

FILED

No. 348318

MAY 10 2017

IN THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

SAREENA MALHI MD

Respondent,

and

ANDY K.R. PRASAD

Appellant.

BRIEF OF RESPONDENT, SAREENA MALHI

SAREENA MALHI MD
1325 Arena Drive
Davis, CA. 95618
(509) 899 4853

Respondent

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	3
INTRODUCTION	4
RESTATEMENT OF ISSUES	6
STATEMENT OF THE CASE	6
ARGUMENT	10
CONCLUSION	30

TABLE OF AUTHORITIES

<u>Cases</u>	Page
In re James, 79 Wn. App.436 (1995)	11
In Re Koome, 82, Wn. 2d 816, 821 (1973)	11
In re Marriage of Humphreys. 79 Wash App.596,599, 902 P.2d 1012 (1995)	10
In re Skimming v Boxer 119 Wn App.748,756, 82 P 3d 707 (2004)	29
Rideout v Rideout, 150 Wn, 2d. 337 (2203).	10
 <u>Statutes</u>	
RCW 26.09.160 (2) – (6)	11
RCW 26.09.140	29
RCW 4.84.185	29
 <u>Court Rules</u>	
WPI 1.03	10
RAP 9.11	11,14,15

INTRODUCTION

Appellant Andy Prasad (father) agreed and signed a parenting plan entered as a court order on May 18, 2015. He subsequently displayed a pattern of willful and repetitive violation of several provisions in the parenting plan. He was terminated from his job and in parallel intensified his efforts to alienate the children from the mother- Sareena Malhi (hence referred in the document as 'I') with intent to sow the seeds of filing for 'primary' custody. Andy Prasad had the ability to comply with the courts order and chose not to do so.

A Motion of Contempt was filed in the trial court where the Parenting Plan was filed and it held Andy Prasad in Contempt for violation of multiple provisions of the Parenting Plan, ordering him to undergo a Psychological evaluation and imposed a civil penalty. This decision is undoubtedly correct.

Andy Prasad now asks this Court to overturn the trial court's memorandum decision and questions the authority of the trial court to impose a civil penalty.

This appeal is Andy Prasad's attempt to prolong the legal battle, expend further time and resources. This court should affirm

and further award me compensation for the inordinate emotional stress and costs associated with filing this brief including fees to obtain all court documents.

RESTATEMENT OF ISSUES

Where the parenting plan agreed upon, signed and entered as an order in the trial court clearly outlined the residential schedule, decision making, roles and responsibilities of both parents, did the trial court correctly interpret the filed parenting plan in holding Andy Prasad in contempt for willful violation by not following the said orders and impose a civil penalty.

STATEMENT OF THE CASE

Andy Prasad and I were married on March 23, 2002. I separated on March 22, 2013 and moved to California to be close to family for support. The final decree of dissolution was filed on May 18, 2015. CP 128. We have two children Aarav, currently 12 years and Vikrant who just turned 10. CP 18. There was an extensive parenting evaluation by Dr. Wendy Hutchins Cook, PhD, ABPP of Seattle in 2013. RP 118 -119, I was granted primary physical custody of the children as well as all major decision making regarding all well child visits, doctor and dentist appointments, emotional and physical well being, school choice and extra-curricular activities. CP 18 – 30.

Andy Prasad was terminated from his employment with Confluence Health previously Wenatchee Valley Medical Center sometime in beginning of year 2016. CP 88. He subsequently relocated to Davis, California in May 2016 CP 136. During this period, and for some months before it Andy Prasad intensified his efforts to alienate the children from me. CP 09.

While the children were spending 5 weeks of summer break with Andy Prasad in 2016, he sent a letter through his attorney dated July 6, 2016 asking for modification of parenting plan by agreement. CP 80. The children returned on July 25, 2016 completely brainwashed by Andy Prasad. They were accusatory, angry and alienated from me unable to behave like their previous affectionate and happy selves. Andy Prasad within 5 days of their return to my home called the Sheriff of Yolo County accusing me of neglect a CP 1-69.

