

FILED

MAR 06 2017

No. 348318

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, Division III
OF THE STATE OF WASHINGTON

In re the Marriage of:

SAREENA MALHI, Respondent,

and

ANDY K.R. PRASAD, Appellant.

BRIEF OF APPELLANT ANDY K.R. PRASAD

Douglas J. Takasugi, WSBA #12139
Attorney for Appellant, Andy K.R. Prasad
930 Briarwood Drive, East Wenatchee, WA 98802
(509)630-5584

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	iii, iv
A. INTRODUCTION	1
B. ASSIGNMENTS OF ERROR.....	1
1. <u>Assignments of Error</u>	1
2. <u>Issues Pertaining to Assignments of Error</u>	1
C. STATEMENT OF THE CASE	2
D. ARGUMENT	4
1. <u>Standard of Review.</u>	4
2. <u>The trial court abused its discretion by holding the father in contempt.</u>	5
3. <u>The trial court did not have the authority to impose a punitive sanction against the father.</u>	21
E. CONCLUSION	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Barr v. Interbay Citizens Bank of Tampa</i> , 96 Wash.2d 692, 697, 635 P.2d 441 (1981)	21, 22
<i>Dailey v. North Coast Life Insurance Co.</i> , 129 Wn.2d 572, 573, 919 P.2d 589 (1996)	22
<i>Dep't of Ecology v. Tiger Oil Corp.</i> , 166 Wn.App. 720, 768, 271 P.3d 331 (2012)	4
<i>First-Citizens Bank & Trust Co. v. Reikow</i> , 177 Wn.App. 787,797, 313 P.3d 1208 (2013)	13
<i>Holiday v. City of Moses Lake</i> , 157 Wn.App. 347, 355, 236 P.3d 981 (2010)	5, 17
<i>In re Dependency of A.K.</i> , 162 Wn.2d 632, 646, 174 P.3d 11 (2007)	20
<i>In re Dependency of H.W.</i> , 92 Wn.App. 420, 425, 961 P.2d 963, amended on reconsideration by, 969 P.2d 1982 (1998)	7
<i>In re Estates of Smaldino</i> , 151 Wn.App. 356, 365, 212 P.3d 579 (2009)	18
<i>In re Interest of Rebecca K.</i> , 101 Wn.App. 309, 314, 2 P.3d 501 (2001)	5
<i>In re Marriage of Didier</i> , 134 Wn.App. 490, 501, 140 P.3d 607 (2006)	5
<i>In re Marriage of Humphreys</i> , 79 Wash.App. 596, 599, 902 P.2d 1012 (1995) ...	4, 10, 13, 17, 20

<i>In re Marriage of James</i> , 79 Wn.App. 436, 442, 903 P.2d 470 (1995)	5
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)	10, 16
<i>International Union, United Mine Workers of America v. Bagwell</i> , 512 U.S. 821, 829, 114 S. Ct. 2252, 129 L.Ed. 642 (1994)	21
<i>Johnston v. Beneficial Mgmt. Corp. of Am.</i> , 96 Wn.2d 708, 712-13, 638 P.2d 1201 (1982)	4, 5, 13, 17
<i>King v. DSHS</i> , 110 Wn.2d 793, 800, 756 P.2d 1303 (1988)	20, 21
<i>Schuster v. Schuster</i> , 90 Wn.2d 626, 630, 585 P.2d 130 (1978)	4
<i>Spokane Truck & Dray Co. v. Hoefler</i> , 2 Wash. 45, 50-56, 25 P. 1072 (1891)	22
<i>State v. Carter</i> , 5 Wn.App. 802, 490 P.2d 1346, review denied, 80 Wash.2d 1004 (1972)	7
<i>State v. Hutton</i> , 7 Wash.App. 726, 728, 502 P.2d 1037 (1972)	7

Statutes

RCW 26.09.160(2)(b)(iii)	22
--------------------------------	----

Court Rules

RAP 9.11	4
----------------	---

A. INTRODUCTION

The trial court held Andy Prasad (“the father”) in contempt for violating several nonresidential provisions of his Parenting Plan and ordered him to pay a \$2,500.00 sanction to Sareena Malhi (“the mother”). The father believes that the trial court abused its discretion in this case and that the \$2,500.00 sanction was punitive and improper.

B. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred in entering its order of October 7, 2016, holding the father in contempt.
2. The trial court erred in entering its order of October 7, 2016, ordering the father to pay a \$2,500.00 sanction to the mother.

