NO. 98200-7
(Court of Appeals No. 50959-8-II)

SUPREME COURT OF THE STATE OF WASHINGTON

In re Marriage of Ingersoll,

Tomi Lee Ingersoll (n/k/a Tomi Lee Winters),

Respondent,

v.

John Patrick Ingersoll,

Petitioner.

ANSWER TO PETITION FOR REVIEW

John Purbaugh, WSBA # 19559
Attorney for Respondent

NORTHWEST JUSTICE PROJECT
715 Tacoma Ave. S.
Tacoma, Washington 98402
(253) 272-7879
JohnP@nwjustice.org

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I. INTRODUCTION

Tomi Winters (f/k/a Tomi Ingersoll), Respondent, answers and opposes the *Petition for Review* filed February 24, 2020 by her former spouse, John Ingersoll.[1] Ingersoll prevailed in his appeal of the trial court's Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) rulings, leaving no issues under that Act for further review. Ingersoll lost only on the separate issue of whether Winters should have been found in contempt of the parties' parenting plan. Because these fact-specific contempt rulings do not present any issue of substantial public interest, Ingersoll's petition should be denied.

II. COUNTER-STATEMENT OF THE CASE[2]

Ingersoll's Statement of the Case provides an incomplete, one-sided version of the evidence, prior proceedings and court rulings. His complaints about Winters' actions prior to their dissolution were previously adjudicated in an appeal of the parties' 2016 parenting plan. *In*

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[1] Ingersoll filed an *Amended Petition for Review* on March 4, 2020. The *Amended Petition* removed sealed documents from the Appendix, as required by the Court's letter dated February 27, 2020, but is otherwise identical to the original *Petition*. Both documents are hereafter referred to singularly, as the "*Petition*."

[2] References to documents in the Appendix to Ingersoll's *Amended Petition* appear as "App.__." References to documents in the Appendix to this *Answer* filed by Respondent appear as "RApp.___."

re the Marriage of Ingersoll, noted at 200 Wn. App. 1070 (Oct. 17, 2017), *review denied* 190 Wn.2d 1010 (2018) ("*Ingersoll I*"). RApp. 1. Ingersoll's own complaints to Alaska child welfare authorities prompted that state's investigations and child welfare proceedings considered by the Washington trial court when denying Ingersoll's contempt motions against Winters.

A. **All Pre-Dissolution Issues Were Fully Adjudicated in *Ingersoll I.***

The trial court entered a Final Parenting Plan in 2016 in conjunction with the dissolution of the parties' marriage. CP 764 - 775. That plan identified Winters as the primary residential parent, provided for visitation by their children with Ingersoll, found that neither parent had a history of acts of domestic violence that required limiting their parenting time, but found that Ingersoll's parenting time should be limited based on his history of alcohol abuse. *Id.* The parenting plan contained no findings regarding abusive use of conflict by either party. *Id.*

The Court of Appeals affirmed the 2016 parenting plan in an unpublished opinion, and the Supreme Court denied Ingersoll's request for further review. RApp. 1; *Ingersoll I.* The *Ingersoll I* opinion reviewed the parties' "frequent and violent fights," their increasing conflict due to Ingersoll's heavy drinking, and Winters' fleeing with the children to a shelter. RApp. 2. *Ingersoll I* held that substantial evidence supported both

the trial court's finding that Ingersoll's alcohol problem warranted a limitation on his parenting time, and its finding that Winters did not have a history of domestic violence as claimed by Ingersoll. RApp. 1-2.

Ignoring these inconvenient aspects of *Ingersoll I*, Ingersoll's present *Petition* recites a laundry list of assertions about Winters's actions prior to the dissolution. In support of these claims, Ingersoll cites portions of a nearly 200 page package of "sealed" documents Ingersoll filed in support of his contempt motion heard December 19, 2017. *Petition,* 2-4; CP 361-554. Many of these documents were excluded from evidence at trial as inadmissible hearsay, in the form of police reports regarding incidents occurring prior to the dissolution trial. CP 374-380, 387-398, 401-407, 409-415. One, a polygraph report (CP 404), was specifically prohibited by a pretrial order *in limine* from even being mentioned at trial. CP 719, fn. 7. Ingersoll did not assign error to these evidentiary rulings in *Ingersoll I.* Winters moved to strike this entire package of documents from the record for the December contempt hearing, and the trial court declined to consider them. CP 717-722; RP December 19, 2017, at 17:20, 18:7-18. Ingersoll did not assign error to this ruling or make argument about these documents in Court of Appeals No. 50959-8-II (*Ingersoll II*).

B. Ingersoll Refuses to Return FMI After Summer 2017 Visitation.

In May 2017 the parties' teenage daughter, KAI, refused to travel from Alaska to Washington for a scheduled visit with Ingersoll. CP 6-24. KAI told her therapist that Ingersoll had been "drinking a lot" during her last visit. CP 951. The trial court denied Ingersoll's contempt motion seeking sanctions against Winters for KAI's refusal to visit her father. CP 59-63, 206-208. Ingersoll did not appeal these rulings. Instead, he refused to return their son FMI, who had made the trip, to Winters.