Shocked and deeply concerned, about these new developments of worsening conduct by Andy Prasad, I filed a Motion of Contempt against Andy Prasad on August 9, 2016 pro se CP 1-69. The motion was on the trial courts calendar to be heard on August 30, 2016. In response to the motion, Andy Prasad filed an Objection to the Motion, Motion for Change of Judge in the

Superior Court of WA County of Chelan, Change of Venue to California and a Response to the Motion CP 71 – 93.

On August 20, 2016 before the motion of contempt was heard by trial court in Chelan County he filed for 'primary' physical custody of the children in Superior Court of Yolo County in California CP 119-146. In his appellant brief, Andy Prasad inaccurately portrays it as a 'joint' physical custody request. (Appellant Brief –page 3)

The trial court on August 30, 2016 denied the Objection to the Motion of Contempt, denied the Motion to Change Judge, and continued the Motion of Contempt and the Motion to change Venue as Andy Prasad did not appear in court RP 02-39. The Motion of Contempt was heard on September 12, 2016, where I represented myself pro se. RP 41-148.

The trial court gave a Memorandum decision on October 7, 2016 holding Andy Prasad in Contempt for violating the parenting plan on multiple accounts. CP162-175. The trial court also ordered Andy Prasad to undergo a psychological evaluation within 60 days. The Change of Venue to Yolo County, CA request was granted and the trial court retained jurisdiction only regarding the entry of the order of contempt. CP162 -175.

Andy Prasad is now seeking review of the trial court's Contempt hearing order CP 176 -186.

ARGUMENT

A. SUMMARY

The trial court has had jurisdiction over this case right from the initiation of divorce proceedings in March 2013. It has the history and the context due to previous extensive court proceedings including child custody issues, implementation of decree of dissolution and previous contempt proceeding. The trial court carefully reviewed all written submissions, oral arguments and the nature of the case in arriving at the decision.

Furthermore, there was a valid court order in effect and Andy Prasad was aware of the order. In *Re Koome*, 82, Wn. 2d 816, 821 (1973). The facts submitted showed there was a clear violation of the order (*In re Marriage of Humphreys*, 79 Wn. App.596 (1995)). Notice of contempt hearing was given to Andy Prasad and contempt is an appropriate remedy for the multiple violations.

Refusal to perform a duty in the parenting plan is assumed to be in bad faith i.e intentional. The law presumes you have the ability to obey the parenting plan which clearly Andy Prasad did not (*Rideout v Rideout*, 150 Wn, 2d. 337 (2203)).

In deciding any matter a court is entitled to consider both direct and circumstantial evidence. See WPI 1.03

The memorandum decision of the trial court in holding the father in contempt should be upheld.

The court can order many different types of remedies to accomplish the goal of having the parties follow the court order. In re James, 79 Wn. App.436 (1995) The court can order the person in contempt to get counseling and also order a civil penalty. The court can also order greater penalties for the second contempt violation in 3 years. RCW 26.09.160(2)-(6).

The trial courts appropriately remedied by ordering Andy Prasad to undergo psychological evaluation and counseling and pay a civil penalty. The psychological evaluation performed by Dr Eugene P Roeder PhD can be provided to the court pursuant to RAP 9.11 if this court directs.

B. TRIAL COURTS FINDINGS OF CONTEMPT

Paragraph 6.1 of parenting plan: Derogatory comments

“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

There has been a constant pattern of negative insinuations and comments from Andy Prasad regarding me to the children. The children returned from the Summer Break 2016 visitation with Andy Prasad and called me ‘crazy’ and a ‘liar’ to my face and added ‘that’s what they say in Wenatchee’. There is no guess or speculation about where these allegations are coming from. The children spill out all the statements and misinformation they have been told about me by Andy Prasad within the first few days of coming back. CP 11-12. This is the same narrative he has given to his adult daughter from his previous marriage Roshni Prasad who has sent me lengthy texts with abusive and derogatory comments. CP 15. If the court directs I can supplement the court with evidence pursuant to RAP 9.11

Andy Prasad interestingly also alleges in his statement that our son has said, “Dad, if we end up living with you, would mom kill us?” This is a repulsive insinuation. CP 81, CP 107. What kind of conversation does Andy Prasad have with the children to prompt this kind of a question?