Issues Pertaining to Assignments of Error

1. Did the trial court abuse its discretion by holding the father in contempt?
2. Did the trial court have authority to impose a punitive sanction against the father?

C. STATEMENT OF THE CASE

The parties were married on March 23, 2002, and separated on March 22, 2013. A Decree of Dissolution was entered on May 18, 2015. CP 128.

The parties have two children, Aarav and Vikrant. (Aarav will be 13 years old in May and Vikrant will be 10 years old in April. CP 128.) A Parenting Plan was entered on May 18, 2015. At that time, the father was living in Washington and the mother was living in California. The Parenting Plan gave the mother primary residential placement of the children. CP 18-30.

In May of 2016, the father moved to California to be closer to the children. CP 84 and CP 130. On July 6, 2016, the father, through his attorney, sent a letter to the mother suggesting that they try to work out a joint custody agreement. The mother never responded to the letter. CP 80.

On August 9, 2016, the mother filed a motion for contempt against the father in Washington. She alleged that the father had violated several nonresidential provisions of their parenting plan. CP 1-17. The father responded and addressed and denied each allegation. CP 78-91 and CP 119-146. The father also filed a

Motion for Change of Venue since both parties were living in California. CP 76-77.

On August 30, 2016, the father filed for joint legal custody and joint physical custody of the children in California. CP 119-146.

On October 7, 2016, after reviewing the written material filed by both parties and hearing argument, the trial court entered its Contempt Hearing Order and Order Changing Venue. The trial court identified ten allegations of contempt made by the mother against the father and found that five of them constituted contempt and that five of them did not constitute contempt. The trial court ordered the father to pay a \$2,500.00 sanction to the mother, to be paid within 10 days. The trial court did not give the father an opportunity to correct or purge the contempt. Finally, the trial court granted the father's Motion for Change of Venue and ordered that all further proceedings not directly related to the entry of its Contempt Hearing Order be heard by the court in California. CP 162-175. (The California case has moved forward and if this Court directs, the father will supplement the record with additional evidence regarding the court proceedings in California pursuant to

RAP 9.11. The children have been interviewed by a court appointed counselor in California.)

On November 2, 2017, the father filed this appeal seeking review of the trial court's Contempt Hearing Order. CP 176-186.

D. ARGUMENT

1. Standard of review.

Even though the trial court's decision in this case was decided entirely on written submissions, the trial court's holding of contempt in a dissolution proceeding is reviewed for an abuse of discretion. *Schuster v. Schuster*, 90 Wn.2d 626, 630, 585 P.2d 130 (1978). However, in such a review, "the court must strictly construe the order alleged to have been violated [in favor of the contemnor], and the facts must constitute a plain violation of the order." *In re Marriage of Humphreys*, 79 Wash.App. 596, 599, 902 P.2d 1012 (1995). Accord *Dep't of Ecology v. Tiger Oil Corp.*, 166 Wn.App. 720 768, 271 P.3d 331 (2012). Also, "in contempt proceedings, an order will not be expanded by implication beyond the meaning of its terms when read in light of the issues and the purposes for which the suit was brought." *Johnston v. Beneficial Mgmt. Corp. of Am.*, 96 Wn.2d 708, 712-13,

638 P.2d 1201 (1982). Further, to find contempt, the court must find that a party's violation of a previous court order was intentional. *Holiday v. City of Moses Lake*, 157 Wn.App. 347, 355, 236 P.3d 981 (2010). Further, the burden of proof is on the moving party to prove contempt by a preponderance of the evidence. *In re Marriage of James*, 79 Wn.App. 436, 442, 903 P.2d 470 (1995). Finally, an "order of remedial civil contempt must contain a purge clause under which a contemnor has the ability to avoid a finding of contempt and/or incarceration for noncompliance." *In re Marriage of Didier*, 134 Wn.App. 490, 501, 140 P.3d 607 (2006) (internal quotation marks omitted) (quoting *In re Interest of Rebecca K.*, 101 Wn.App. 309, 314, 2 P.3d 501 (2001)).

With the above standard of review, this Court should vacate the trial court's Contempt Hearing Order.