The trial court denied Ingersoll's multiple requests to "suspend" the Parenting Plan and allow him to keep FMI in Washington. RP June 28, 2017, at 7-9; CP 250-253, 298-299. After keeping FMI in violation of the parenting plan for an additional 40 days and 40 nights, Ingersoll finally returned FMI to Winters in Alaska, but only after being found in contempt, ordered to either put FMI on the airplane or report to jail, and ordered to pay Winters' attorney fees. CP 255-257. This Commissioner's ruling was affirmed on revision by the superior court. CP 295-297.

The Court of Appeals affirmed these rulings in *Ingersoll II*, and awarded Winters fees on appeal. App.18.[3]

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[3] Ingersoll's *Petition* mentions but does not seek further review of the trial court rulings finding him in contempt or the fee awards related to these rulings. *Petition* 5, fn. 2.

C. **Ingersoll Initiates Child Welfare Investigations in Alaska.**

Two days after the trial court's first ruling denying his contempt motion regarding KAI's failure to visit, Ingersoll made a report to the Alaska Office of Children's Services (OCS), claiming neglect in Winters' household and that KAI had physically abused FMI. CP 129, 197, 465. OCS opened an investigation into Ingersoll's reports. CP 188-189.

When Ingersoll finally returned FMI to Alaska in early August 2017, OCS interviewed him. CP 614. FMI made disclosures prompting OCS to also investigate Ingersoll. CP 615. FMI was afraid of Ingersoll, and of upcoming Skype calls with his father. *Id.* FMI's doctor independently reported suspected child abuse of FMI by Ingersoll to OCS. CP 321, 323.

The children's therapist reported that "[b]oth children have expressed a fear of their father and they have developed traumatic stress reactions related to their experiences with him." CP 330. KAI's mental health symptoms worsened when she was forced to have contact with Ingersoll, and FMI had "begun exhibiting somatic symptoms during times when he is supposed to be participating in Skype visits with his father." *Id.* The therapist recommended that the children not be forced to have visitation with Ingersoll at this time and recommended a number of steps he could take to re-establish a healthy relationship with his children. *Id.*

On September 25, 2017 OCS sent Winters an email stating OCS had "significant concerns for the children's safety" if they had contact with their father during the continuing investigation. CP 615, 621. They further specifically asked Winters "what actions" she intended to "take to keep the children safe." *Id.* Winters asked Ingersoll to postpone his scheduled visit to Alaska in September 2017 while she sought clarification from OCS about what they expected of her. CP 615.

Ingersoll refused to reschedule. Upon arrival he was served in the Fairbanks, Alaska airport with a Long Term Domestic Violence Protective Order (DVPO) protecting Winters. CP 661, 665. This order found that Ingersoll had committed, or attempted to commit, crimes involving domestic violence (including violating a protective order) against Winters, and that he represented a credible threat to her safety. CP 667.

Faced with conflicting demands -- by OCS that she protect the children from their father, and by Ingersoll that she provide the children to him for a visit under the parenting plan -- Winters made the difficult decision to withhold the children from Ingersoll. CP 714. In an effort to comply with OCS' demand that she protect the children, Winters also obtained a 20-day Ex-Parte DVPO prohibiting contact between the children and Ingersoll. CP 661, 673-681.

Before the 20-day DVPO involving the children expired, the State of Alaska interceded to protect the children by filing a "Petition for Adjudication of Children in Need of Aid (CINA) and for Temporary Custody" under Alaska Statutes chapter 47.10. CP 539, 661. At a hearing on November 2, 2017 the Alaska Juvenile Court took temporary custody of the children from both parents, temporarily placed the children with Winters, and ordered that they have no contact with Ingersoll except as allowed by OCS or the CINA court. *Id.*, CP 570-578.

D. Ingersoll Files Further Contempt Motions, Despite Alaska's Investigation, DVPOs and Child Welfare Orders.

Ingersoll filed further contempt motions during the summer and fall of 2017. One alleged that Winters had failed to make the children available for video visits during several dates in August. CP 582. Another alleged additional missed video visits and a missed in-person visit in September. CP 705-708. Ingersoll pursued these contempt proceedings despite being aware of the pending OCS investigation of suspected child abuse, despite OCS' stated concerns about his unsupervised contact with the children, despite being served with the Alaska DVPOs, and despite being informed about the CINA proceedings in Alaska. CP 321, 323, 615, 621, 661, 665, 673-681, 570-578. The trial court denied both contempt motions. CP 748-755 (November 17, 2017), 756-760 (December 19, 2017). It found

Ingersoll had brought the second motion without a reasonable basis and awarded fees to Winters. CP 758-759.

Ingersoll asserted at both the November and December contempt hearings that the Alaska investigations and orders should not excuse Winters' failure to comply with the parenting plan because Washington had exclusive, continuing jurisdiction under the Uniform Child Custody and Jurisdiction and Enforcement Act (UCCJEA), chapter 26.27 RCW, to make or permanently modify child custody determinations regarding the children. CP 689, 704.

In both the November and December 2017 hearings the trial court communicated its view that in contempt enforcement proceedings it was not exercising its jurisdiction to make or modify a "child custody determination," and that any future modification proceedings that might be filed in family court[4] would be subject to the control of the juvenile court during the pendency of any child welfare proceedings. [5] *Eg.*, RP November 17, 2017 at 11; RP December 19, 2017 at 11-12.