Andy Prasad’s email on June 19, 2016 states *“Boys are already upset that you and your day care provider Megan did not allow / forward / facilitate them when they wanted to get craft to make Father’s day gift / card for me”*. This again shows his resentful attitude nurturing hate towards the other parent without basis. Contrary to his accusation, I had ordered a copy of Vikrant’s published book at Grace Valley School for the boys to give him for Father’s Day. CP 09

Andy Prasad’s texts to me alleging abuse of the boys to falsely corroborate his narrative and accusations also show the negative conversations regarding events in my home that he was having with the kids. His email Exhibit K states – *‘I would like to notify you with all due respect that you will be held responsible for any*

physical / emotional abuse you inflict upon our boys. Please don't play with our boys emotions and future.' CP 44.

Dr Jayshri Gamoth, a close friend of Andy Prasad with whom he and the children spent time during breaks in Wenatchee and vacationed in Arizona and Cancun called me to inform me that Andy Prasad constantly disparages me in front of the children including making statements like I will someday harm them grievously, Andy Prasad was also coaching Aarav, our older son to leave home on Mother's Day when he turns 14. (Aarav was born on Mother's Day in 2004). Dr Gamoth did not give a statement in the trial court as her Dermatology Practice in Arizona started receiving threats soon after she voiced her support to me. CP 14. CP 108. I have a voicemail from her that I did not know how to present to the trial court. If the court directs I can supplement the court with additional evidence pursuant to RAP 9.11

The trial court was completely justified in the ruling holding Andy Prasad in contempt for making derogatory comments. The trial court's ruling should be upheld.

Paragraph 6.5 of the parenting plan: Affections

“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 of the other or which would impair the natural development of love and respect for both of the parents.”

Andy Prasad has relentlessly tried to alienate the affections of the children from their mother (I). He engaged the children in the legal proceedings right at the beginning of the separation during the first break the children spent with him. Andy Prasad was held in contempt for this violation by the court in November 2013 and pursuant to RAP 9.11. I can provide the court with additional evidence from prior contempt if felt necessary. CP 06

Despite the first contempt Andy Prasad continued his efforts to negatively impact the children’s opinion of me. He had his attorney meet with the boys several times to get the kids to believe in his storyline. This fact is neither refuted by Mr. Doug Takasugi nor by Andy Prasad. RP 128

During the summer break in 2016, Andy Prasad filled the children's mind with false scenarios of abuse in my home. They returned angry, resentful, accusatory, unhappy, unwilling to hug or love me. The children right away said to me "You are crazy. That is what everyone says in Wenatchee" "I don't want the pool party. Stop lying and you have also hit us". "You have put us against the wall and hit us". We had been preparing to get a pup and post summer break visitation my younger son stated "I don't want a pup." "not in this house". CP 10-12.

Nanny Megan King and close friends witnessed this alienated behavior of the boys on return from the summer break. Please see declarations in support CP 53-70

Andy Prasad also incessantly over many months voiced to the children concerns regarding their safety in my home. He was frequently heard saying to the children 'Be safe', ' Be safe', ' No one can harm you', 'you can call Dad anytime'. Without any proof he would frequently allege in his texts that I was abusing them at home. Despite his creating this picture of abuse and unsafety in my home, Andy Prasad never brought this up to any Pediatrician's

attention. Scout leaders, soccer coaches, friends in the community and their pediatrician to be thriving noted the children. Please see declarations in support CP 53-70