2. The trial court abused its discretion by holding the father in contempt.

Again, the trial court identified ten allegations of contempt made by the mother against the father, all of them having to do with the nonresidential provisions of their Parenting Plan. The trial court found that five of them constituted contempt and that five of

them did not constitute contempt. CP 162-166. The trial court's five findings of contempt are separately addressed below.

i. Paragraph 6.1 of the Parenting Plan provides:

“Derogatory Comments. Each parent is restrained from making any derogatory comments about the other parent to or in the presence of any dependent child and from entering the other parent's residence without invitation.” CP 28.

The father denied making any derogatory comments about the mother to the children. CP 78. In addition, the trial court found that there wasn't any direct evidence that the father had violated this provision of the Parenting Plan. CP 63.

Nevertheless, the trial court decided to find the father in contempt based on what the mother said the children said to her. CP 63. However, the problem with this is that nowhere in the mother's submissions does the mother even make the claim that the children told her that the father was saying bad things about her. So, in truth, the trial court really had no idea if the father ever said anything about the mother to the children and, if he did, whether what he said to the children would even be considered derogatory.

Again, the only direct evidence came from the father and he unequivocally denied making any derogatory comments about the

mother to the children. Further, the father asked the trial court to interview the children. CP 78. Regrettably, the trial court never did.

Therefore, on this issue, there is simply a lack of evidence that the father did anything to violate this provision of the Parenting Plan.

However, even if it is conceded that there might be facts and circumstances sufficient to warrant an inference that the father said something that was derogatory about the mother to the children, the burden of proof would still be on the mother to establish this fact by a preponderance of the evidence. The existence of a fact cannot rest upon guess, speculation, or conjecture. *State v. Hutton*, 7 Wash.App. 726, 728, 502 P.2d 1037 (1972) (citing *State v. Carter*, 5 Wn.App. 802, 490 P.2d 1346 (1971), review denied, 80 Wash.2d 1004 (1972)). The preponderance of the evidence standard requires that the evidence establish the proposition at issue is more probably true than not true. *In re Dependency of H.W.*, 92 Wn.App. 420, 425, 961 P.2d 963, amended on reconsideration by, 969 P.2d 1082 (1998).

Therefore, in this case, the mother simply did not meet her burden of proof. She failed to show by a preponderance of the evidence that the father made any derogatory comments about her to the children. The trial court failed to recognize the distinction between what is mere conjecture and what is a reasonable inference from the facts and in doing so abused its discretion in holding the father in contempt.

ii. Paragraph 6.5 of the Parenting Plan provides:

“Affections. Each parent shall exert every effort to foster a feeling of affection between the children and the other parent. The other parent shall not do anything which would estrange the children from the other, which would injure the opinion of the children as to the other, or which would impair the natural development of the children’s love and respect for both of the parents.” CP 29.

The father denied violating this paragraph of the Parenting Plan. CP 79-80.

Regardless, the trial court decided to find the father in contempt relying in part on the fact that “the father called the sheriff to check on the children when he did not receive a Facetime visit.” CP 64.

How can this possibly serve as a basis for finding the father in contempt? All that the father did was make a telephone call to a nonemergency police line to report a parenting plan violation. CP 86. The mother did not have the right to unilaterally change the father's FaceTime visit with the children. In his declaration, the father tried to explain this to the trial court: "Finally, Ms. Malhi admits to her own violation of the Parenting Plan on Saturday, July 30, 2016. The Parenting Plan specifically says: "the nonresidential parent shall have telephone contact with the children three times a week, by FaceTime where practical: every Tuesday and Thursday at 6:00 p.m. and every Saturday at 9:00 a.m." These days and times were put in the Parenting Plan so that Ms. Malhi could not manipulate the situation and prevent me from having regular telephone contact with the children." CP 79.

While the trial court may have disagreed with the father's course of action, it doesn't provide the trial court with a basis to hold the father in contempt. The father calling a nonemergency police line and reporting a parenting plan violation does not violate any provision of the Parenting Plan. As previously stated in this brief, "the court must strictly construe the order alleged to

have been violated [in favor of the contemnor], and the facts must constitute a plain violation of the order.” *In re Marriage of Humphreys*, 79 Wn.App. at 599. A court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). Here, there is no plain violation of a court order and it is unreasonable to hold the father in contempt for doing something that he had the right to do.

iii. Paragraph 6.7 of the Parenting Plan provides:

“Changes in the Residential Schedule. Neither parent shall discuss changes in the residential schedule with the children unless the parents have agreed to the change.” CP 29

The father denied discussing any changes in the residential schedule with the children. CP 81. The children, however, have expressed to both parents that they want to spend more time with their father. CP 78-91.