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[4] Neither Ingersoll or Winters has filed an action in Washington to modify the original child custody determination made in the 2016 Parenting Plan.

[5] Once child welfare proceedings are initiated, any modification action filed by private parties would have been subject to the primary jurisdiction of the juvenile court. Each State has a *parens patriae* interest in (and jurisdictional authority over) the welfare of minors present in its territory. Alaska's assertion of this interest and jurisdiction appears in AS 47.10.010(a): "Proceedings related to a child under 18 years of age residing or found in the State are governed by this chapter when the child is alleged to be or may be

The Court of Appeals affirmed all of the contempt rulings in *Ingersoll II*. It held that the trial court "did not abuse its discretion when determining Winters was justified in obeying the Alaska court orders." App. 18. It rejected Ingersoll's argument that Winters' reliance on the Alaska orders was unreasonable because they were contrary to the UCCJEA, holding that "Alaska superior courts had the ability to initiate child welfare proceedings based, at least in part, on Ingersoll's own allegations to the Alaska OCS." App.17. The Court of Appeals also awarded attorney fees to Winters for addressing Ingersoll's appeal of the contempt orders. App. 18.

E. The Trial Court Relinquishes UCCJEA Jurisdiction to Alaska But is Reversed on Procedural Grounds.

Ingersoll eventually sought dismissal of the Alaska child welfare proceedings, arguing that under the UCCJEA Washington had exclusive jurisdiction to permanently modify orders regarding the children's

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determined by the Court to be a child in need of aid under AS 47.10.011." In both Washington and Alaska, once a juvenile court asserts this authority over children in child welfare proceedings (called dependency in Washington, and Child in Need of Aid [CINA] in Alaska) any further determination of child custody must occur in the juvenile court, unless that court expressly authorizes family court to make such decisions. RCW 13.04.030 grants juvenile court exclusive original jurisdiction over children alleged to be dependent, and concurrent jurisdiction with family court over child custody proceedings. RCW 13.34.155 allows dependency court to establish or modify a parenting plan when doing so will implement a permanency plan of care for child and result in dismissal of the dependency case. Similarly, AS 47.10.113 provides that, except by agreement of the parties, any request to make, modify or vacate a custody or visitation order affecting a child alleged to be in need of aid must be heard as part of the CINA proceedings.

custody. CP 817. A Guardian ad Litem for the children, OCS and Winters all opposed dismissal, arguing that Alaska had appropriately asserted temporary emergency jurisdiction based on Ingersoll's harmful conduct toward KAI and FMI. CP 802, 812, 815. In the ensuing conference between the two states' courts, the Alaska juvenile court judge described the CINA proceedings as taken "on the basis of an emergency" and asked that Washington allow Alaska to have jurisdiction. RP May 17, 2018 at 4-5. The Washington family court judge agreed, noting "I don't think there's much in Washington. What we have been doing is contempt hearings." *Id.* at 5.

The Court of Appeals reversed the trial court's order relinquishing UCCJEA jurisdiction to Alaska in *Ingersoll II*, holding that although the request to do so came directly from the Alaska court, the Washington court failed to comply with the motion notice requirements of CR 7 and also failed to afford the parties a meaningful opportunity to participate in the conference. App. 11, 14. The Court of Appeals remanded for a hearing on whether Washington is an inconvenient forum, at which the parties may submit information and provide briefing. App. 14. Ingersoll's motion to enforce the Washington parenting plan pending the hearing on remand was denied by the Court of Appeals. RApp. 14. Scheduling of the hearing on remand awaits issuance of the mandate in *Ingersoll II*. RAP 12.5.

III. ARGUMENT

A. No UCCJEA Issues Survive for Further Review.

Ingersoll argues (as he did in the Court of Appeals) that the trial court "misinterpreted" its UCCJEA jurisdiction and should have "asserted" that jurisdiction sooner. *Petition* 1, 14. The Court of Appeals did not reach this issue, because Ingersoll prevailed on all UCCJEA issues when it reversed the trial court's ruling relinquishing Washington's UCCJEA jurisdiction to Alaska. App. 14.

"Only an aggrieved party may seek review by the appellate court." RAP 3.1. A party is not aggrieved by a favorable decision, and cannot properly appeal from such a decision. *Reynolds v. Harmon,* 193 Wn.2d 143, 150, 437 P.3d 677 (2019) (citations omitted); *Paich v. N. Pac. Ry. Co.,* 88 Wn. 163, 165-66, 152 P. 719 (1915). Disappointment in the result or disagreement with the court's reasoning do not entitle a party to appeal a favorable decision; "[h]e must be aggrieved in a legal sense." *Sheets v. Benevolent & Protective Order of Keglers,* 34 Wn.2d 851, 855, 210 P.2d 690 (1949). "[A] party is not entitled to seek review of an issue by a higher court when it prevails on that issue below." *See, State v. Alexander,* 125 Wn.2d 717, 721 n. 6, 888 P.2d 1169 (1995).