I attended school open houses in the Davis Joint Unified School District, did my due diligence and enrolled Aarav at the AIM (Alternative Instructional Method for gifted children) program of for 7th grade. Aarav was excited about moving to his neighborhood school – Harper Junior High. I informed Andy Prasad of this decision. His only response was an email several weeks later, after he had a chance to brainwash Aarav during Summer Break. He stated: *‘Aarav is very concerned and worried about the change of school – he told me that you have been threatening him and switching schools as a punishment to separate the boys. Punishment for what ? I would like to notify you with all due respect that you will be held responsible for any physical / emotional abuse you inflict upon our boys.’* This undermined Aarav’s confidence in me and led him to be confused and concerned. CP 15 -16, CP 45, CP 106. Aarav is a straight ‘A’ student at Harper Junior High and doing extremely well. I can provide his school and teacher assessment report if directed by the court pursuant to RAP 9.11

To be clear the trial court did not hold Andy Prasad in contempt for just his calling the Sheriff as stated in the appellant's argument but clearly outlined the pattern of alienation based on above incidents that culminated in his calling the Sheriff for the flimsiest of reasons. The Face time conversations have been rescheduled if needed due to children's activity or Andy Prasad's travels previously so this was not an unusual event. For all this to happen within 3 days of the children's return home was clearly a serious attempt at alienation of affections and a set up to file for 'primary custody' in the Yolo County, CA.CP 01-17

After I filed for Motion of Contempt Andy Prasad in his response referred to a series of very disturbing texts purportedly sent by me. CP 142 – 146. These texts on face value are allegedly direct admissions by me to him of my affairs, my threats to hurt him, my getting him fired from his job etc etc. They are so obviously false and manufactured, that they do not pass even the smell test. I denied any knowledge of these texts under oath during the hearing on Aug 30, 2016. I also reaffirmed in my declaration I had no idea how these texts were found on Andy Prasad's device. CP 99 - 104.

Andy Prasad then presented declaration of Simon Varley CP147 - 150 giving time stamps of the texts to support his statement.

I had my phone forensically analyzed, declaration of Steve Robles CP 154 – 161 which identified one text fragment in the deleted space. Shockingly, it was noted that the time stamp of each and every alleged text corresponded to the time stamp of a face time conversation between my son and Andy Prasad. CP 154 -161.

On talking to my older son Aarav he shared that his father, Andy Prasad had asked him to write these texts and delete them during the weekly Facetime contact.

Andy Prasad also used the same texts as false evidence to support his filing for sole custody in the Yolo County Superior Court. CP 128 -146 He is also using the same texts as false evidence to fight his termination by Confluence health. RP 50 – 53.

The trial court on Sep 12, 2016 after reviewing all evidence presented entered ‘ *I am gravely concerned about what these children may be being subjected to at this point. I am gravely concerned. I am concerned that the circumstantial evidence*

strongly indicates that Dr Prasad is attempting to alienate the affections of the boys and, quite frankly, I am concerned that he has - - . Well I won't say that. I am very concerned what it appears that these boys may be being subjected to. I am very concerned about this whole issue of these text messages and I am contemplating this court appointing its own independent forensic expert, to be paid for by the parties. I am also concerned that we need a guardian ad litem for the children. It is, of course a problematic situation for this court, with the children in California. I am concerned about delaying dealing with these contempt issues.'

RP 54

Andy Prasad did not hesitate to use his own children as tools to achieve what he wanted – denigrate me as a parent in the eyes of the children and the court and claim the affections of the children and the custody. RP 48 - 53

The forensic evaluation unfortunately was only available 24 hours prior to the hearing on September 12. The court was unable to rule on the texts during the hearing but noted in the memorandum decision *'the fathers behavior causes the court to have significant*

concerns about the childrens' emotional health and safety. The court is also gravely concerned if left unchecked the father will persist in his apparent determination to alienate the children from the mother'. CP 165.

The trial court was completely justified in the ruling holding Andy Prasad in contempt for Alienation of Affections. The trial court's ruling should be upheld.

Paragraph 6.7 of the parenting plan: Changes in residential
Schedule

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

This provision in the Parenting Plan is put in place to safeguard the children's emotional and mental wellbeing. Andy Prasad's interpretation is completely wrong. Both parents are meant to reassure the children that they are equally loved and will be taken care of at both homes. This is meant to prevent them from suffering distress over residential schedule and arrangements.