Regardless, the trial court still found the father in contempt for violating this provision: “The court finds that the evidence establishes that the father has violated this provision. Specifically, there are repeated instances in which the children have questioned

the mother about the residential schedule immediately upon return from a visit with the father.” CP 164. The trial court was wrong.

First, there was no evidence or even any claim of “repeated instances.” The mother’s allegation was that: “The children have come back from the summer break with questions like – “Who made the decision we should stay here”, “How old do I have to be to make my own decision”, “Why can’t we stay 50-50 with you and dad”, “He has moved here so that is how it should be”. CP 3. Second, the children’s questions weren’t really asking the mother about the residential schedule. They were general questions, the kind that any child the age of Aarav or Vikrant might ask a parent, when the child knows that his father has just moved from Washington to California and that his parents now live within 1 mile of each other. The father tried to explain this to the trial court: “Aarav is 12 years old and Vikrant is 9 years old and they know that I have moved to Davis, California, and that Ms. Malhi and I live within 1 mile of each other. Why then is it so hard to believe that the children on their own might want to spend more time with me and, more importantly, why does this make Ms. Malhi so angry? She takes it personal and she refuses to even

consider the fact that maybe this is what the children really want. Instead, she thinks that I am “pressurizing”, “coaching”, and “brainwashing” them. She can’t accept that maybe the children really want to live with me because they love their Dad.” CP 84-85. The father continued: “Again, why is it so hard for Ms. Malhi to accept the fact that the children would like to spend more time with their father, especially now that he is living less than 1 mile away? This doesn’t have to be a personal attack on the mother. Sometimes, no matter what the custodial parent does or doesn’t do, the children as they get older just want to spend more time with the other parent. My proposal to Ms. Malhi wasn’t to take the children away from her, what I proposed was a joint custody arrangement and sharing time with the children.” CP 87.

The trial court reached to find that the father violated this paragraph of the Parenting Plan. Paragraph 6.7 was never intended to extinguish the kinds of inquiries that the children were making to both parents in this case. Is it a violation of Paragraph 6.7 for a parent to have a discussion with a child that wants to spend more time with that parent or with the other parent? If so, Paragraph 6.7 needs to be revised and rewritten so that the parents know what

their responsibilities are under their parenting plan. As previously stated in this brief, “the court must strictly construe the order alleged to have been violated [in favor of the contemnor], and the facts must constitute a plain violation of the order.” *In re Marriage of Humphreys*, 79 Wn.App. at 599. And, “in contempt proceedings, an order will not be expanded by implication beyond the meaning of its terms when read in light of the issues and the purposes for which the suit was brought.” *Johnston*, 96 Wn.2d at 712-13.

Therefore, there was no plain violation of the Parenting plan in this case and to hold the father in contempt because the children might have asked their mother some questions because they wanted to spend more time with their father would simply be unreasonable. A trial court abuses its discretion if it exercises its contempt powers in a manifestly unreasonable way or exercises its power on untenable grounds or for untenable reasons. *First-Citizens Bank & Trust Co. v. Reikow*, 177 Wn.App. 787, 797, 313 P.3d 1208 (2013). Here, the trial court clearly abused its discretion in holding the father in contempt for violating Paragraph 6.7 of the Parenting Plan.

iv. Paragraph 4.1 of the Parenting Plan provides:

“Day-to-Day Decisions and Parental Obligations. Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children. Each parent is to notify the other parent as soon as reasonably possible of any illness or injury requiring medical attention, or any emergency involving the children.” CP 26.

Except for the requirement regarding notification of medical or other emergencies (which no one accused the father of violating), Paragraph 4.1 does not impose an obligation on either parent to do anything. The father was therefore confused by the mother’s allegation that he had done something wrong with respect to Paragraph 4.1: “I don’t know how I could violate this provision of the Parenting Plan. Ms. Malhi has a twisted way of reading things.” CP 82. The father went on and denied that he pressured the children to call him and denied that he interrogated the children about what goes on in the mother’s home. CP 83.

Regardless, the trial court again found that the father had violated a nonresidential provision of the Parenting Plan: “The mother next alleges that the father has violated paragraph 4.1 of the parenting plan regarding day to day decisions and parental

obligations. Specifically, the mother alleges that the father interferes with the mother's right to make decisions about the daily care and control of the children by pressuring the boys to call on non-scheduled days and interrogating the children regarding the events of the mother's home, then endlessly questioning and harassing the mother about daily events via e-mail and text.

