided *Rideout* and construed the statute to require the alleged contemnor to have the burden to prove by a preponderance of the evidence that he or she " lacked the ability to comply with the residential provisions of a court-ordered parenting plan or had a reasonable excuse for noncompliance." *Rideout*, 150 Wn.2d at 352-53.

It did so, however, only when "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." In the same breath, however, this Court also concluded, "a parent should not be punished for the actions of a truly recalcitrant child."

This Court also applied the burden shifting analysis specified in RCW 26.09.160(4), which states:

> …the parent shall be deemed to have the present ability to comply with the order establishing residential provisions unless he or she establishes otherwise by a preponderance of the evidence. The parent shall establish a *reasonable excuse* for failure to comply with the residential provision of a court-ordered parenting plan by a preponderance of the evidence.

(emphasis added).

When it applied the burden shifting analysis, a parent should not be punished for the actions of a truly recalcitrant child, punishment is appropriate when the parent is the source of the child's attitude or fails to overcome the child's recalcitrance when, considering the child's age and maturity, it is within that parent's power to do so. *In re Marriage of Rideout,* 150 Wn. 2d 337, 356, 77 P.3d 1174, 1183 (2003), *as corrected* (Oct. 27, 2003).

The key language in the statute is a "*reasonable excuse"* for not doing so, also quoted in *In re Marriage of Rideout*, 150 Wn.2d 337, 353, 77 P.3d 1174 (2003) as corrected (Oct. 27, 2003). "[W]hile a parent should not be punished for the actions

of a truly recalcitrant child, punishment is appropriate when the parent is the source of the child's attitude or fails to overcome the child's recalcitrance when, considering the child's age and maturity, it is within that parent's power to do so. *Rideout*, 150 Wn.2d at 356, 77 P.3d 1174, 1183 (2003). To be held in contempt, a parent must either *contribute* to the child's attitude or fail to make *reasonable efforts* to require the child to comply with the parenting plan and court-ordered residential time. *Id*. at 356-57. The father here was under an obligation to exchange the child with the mother by making a drop-off at a particular time and place, which he did.

RCW 26.09.160 permits a court to punish parents by finding them in contempt when the child refuses to spend court-ordered residential time with the other parent. This statute does however provide a carve-out for a parent who can "establish a *reasonable excuse* for failure to comply with the residential provision of a court-ordered parenting plan by a preponderance of the evidence." RCW 26.09.160(4). Although a parent is

presumed to be able to comply and must do so, where the parent cannot, the burden is on the parent to show by a preponderance of the evidence that they either could not comply or had a reasonable excuse for not doing so.

Rideout did not address the second part of RCW 26.09.160(4), which is what constitutes a reasonable excuse for noncompliance. Here, the child was reluctant to spend time in the household of a mother who did not support gender transition. The child attempted to run away and had a history of self-harm and suicidal ideation, at one time threatening, whether idly or not, either suicide or killing the mother. The child had a history of trying to run away once at the exchange location. This history, and a legitimate concern for the child's best interests, constitutes a reasonable excuse for any noncompliance on the part of the Father.

A parent must have not only a subjective belief that they are acting in good faith, but that belief must be objectively reasonable. Here, given the history of suicidal ideation, cutting

and self-harm, depression and anxiety, and running away, a belief that making extraordinary efforts to force residential time with the Mother would potentially harm the child was objectively reasonable. The Court of Appeals acknowledged that withholding a child out of concern for a child's safety was a valid concern not implicated in *Rideout*. *In re Marriage of King*, 178 Wn. App. 1042 (2014) (UNPUBLISHED). *See also In re Marriage of Barrett,* 14 Wn. App. 2d 1055 (2020) (UNPUBLISHED).

The first contempt order held the Father in contempt for failure to notify the Mother regarding the Child's enrollment in mental health treatment. CP 57–60.

Chapter 71.34 RCW governs behavioral health services for minors. RCW 71.34.500 permits an adolescent not under the age of thirteen to admit himself or herself to an evaluation and treatment facility for inpatient mental health treatment without parental consent. RCW 71.34.500(1). RCW 71.34.530 provides that any adolescent not under the age of thirteen may request

and receive outpatient treatment without the consent of the adolescent's parent.

RCW 70.02.265(1)(a) provides further privacy protections for minors 13 or older seeking mental health treatment, stating:

> When an adolescent voluntarily consents to his or her own mental health treatment under RCW 71.34.500 or 71.34.530, a mental health professional shall not proactively exercise his or her discretion under RCW 70.02.240 to release information or records related to solely mental health services received by the adolescent to a parent of the adolescent, beyond any notification required under RCW 71.34.510, unless the adolescent states a clear desire to do so which is documented by the mental health professional, except in situations concerning an imminent threat to the health and safety of the adolescent or others, or as otherwise may be required by law.

Considered together, these statutes demonstrate a clear legislative intent for minors age 13 or older not only to direct their own mental health care but also to have privacy in doing so, even as to their own parents.

A minor 13 or older seeking counseling or other mental health treatment because of gender dysphoria is clearly within the purview of these statutes. When a father does not

even know his adolescent child has seen a mental health professional, he should not be held in contempt for failing to disclose the treatment to the other parent. When a father is aware of the mental health treatment, as here, but the adolescent wishes to invoke the privacy protections of RCW 70.02.265(1)(a) as to his or her providers, to prevent a parent not supportive of gender transition from knowing, then the child's rights to privacy as expressed in these statutes will come directly into conflict with any parenting plan requiring disclosure to the other parent. A parent, in this instance a father, should not be held in contempt for trying to act in the adolescent's best interest by respecting the adolescent's right to privacy.

F. CONCLUSION

For the reasons stated above, review should be accepted, and the Court of Appeals decision affirming the four trial court contempt orders should be reversed.

SUBMITTED: March 28, 2024.

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By my signature above, I certify that the foregoing document contains 4,577 words, in compliance with RAP 18.17.

Court of Appeals Cause No. 39222-8

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Respondent.

APPENDIX TO PETITION FOR REVIEW

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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.

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† 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.

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[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.

FILED
FEBRUARY 27, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In re Parentage of:	)	**No. 39222-8-III**
	)	
I.D.O.[†]	)	
	)	
Minor child,	)	
	)	
SHAWN M. JETT,	)	**ORDER DENYING MOTION FOR RECONSIDERATION**
	)	
Appellant,	)	
	)	
v.	)	
	)	
JASINE R. CAREY,	)	
	)	
Respondent.	)	

The court has considered appellant's motion for reconsideration of this court's opinion dated January 23, 2024, and is of the opinion the motion should be denied.

THEREFORE, IT IS ORDERED that the motion for reconsideration is hereby denied.

PANEL: Judges Lawrence-Berrey, Staab, and Cooney

FOR THE COURT:

George Fearing

GEORGE FEARING
CHIEF JUDGE

[†] To protect the privacy interests of the minor child, we use their initials in the caption of this order. 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.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true copy of the Petition for Review and Appendix on the following:

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Kenneth Masters Shelby Lemmel 321 High School Rd, D-3 #362 241 Madison Ave N Bainbridge Island, WA 98110 Email: ken@appeal-law.com shelby@appeal-law.com	[ ] Facsimile [ ] Hand Delivery [ ] U.S. Mail [X] Email/Electronic Upload

DATED this 28th day of March 2024 at Beverly Hills, Michigan.

/s/ Matt McGlothin

Matthew Clark McGlothin
Paralegal
Western Washington Law Group, PLLC

WESTERN WASHINGTON LAW GROUP PLLC

March 28, 2024 - 4:44 PM

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