The children returned from Summer Break visitation with Andy Prasad and starting the same day directed questions at me - ‘Why cant we stay 50-50 with you and Dad?’ ‘How old do I have to be to make my own decision?’ ‘Who decides where we stay?’ This language is not normal for the boys and along with the other above documented conduct of the children is clear evidence that Mr. Prasad discussed residential schedule with the children. CP 10

Andy Prasad’s strategy always has been to issue a blanket denial of him having said anything and putting the burden of these questions on the minds of 9 and 12 year old boys. He frequently deflects his poor conduct onto others trying to make them responsible. This behavior pattern is explained in his court ordered psychological evaluation in CA. I can supplement this additional evidence to the Court pursuant to RAP 9.11.

Andy Prasad states “ 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 was able to see the disconnect between Andy Prasad’s statement and denials and his actual conduct. He was actively

sowing seeds for subsequently moving courts in Yolo County CA for sole custody. CP 162. The trial court's ruling is correct and should be upheld.

Paragraph 4.1 of the parenting plan: Day to day decision - making and Parental obligations.

"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 regarding the health or safety of the children. Each parent is to notify the other parent as soon as reasonably possible regarding any injury or illness requiring medical attention or any emergency involving the children."

This provision confirms each parents right regarding the day to day care and control of each child while they reside with that parent. It also asks each parent to keep the other parent informed in a reasonable timeframe of medical events. While I diligently followed this provision by informing Andy Prasad in a timely manner, Andy Prasad continued to force daily telephone contact with the children using it to gain information and then not just question my decisions regarding even minor illness, routine vaccinations, other planned activities but also accuse me of not taking the appropriate

decisions. CP 15-17. For instance, Andy Prasad's email regarding vaccination and soccer team get-together displays this accurately.

"Sareena,

1. Aarav told me that you took him by surprise this morning to get two vaccines.

2. Is that the right thing to do when you arranged a pool party for him with soccer friends today. He is having pain in his arm and feeling feverish. It seems you also told him that he doesn't need to get in the pool. I don't understand the reasoning behind these decisions. Why would one arrange a pool party and vaccinate their son to prevent him from swimming. Is that another punishment?"

CP 43

In the same email he also accuses me of not notifying him of a well child visit and again questions me on a medication, a response to which had been previously provided.

"I have clearly requested you to notify me of any pediatrician appointment so that I can accompany the boys or be there at that time (one email from Jun 5, 2015 attached) I have also notified you earlier that I am free all day today but you still did not notify me of this morning's appointment. You are also yet to disclose the

antibiotic you gave to Aarav in May 2016. I need to be notified of any medical appointments and use of prescription medication.”CP 43

CP15 -16. Exhibit G, H, I and L CP 40-42, CP 45-51.

It is hard to understand why Andy Prasad would be confused about this provision and parenting obligation. The trial court correctly concluded from all the evidence provided that Andy Prasad 's behavior contravenes the exclusive authority delegated to the residential parents to make these decisions without harassment by the other parent. The facts constitute a plain violation of the order, the violation was intentional and Andy Prasad had knowledge of the existence and substantive effects of the courts order and therefore case law he has provided is irrelevant.

The trial courts decision should be upheld.

Paragraph 4.2 of the Parenting Plan: Major Decisions

In relevant part states: “Major Decisions: 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 mother. Father can always make his own contact with the provider.

Mother shall make decisions about consultations regarding the physical and emotional health of the children and shall inform father in writing about such consultations.