The court finds that the evidence also establishes that the father has violated the parenting plan in this regard. The father has sent an inordinate number of text and e-mail messages demanding information and criticizing the mother's day to day decisions regarding the children. This behavior contravenes the exclusive authority delegated to the residential parent to make these decisions without harassment by the other parent." CP 165.

So, the trial court's decision to hold the father in contempt was based on its conclusion that the father violated the Parenting Plan by sending text and email messages to the mother requesting information and/or criticizing the mother's decisions regarding the children. Again, the trial court was wrong.

A trial court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d at 46-47.

Nowhere in the Parenting Plan is the father prohibited from sending text and email messages to the mother requesting information and/or criticizing the mother's decisions regarding the children. Therefore, this conduct cannot be the basis for finding the father in contempt.

Moreover, it is highly disconcerting that the trial court acknowledged and recognized this fact and yet still held the father in contempt. The trial court stated: "the mother asserts that the father repetitively badgers her with requests for phone calls on non-scheduled days. The evidence submitted clearly shows that this is true. Perhaps unfortunately, however, **the parenting plan does not contain an anti-harassment provision. Thus, although the father's behavior in this regard is clearly inappropriate, it does not technically violate any portion of the current parenting plan.**" CP 164. (Emphasis added.)

The trial court also stated: “the mother alleges that the father incessantly badgers her for information about the children’s school and/or medical care, when he has the ability to simply obtain that information directly from the school and/or medical provider. Again, the evidence clearly establishes this is true. However, **again, while bordering on harassment, the father’s conduct does not appear to violate any specific provision of the parenting plan.**” CP 164. (Emphasis added.)

If the trial court was confused as to what conduct was prohibited by the Parenting Plan, then what about the parents? Under these circumstances, it would be extremely difficult to find any violation of the Parenting Plan warranting contempt. As previously stated in this brief, where a finding of contempt is based on a violation of an order, the court must strictly construe the order in favor of the contemnor, and the facts must constitute a plain violation of the order. *In re Marriage of Humphreys*, 79 Wash.App at 599. And, “in contempt proceedings, an order will not be expanded by implication beyond the meaning of its terms when read in light of the issues and the purposes for which the suit was brought.” *Johnston* 96 Wn.2d at 712-13. Also,

the trial court must find that a party's violation of a previous court order was intentional. *Holiday v. City of Moses Lake*, 157 Wn.App. at 355. "Implicit in [the definition of contempt] is the requirement that the contemnor have knowledge of the existence and substantive effect of the court's order or judgment." *In re Estates of Smaldino*, 151 Wn.App. 356, 365, 212 P.3d 579 (2009).

Here, the father did not violate Paragraph 4.1 of the Parenting Plan and if he did, he did not violate it intentionally. There simply can't be a plain violation or an intentional violation of this paragraph because the paragraph fails to clearly describe what a parent can and can't do. Therefore, strictly construing Paragraph 4.1 of the Parenting Plan in favor of the father, this Court should find that the trial court abused its discretion by holding the father in contempt for violating this paragraph.

iv. Paragraph 4.2 of the Parenting Plan, in relevant part, provides:

"Mother shall be responsible for arranging all well-child doctor and dentist appointments, and shall inform father in writing with a brief description of the outcome of any visits. Father acknowledges receipt of the information. This is not meant to involve questioning of the mother. Father can always make his own contact with the provider." CP 26.

Again, the trial court had to reach to find that the father violated this provision of the Parenting Plan: “The mother next alleges that the father has violated paragraph 4.2 of the parenting plan regarding major decisions. This issue also centers on the father’s incessant communications with the mother about the children’s health issues in contravention of the parenting plan. Specifically, paragraph 4.2 provides, in part: “...This is not meant to involve questioning of mother. Father can always make his own contact with the provider.” The father has repeatedly violated this provision and is in contempt.” CP 165.

However, in its decision, the trial court also found just the opposite, that the father’s communications with the mother about the children’s health issues did not constitute a violation of the parenting plan and therefore, the father could not be held in contempt. The trial court stated: “Specifically, the mother alleges that the father incessantly badgers her for information about the children’s school and/or medical care, when he has the ability to simply obtain that information directly from the school and/or medical provider. Again, the evidence clearly establishes this is true. However, again, **while bordering on harassment, the**

father's conduct does not appear to violate any specific provision of the parenting plan.” CP 164. (Emphasis added.)