Because the reversal was on procedural grounds, the Court of Appeals remanded for a new hearing on whether Washington had become an inconvenient forum. Rapp. 14. Winters does not seek Supreme Court review of that result, and Ingersoll's *Petition* does not object to the Court of Appeals' failure to reach the merits of the inconvenient forum issue. By leaving intact Washington's exclusive continuing jurisdiction, the Court of Appeals granted Ingersoll complete relief on UCCJEA issues. The trial court has yet to "interpret" or "assert" its UCCJEA jurisdiction in the hearing on remand. Once it does, Ingersoll may again seek appellate review of the new decision if he is aggrieved by it.

Ingersoll does not identify any relief that could be awarded now to remedy the timing of the courts' communication prior to its UCCJEA decision. A case is moot when a court can no longer provide effective relief. *Blackmon v. Blackmon*, 155 Wn.App. 715, 719, 230 P.3d 233 (2010).

Ingersoll also does not show how he was prejudiced by the trial court's failure to communicate sooner, beyond speculating that *if* the UCCJEA conference had been held sooner, Winters' withholding of the children based on the Alaska orders "*could have been* prevented." *Petition* 14. (emphasis added). This would only be true if the Washington court had then decided to retain jurisdiction and if further proceedings were

favorable to Ingersoll. Even if speculation were appropriate as part of Ingersoll's search for an issue of public interest, this particular speculation ignores the result of the trial court's UCCJEA conference: it relinquished Washington's jurisdiction to Alaska, where the children had lived since 2012. CP 794, 909. Although this result was reversed on procedural grounds, Ingersoll offers no reason to believe that the substantive decision would have been different if made sooner. Error without demonstrated prejudice affecting the outcome of the case is not a basis for reversal on appeal. *E.g., Carlisle Packing v. Sundanger,* 259 U.S.225, 42 S.Ct. 475, 66 L.Ed. 927 (1922); *McDonald v. Department of Labor & Industries*, 104 Wn.App. 617, 17 P.3d 1195 (2001).

For all of these reasons, no UCCJEA issues survive for further appellate review.

B. The Trial Court's Fact-Specific Contempt Rulings Do Not Present Any Question of Substantial Public Interest.

1. Contempt Rulings Are Reviewed For An Abuse of Discretion.

A trial court's discretionary decisions in a contempt proceeding are reviewed for an abuse of discretion. *Marriage of Eklund,* 143 Wn.App. 207, 212, 177 P.3d 189 (2008). The trial court's findings of fact in such a decision are reviewed for substantial evidence, even if they are based solely on sworn statements, and conclusions of law are reviewed to see if

they are supported by the findings. *Marriage of Rideout*, 150 Wn.2d 337, 351, 77 P.3d 1174 (2003). A trial court abuses its discretion where its decision is manifestly unreasonable or based on untenable grounds or reasons. *Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041 (2017).

RCW 26.09.160(2)(b) states:

> If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court.

Contempt rulings are, thus, necessarily fact-specific. Fact-specific rulings are not typically found to present a substantial public interest. *See, e.g., State v. Lundstrom*, 6 Wn. App. 2d 388, 429 P.3d 1116 (2018), *rev. denied*, 193 Wn.2d 1007, 443 P.3d 800 (2019); *In re Flippo,* 185 Wn.2d 1032, 380 P.3d 413 (2016); *In re Sanchez*, 189 Wn.2d 1023, 408 P.3d 1089 (2017).

2. Winters Was Justified in Obeying Alaska Court Orders.

Ingersoll's claimed issue of public interest is "justice and equity for parents with custody or visitation rights across state borders." *Petition* 13. Ingersoll argues (as he did in the Court of Appeals) that the trial court abused its discretion by excusing Winters' noncompliance based on Alaska court orders she "solicited" by making stale allegations. *Id.*

This argument ignores Ingersoll's own primary role in the commencement of Alaska child welfare proceedings. He, not Winters, made a complaint to Alaska authorities. CP 129, 197, 465. During the investigation of Ingersoll's complaint, OCS interviewed FMI, who made disclosures prompting an investigation of his father. CP 615.

Ingersoll's argument also ignores a doctor's report of suspected child abuse of FMI by his father (CP 614-615) and a therapist's report of traumatic stress reactions by both children to their father. CP 330. It requires the court to speculate which allegations OCS acted on, since as Ingersoll notes, the CINA petition is not in the record. *Petition* 7.

The Court of Appeals recognized that, regardless of what Winters had said about Ingersoll, Alaska had jurisdiction to act based on Ingersoll's own allegations:

> Alaska superior courts had the ability to initiate child welfare proceedings based, at least in part, on Ingersoll's own allegations to the Alaska OCS. *See* RCW 26.27.231; AS 25.30.330. Therefore, the superior court did not abuse its discretion by determining that Winters was unable to comply with the parenting plan due to OCS's instruction to Winters and the temporary orders entered by the Alaska courts.

App. 17. Winters "was justified in obeying" those court orders. App. 18.

3. **Speculation Does Not Create an Issue of Public Interest.**

As discussed in argument section III.A above, Ingersoll's speculation that a different decision might have been made if the UCCJEA hearing had been held sooner does not turn the trial court's fact-specific discretionary contempt rulings into issues of substantial public interest warranting Supreme Court review. RAP 13.4(b).