I provided Andy Prasad with detailed contact information of all of the medical / dental / orthodontic providers engaged in the care of the children. I would update him with timely information on medical visits. He would respond by criticizing and questioning my decisions. He would not make independent contact with provider but instead continue to barrage me with emails and texts. He would repetitively accuse me of withholding information. A few examples of this include in parts *'On June 3rd in your email you wrote "She" when you referred to Vikrant's pediatrician. That did not go with the name "John" I knew of. No, I am not aware both boys have the same pediatrician.'* *'Kindly let me know of the "she" who you spoke to when Vikrant was sick.'* *' You are yet to disclose the name of the antibiotic you gave to Aarav few weeks ago. What is there to hide when you are dealing with the boys health'. CP 45*

When informed of an upcoming Orthodontic appointment 3 weeks in advance Andy Prasad accused me of not informing him of the appointment in a timely fashion and interfering with his upcoming vacation plans. He also involved the children and wrote to me saying ‘ *Aarav was very worried that he may have to miss his Orthodontic appointment or it will conflict with his Europe trip to attend his sister’s graduation.*’ He also accused me in the same email ‘ *You have asked Aarav to tell me not to travel on that day.*’

CP 45-51

Andy Prasad is in clear violation of the Parenting Plan with regards to Major Decision Making 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 with his incessant emails and questioning in contravention of the parenting plan.

The trial court’s decision is correct and should be upheld.

C. THE TRIAL COURT HAD THE AUTHORITY TO IMPOSE A CIVIL PENALTY.

RCW26.09.160 in relevant part (2) (a) states ' A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If a court finds there is reasonable cause to believe a parent has not complied with an order, court may issue an order to show cause why the relief requested should not be granted.' And In (2) (b) 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. Upon finding of contempt the court shall order (2)(b) (iii) the parent to pay, to the moving party, a civil penalty, not less than the sum of 100 dollars. And in (3) (c) the non complying parent to the moving party, a civil penalty of not less than two hundred and fifty dollars.

Andy Prasad was held in contempt under Para 4.1, Day to Day Decisions and Parental Obligations during Residential Schedule and para 4.2 Major Decisions during Residential Schedule.

The trial court has authority to impose a civil penalty and a higher penalty for a second contempt. The trial court's ruling should be upheld.

D. THIS COURT SHOULD AWARD RESPONDENT, SAREENA MALHI FEES ON APPEAL.

This court should award me fees under RCW 26.09.140 based on my need and RAP 18.9, where Andy Prasad's appeal is frivolous. *Skimming v Boxer*, 119 Wn App. 748, 756, 82 P 3d 707 (2004). RCW 4.84.185 which allows an award of fees for a frivolous action, "is designed to discourage abuses of the legal system by providing for an award of expenses and legal fees to any party forced to defend against meritless claims advanced for harassment, delay, nuisance or spite."

Andy Prasad is being spiteful. He is prolonging the legal battle and accruing costs.

The court should also award me the costs of filing this brief in court.

CONCLUSION

The trial court has complete and relevant history of this case. The trial court took into account all the information including written submissions, oral pleading, multiple exhibits and corroborative evidence into account, reaching the appropriate conclusion and holding Andy Prasad in contempt in a memorandum decision.

Andy Prasad exhibits a consistent and callous disregard of the parenting plan by his actions. This is the second time I had to go to court to protect my children's relationship with me, prevent further alienation and safeguard their emotional well being.

Even though I represented myself *Pro Se* I was able to prove with relevant evidence Andy Prasad's pattern of willful and intentional violation of court ordered parenting plan.

The trial court's decision holding Andy Prasad in contempt should be upheld. The trial court has full authority to impose a civil penalty. Andy Prasad should be required to pay costs associated with filing this brief.

Respectfully submitted this 8th day of May 2017.



Sareena Malhi MD.

Respondent.

1325 Arena Drive, Davis. CA 95618.

CERTIFICATE OF SERVICE BY MAIL

I certify under penalty of perjury under the laws of the state of Washington, that a copy of the BRIEF OF RESPONDENT was taken to the United States Postal Service on the 8th day of May, 2017 in Davis, CA and mailed to Douglas J Takasugi, attorney for the Appellant Andy Prasad at the following address: 930 Briarwood Drive, East Wenatchee. WA. 98802.

Dated: May 8th 2017

A handwritten signature in cursive script that reads "Sareena Malhi".

Sareena Malhi MD
Respondent

1325 Arena Drive
Davis, CA 95618
Phone: 509-899-4853