The problem here is that the trial court, for whatever reason, became determined to find the father in contempt. (The father did file a Motion to Change Judge which was denied. CP 75.) However, in its pursuit, the trial court repeatedly failed to strictly construe the Parenting Plan in favor of the father. Instead, the trial court expanded the provisions of the Parenting Plan beyond the meaning of its terms, to the point where even the trial court became confused.

Specifically, with respect to Paragraph 4.2 of the Parenting Plan, this paragraph does not clearly define a parent's responsibilities. As such, it would be unreasonable to hold a parent in contempt for violating an order that is unclear and that he or she couldn't be expected to understand. Therefore, strictly construing Paragraph 4.2 of the Parenting Plan in favor of the father, this Court should find that the trial court abused its discretion in holding the father in contempt for violating this paragraph.

3. The trial court did not have the authority to impose a punitive sanction against the father.

The trial court's order that the father pay a \$2,500.00 sanction to the mother within 10 days is clearly punitive. The court's intent was to simply punish the father. The father wasn't allowed to purge the contempt through an affirmative act. See *In re Dependency of A.K.*, 162 Wn.2d 632, 646, 174 P.3d 11 (2007). As the Court in *King v. DSHS*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988), stated: "[T]he sanction is civil if it is conditional and indeterminate, i.e. where the contemnor carries the keys of the prison door in his own pocket and can let himself out by simply obeying the court order." In *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829, 114 S. Ct. 2552, 129 L.Ed 2d 642 (1994), the Court stated: "Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge." Here, the trial court's order doesn't contain a purge clause.

Washington law does not allow punitive damages unless expressly allowed by statute. *Barr v. Interbay Citizens Bank of*

Tampa, 96 Wash.2d 692, 697, 635 P.2d 441 (1981). In *Dailey v. North Coast Life Insurance Co.*, 129 Wn.2d 572, 573, 919 P.2d 589 (1996), the Court stated: “Since its earliest decisions, this court has consistently disapproved punitive damages as contrary to public policy. See *Spokane Truck & Dray Co. v. Hoefer*, 2 Wash. 45, 50-56, 25 P. 1072 (1891).

Punitive damages not only impose on the defendant a penalty generally reserved for criminal sanctions, but also award the plaintiff with a windfall beyond full compensation.”

Finally, any reliance on RCW 26.09.160(2)(b)(iii) would be misplaced. That statute applies only to violations of the residential provisions of a parenting plan. Here, we are only dealing with allegations that a parent violated the nonresidential provisions of a parenting plan. Therefore, there being no applicable statute in this case, the trial court did not have the authority to impose a punitive sanction against the father.

E. CONCLUSION

The trial court erred in finding the father in contempt and ordering the father to pay a \$2,500.00 sanction to the mother.

The mother did not prove by a preponderance of the evidence that the father intentionally violated the parenting plan. The trial court abused its discretion by holding the father in contempt.

The trial court had no authority to impose a punitive sanction against the father. The trial court's order is defective without a purge clause.

The trial court's Contempt Hearing Order should be vacated and an order entered denying the mother's motion for contempt. The mother should also be required to pay back the \$2,500.00 paid to her by the father.

Dated this 3rd day of March, 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas J. Takasugi", written over a horizontal line.

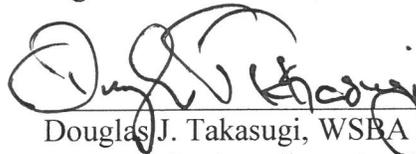
Douglas J. Takasugi, WSBA#12139
Attorney for Appellant, Andy K. R. Prasad

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

In re Marriage of:)
)
Sareena Malhi,) No. 348318
Respondent,)
) Declaration of Service
v.)
)
Andy K.R. Prasad,)
Appellant.)

Pursuant to RCW 9A.72.085, the undersigned hereby declares under penalty of perjury under the laws of the state of Washington, that on the 3rd day of March, 2017, a copy of the Brief of Appellant Andy K.R. Prasad was taken to the United States Postal Service in Wenatchee, Washington, and mailed to Sareena Malhi, the respondent, at the following address: 1325 Arena Drive, Davis, California 95618.

Dated: March 3, 2017.
Signed at Wenatchee, Washington.



Douglas J. Takasugi, WSBA No. 12139
Attorney for Appellant, Andy K.R. Prasad
930 Briarwood Drive
East Wenatchee, Washington 98802
(509)630-5584