C. **Attorney Fees.**

The Court of Appeals awarded Winters attorney fees for addressing Ingersoll's appeal of the contempt hearing orders. App. 18. Pursuant to RAP 18.1(j), Winters requests a supplemental award of attorney fees for answering Ingersoll's *Petition*.

IV. CONCLUSION

Ingersoll's Petition for Review should be denied.

Respectfully submitted on March 25, 2020.

/s/ John Purbaugh
John Purbaugh, WSBA # 19559
Attorney for Respondent
Northwest Justice Project
715 Tacoma Ave. S.
Tacoma, WA 98402
253-272-7879
JohnP@nwjustice.org

RESPONDENT'S APPENDIX

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on March 25, 2020 I caused the foregoing document to be filed with the Supreme Court and to be served on the Attorney for Appellant listed below, via the Washington State Appellate Courts' Portal.

Kevin Hochhalter
PO Box 55
Adna, WA 98522
kevin@olympicappeals.com

March 25, 2020

/s/ John Purbaugh
John Purbaugh, WSBA # 19559
Northwest Justice Project
715 Tacoma Ave. S.
Tacoma, WA 98402
johnp@nwjustice.org

Filed
Washington State
Court of Appeals
Division Two

October 17, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of: TOMI LEE INGERSOLL, Petitioner, v. JOHN PATRICK INGERSOLL, Respondent.	No. 49229-6-II UNPUBLISHED OPINION

MAXA, J. – John Ingersoll appeals the trial court's parenting plan entered in a dissolution action regarding his marriage to Tomi Ingersoll. The parenting plan designated Tomi[1] as the primary residential parent of John and Tomi's two children and placed limitations on John's contact with the children under RCW 26.09.191(3)(c) based on a finding that he had an alcohol problem that affected his ability to parent.

We hold that (1) the trial court was not required to make a detailed finding that John's alcohol problem would cause specific harm to the children to impose a limitation on his conduct under RCW 26.09.191(3)(c), (2) substantial evidence supported the trial court's finding that John's alcohol problem affected his ability to parent and warranted a limitation on his contact with the children, (3) substantial evidence supported the trial court's finding that Tomi did not

[1] To avoid confusion, first names are used to identify John and Tomi. No disrespect is intended.

have a history of acts of domestic violence, and (4) the trial court did not improperly base its designation of Tomi as the primary residential parent on her status as the primary residential parent in the temporary parenting plan.

Accordingly, we affirm the trial court's parenting plan.

FACTS

John and Tomi were married in 2000. During their marriage they had two children. By 2012, the marriage had deteriorated and the couple had several intense arguments. Once, Tomi threatened to kill herself with a knife and then threatened to kill John, although John just laughed at Tomi's threats. Another time Tomi kicked open the bathroom door during an argument and then repeatedly hit John's chest after he grabbed her. Witnesses also claimed that Tomi choked John at a family gathering, although she denied that she choked him. John once held his pistol to his head after an altercation with Tomi.

During this tumultuous time John was drinking regularly, which increased the conflicts. Tomi and John had gone to a group meeting for alcoholics and their affected family members, but the meetings became a point of contention. The frequent and violent fights frightened Tomi to the point that she feared for her life. She eventually got a friend's help to flee the house and she went with the children to a shelter. Following several short-term moves, Tomi moved with the children to live near her parents in Alaska.

Tomi filed a dissolution action in Grant County. The trial court in Grant County entered a temporary parenting plan that designated Tomi as the primary residential parent. A guardian ad litem (GAL) from Grant County met with John, Tomi, and the children on several occasions during 2012 and 2013. The GAL raised questions about the credibility of both John and Tomi in

his reports. Following a change of venue to Pierce County, a new GAL evaluated the family members and made written recommendations to the court.

After a bench trial, the trial court entered a permanent parenting plan that designated Tomi as the primary residential parent. In the parenting plan, the court found that John had a long-term problem with alcohol that "gets in the way of [his] ability to parent." Clerk's Papers (CP) at 72. The court also entered an additional finding that John's alcohol problem "includes or influences behavior requiring psychological evaluation and treatment." CP at 81-82. Based on these findings, the court placed limitations on John's conduct that included abstaining from alcohol, enrolling in a random urinalysis program, and enrolling in counseling therapy with a psychologist to address his alcohol dependence and other issues. The parenting plan stated that John's parenting time would be suspended if he did not comply with the court's limitations.

The parenting plan also included the court's finding that neither parent had a problem with domestic violence requiring a mandatory limitation on parenting time.

John appeals the trial court's parenting plan.

ANALYSIS

A. PARENTING PLAN PROVISIONS

A trial court has broad discretion in developing a parenting plan. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012). This discretion is guided by (1) RCW 26.09.184, which states the objectives of a parenting plan and identifies the required provisions; (2) RCW 26.09.187(3)(a), which lists seven factors that the court must consider when adopting residential provisions; and (3) RCW 26.09.002, which declares that the best interests of the child is the standard for determining parental responsibilities. *See Katare*, 175 Wn.2d at 35-36. In

addition, the trial court's discretion is guided by RCW 26.09.191, which provides certain factors that *require* limitations on a parent's residential time (subsection (2)) and *permit* limitations on parenting plan provisions (subsection (3)). *See Katare*, 175 Wn.2d at 36.

RCW 26.09.187(3) states that a child's residential schedule must be consistent with RCW 26.09.191 and that the seven factors listed in RCW 26.09.187(3)(a) must be considered only if limitations imposed under RCW 26.09.191 are not dispositive of the residential schedule.

We review a trial court's parenting plan for an abuse of discretion. *In re Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041 (2017). A trial court abuses its discretion where its decision is manifestly unreasonable or based upon untenable grounds or reasons. *Id.* The trial court's findings of fact are verities on appeal as long as they are supported by substantial evidence. *Id.* Substantial evidence is that which is " 'sufficient to persuade a fair-minded person of the truth of the matter asserted.' " *Id.* (quoting *Katare*, 175 Wn.2d at 35). We do not review the trial court's credibility determinations or weigh evidence. *Black*, 188 Wn.2d at 127.

We are extremely reluctant to disturb child placement decisions "[b]ecause the trial court hears evidence firsthand and has a unique opportunity to observe the witnesses." *In re Parenting & Support of C.T.*, 193 Wn. App. 427, 442, 378 P.3d 183 (2016).

B. RESTRICTIONS BASED ON ALCOHOL ABUSE

John argues that the trial court abused its discretion in placing a limitation on his contact with the children because (1) the court was required to make a detailed finding that his alcohol problem would cause specific harm to the children to impose a restriction under RCW 26.09.191(3)(c), and the court's boilerplate finding regarding the restriction was insufficient to

satisfy this requirement; (2) even if the court's finding was sufficient, substantial evidence did not support that finding. We disagree with both arguments.

1. Statutory Provisions

Under RCW 26.09.191(3), the trial court "may preclude or limit any provisions of the parenting plan" if at least one of seven listed factors exist. The existence of one of the factors permits but does not require the trial court to impose limitations. *See Katare*, 175 Wn.2d at 36. The rationale for imposing limitations on a parenting plan is that "[a] parent's involvement or conduct may have an adverse effect on the child's best interests." RCW 26.09.191(3).

The third factor that permits a trial court to impose limitations is "[a] long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions." RCW 26.09.191(3)(c). A seventh factor is a catchall provision for "[s]uch other factors or conduct as the court expressly finds adverse to the best interests of the child." RCW 26.09.191(3)(g).

2. Requirement of Finding of Specific Harm

To support imposing limitations on John's contact with the children, the trial court made a factual finding that tracked the language of RCW 26.09.191(3)(c): "John Ingersoll has a long-term problem with drugs, alcohol, or other substances that gets in the way of his/her ability to parent." CP at 72. John argues that this finding was insufficient because a trial court is required to make a detailed finding of specific harm to the child before imposing restrictions under any of the subsections of RCW 26.09.191(3). We disagree.

We must determine whether RCW 26.09.191(3) requires a trial court to make certain findings to support limitations on parenting plan provisions. Statutory requirements are a

question of statutory interpretation, which we review de novo. *Pope Res. v. Dep't Nat. Res.*, 197 Wn. App. 409, 416-17, 389 P.3d 699 (2016), *review granted,* 188 Wn.2d 1002 (2017).

Nothing in RCW 26.09.191 expressly requires a trial court to make any specific level of findings before limiting parenting plan provisions under RCW 26.09.191(3). *See* RCW 26.09.191(6) (stating only that "[i]n determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure").

John relies on the Supreme Court's decision in *In re Marriage of Chandola*, 180 Wn.2d 632, 327 P.3d 644 (2014). In that case, the court addressed a trial court's imposition of limitations on a parent's contact with his child under the catchall provision, RCW 26.09.191(3)(g). *Id.* at 636. The issue was what type of adverse effect on the child's best interests a trial court must find before imposing parenting plan limitations under the catchall provision, subsection (3)(g). *Id.* (quoting RCW 26.09.191(3)(g)). The court's holding was that limitations imposed under RCW 26.09.191(3)(g) "must be reasonably calculated to prevent relatively severe physical, mental, or emotional harm to a child." *Chandola*, 180 Wn.2d at 636.

In the course of its analysis, the court in *Chandola* stated, "RCW 26.09.191(3)(g) does require a *particularized finding of a specific level of harm* before restrictions may be imposed." *Id.* at 646 (emphasis added). John claims that this rule also applies to the other subsections of RCW 26.09.191(3).

But the court's explanation of the rule does not support John's claim. The court pointed out that the other subsections of RCW 26.09.191(3) "concern either the lack of any meaningful parent-child relationship whatsoever or conduct . . . that seriously endangers the child's physical or emotional well-being." *Chandola*, 180 Wn.2d at 647. In other words, the legislature already

had determined that the conduct described in subsections (3)(a)-(f) involved harm to the child. The court concluded that "the nature of the specific grounds for parenting plan restrictions listed [in] RCW 26.09.191(3)(a)-(f)" show that the legislature intended subsection (3)(g) to apply only when necessary to protect the child from harm "similar in severity to the harms posed by the 'factors' specifically listed in RCW 26.09.191(3)(a)-(f)." *Chandola*, 180 Wn.2d at 648.[2]

The court's implication in *Chandola* was that application of subsection (3)(g) requires a finding of specific harm to the child because application of the other subsections *necessarily*, by their terms, involves a finding of harm to the child. *See id.* at 646-48. For example, under subsection (3)(c) a parent's long-term alcohol abuse that interferes with parenting functions necessarily "seriously endangers the child's . . . emotional well-being." *Id.* at 647.

We conclude that *Chandola* requires detailed findings of specific harm to the child only for application of RCW 26.09.191(3)(g), not for application of any of the other subsections of RCW 26.09.191(3).

John also cites this court's decision in *In re Marriage of Underwood*, 181 Wn. App. 608, 326 P.3d 793 (2014), for the proposition that a trial court must enter detailed findings when applying RCW 26.09.191(3)(c). But the court in that case required detailed findings in a very narrow situation: "*allowing a child to decide* whether to have *any* residential time with the non-custodial parent based solely on the RCW 26.09.191(3) factors." *Underwood*, 181 Wn. App. at

[2] In its conclusion regarding the necessity of harm, the court referred generally to RCW 26.09.191(3) rather than specially to RCW 26.09.191(3)(g). This appears to be an inadvertent omission. Considered in context – following directly after a reference to RCW 26.09.191(3)(a)-(f) – the court's holding clearly referred only to subsection (3)(g).

612-13 (emphasis added). *Underwood* did not impose a detailed finding requirement for any application of RCW 26.09.191(3).

Finally, John cites *Thompson v. Thompson*, 56 Wn.2d 683, 355 P.2d 1 (1960), to support his position. In that case, the court affirmed an award of custody of a child to the father despite the mother's assertion that he was a "drunkard." *Id.* at 685. The court discounted this assertion because there was no evidence that his drinking habit rendered the father incompetent in any way. *Id.* But *Thompson* said nothing about the detail of the trial court's findings, and supports only a rule that there must be some connection between a parent's alcohol problems and parenting abilities. Here, the trial court expressly found that John's alcohol problem "gets in the way of [his] ability to parent." CP at 72.

We hold that the trial court's general finding that tracked the language of RCW 26.09.191(3)(c) was sufficient for the court to impose limitations on John's contact with his children under that subsection.

3. Substantial Evidence Supporting Restriction

John argues that substantial evidence did not support the trial court's finding that John had a long-term problem with alcohol that got in the way of his ability to parent. We disagree.

John testified that he drank to deal with the problems in his marriage. John further testified that his use of alcohol had been unhealthy. Tomi testified that during their time together John would drink a lot of alcohol at home. She stated that he would drink an entire bottle of liquor in a single day. We hold that this evidence was sufficient to support the trial court's finding that John had an alcohol problem.

Regarding the effect of John's alcohol use on his parenting, Tomi testified that John's use of alcohol played a role in the arguments between them. He would become angrier and more violent, and then he would have a short temper with the children. Tomi stated that when he would drink he would yell at and spank the children.

The Pierce County GAL testified that alcohol exacerbated John's problematic personality traits that made him prone to impulsive, self-indulgent, and short-sighted behavior. And the GAL stated that both children were apprehensive about John's anger. One child told the Grant County GAL that her primary concern was with John's anger and behavior during Skype visits. The other child told a therapist that he was afraid when John drank alcohol.

John relies on testimony from the Pierce County GAL and a person who supervised his visits with his children that did not identify any risk of harm to the children from John's alcohol use. But under RCW 26.09.191(3)(c), the standard is whether the alcohol problem "interferes with the performance of parenting functions." As we conclude above, the trial court was not required to make a specific finding that the problem caused harm to the children.

The trial court's finding involves witness credibility, and we do not interfere with the trial court's credibility determinations. *Black*, 188 Wn.2d at 127. In addition, the trial court is in the best position to evaluate the evidence. *C.T.*, 193 Wn. App. at 442. We hold that this evidence was sufficient to support the trial court's finding regarding John's alcohol problem.

The evidence is sufficient for a fair-minded person to conclude both that John had an alcohol problem and that his problem got in the way of his ability to parent. Therefore, we hold that substantial evidence supported the trial court's RCW 26.09.191(3)(c) finding.

C. DESIGNATION OF PRIMARY RESIDENTIAL PARENT

John challenges the designation of Tomi as the primary residential parent in the parenting plan. He argues that the trial court erred in failing to enter limitations against Tomi for a history of acts of domestic violence under RCW 26.09.191(2)(a)(iii) and improperly relied on Tomi's status as the primary residential parent under the temporary parenting plan. We disagree.

1. Finding of No Domestic Violence

The trial court made a specific finding in the parenting plan that neither parent had any problems, including domestic violence, that required a limitation on parenting time. John argues that substantial evidence does not support the trial court's finding that Tomi's behavior did not constitute a history of domestic violence. Therefore, he argues the trial court was required to limit Tomi's residential time. We disagree.

Under RCW 26.09.191(2)(a), "[t]he parent's residential time with the child shall be limited" if the trial court finds that the parent has engaged in certain specified conduct. If the trial court finds that a parent has engaged in such conduct, the limitation of that parent's residential time is mandatory. *Underwood*, 181 Wn. App. at 611-12.

One type of conduct that requires a limitation on residential time is engaging in "a history of acts of domestic violence as defined in RCW 26.50.010([3])[3] or an assault or sexual assault which causes grievous bodily harm or the fear of such harm." RCW 26.09.191(2)(a)(iii). RCW 26.50.010(3)(a) defines "domestic violence" to include "[p]hysical harm, bodily injury, assault,

[3] This RCW includes an asterisk that leads to the following note: "Reviser's note: RCW 26.50.010 was alphabetized pursuant to RCW 1.08.015(2(k), changing subsection (1) to subsection (3).

or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members."

John argues that there was undisputed evidence that Tomi engaged in conduct meeting the statutory definition of domestic violence and constituting an assault that caused a fear of grievous bodily harm. He relies on Tomi's testimony that she admitted grabbing a kitchen knife and threatening to kill John, and kicking open a door and beating John's chest. He also relies on an incident in which witnesses stated that Tomi choked John at a family gathering, although Tomi denied that she choked him. John claims that Tomi's admission of at least the first two incidents requires a finding of domestic violence as a matter of law.

However, Tomi actually provided more detail regarding these incidents than John summarizes in his brief. The knife incident occurred when Tomi told John that she and their 15-month-old daughter were going to California to visit her sister and John grabbed the child and refused to let her go. Although the child was crying, John was taunting Tomi and telling her that she could not have the child. Tomi admitted grabbing a knife and threatening to kill herself and then threatening to kill John, but she said that John just laughed at her. Given John's response, this evidence supports a finding that this incident did not involve "fear of imminent physical harm, bodily injury or assault" under RCW 26.50.010(3)(a).

Tomi testified that the incident when she hit John's chest started when she kicked open the bathroom door while John was taking a shower. John was mad, and grabbed her arms and pushed her from the bathroom to the bedroom. In response, Tomi hit John repeatedly in the chest. This evidence supports a finding that Tomi was defending herself rather than assaulting John.

Tomi denied that she choked John at the family gathering. She testified that John was grabbing her younger brother and messing with him, and she tried to gently push John away. Tomi's arm moved up from John's chest and John claimed that he was choking her, but Tomi denied wrapping her hands around John's neck. Tomi's testimony supports a finding that she did not choke John.

The Grant County GAL did not offer any opinion on domestic violence allegations regarding either party. The Pierce County GAL found it difficult to reach a conclusion or make recommendations regarding the parties' reciprocal allegations of domestic violence, but testified that any such allegations did not impact his opinion on the parenting abilities of either party.

The totality of the evidence is sufficient to persuade a fair-minded person that Tomi did not have a history of acts of domestic violence. Therefore, we hold that substantial evidence supported the trial court's finding that Tomi did not have a problem with domestic violence that required limitations on her parenting time.

2. Reliance on Temporary Parenting Plan

John also argues that the trial court improperly based its designation of Tomi as the primary residential parent on her status as the primary residential parent in the temporary parenting plan, in violation of RCW 26.09.191(5). We disagree.

As discussed above, the trial court has broad discretion in developing a permanent parenting plan. *Katare*, 175 Wn.2d at 35-36. However, RCW 26.09.191(5) expressly states that a trial court may not draw presumptions from the temporary parenting plan. Under this statute, a trial court cannot establish a permanent parenting plan solely on the basis of the temporary parenting plan or presume that maintaining the same primary residential parent is in the child's

best interest. *In re Marriage of Kovacs*, 121 Wn.2d 795, 808-09, 854 P.2d 629 (1993). Further, the trial court cannot apply a presumption based on the temporary parenting plan to determine the primary residential parent when the analysis of the factors in RCW 26.09.187(3)(a) results in a "tie." *In re Marriage of Combs*, 105 Wn. App. 168, 176-77, 19 P.3d 469 (2001).

Here, the trial court's designation of Tomi as the primary residential parent was consistent with the RCW 26.09.191(3)(c) limitation placed on John, and there is no indication in the record that the court applied a presumption based on the temporary parenting plan. Accordingly, we hold that the trial court did not improperly base its designation of Tomi as the primary residential parent on her status in the temporary parenting plan.

CONCLUSION

We affirm the trial court's parenting plan.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

WORSWICK, J.

BRIDGE, C.J.

Filed
Washington State
Court of Appeals
Division Two

October 28, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

TOMI L. WINTERS, f/k/a INGERSOLL, Respondent, v. JOHN P. INGERSOLL, Appellant.	No. 50959-8-II ORDER DENYING MOTION TO ENFORCE PARENTING PLAN

Appellant, John P. Ingersoll, filed a motion to enforce the Washington parenting plan pending issuance of the mandate in this case. After consideration, it is hereby

ORDERED that the motion to enforce the parenting plan is denied.

FOR THE COURT: Jj. Worswick, Lee, Cruser

A.C.J.
ACTING CHIEF JUDGE

NORTHWEST JUSTICE PROJECT

March 25, 2020 - 6:39 AM

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