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No. 94234-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of

ARADHNA FORREST
Respondent

and

VIKAS LUTHRA
Petitioner

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

The respondent is Aradhna Forrest, f/k/a Aradhna Luthra, who was the petitioner in the Superior Court and the respondent in the Court of Appeals.

B. RESTATEMENT OF ISSUES ON WHICH REVIEW IS SOUGHT

1. Are the issues on review limited to issues raised in the Court of Appeals?

2. Is the 2010 order entered by Judge Fleck requiring a specific treatment modality a final order, and has the father been repeatedly told his self-designed treatment fails to satisfy the order?

3. Does the constitutional prohibition against cruel and unusual punishment apply to coercive civil sanctions?

4. Should the mother receive her fees for answering the father's petition?

C. RESTATEMENT OF THE CASE

Since the parties divorced in 2010, Luthra has appealed seven times and sought discretionary review once.¹ Persistently, he contests

¹ Four appeals from four contempt orders were consolidated in this appeal. The other proceedings are as follows: *In re Marriage of Luthra*, 165 Wn. App. 1032 (2012), *review denied at* 174 Wn.2d 1008 (2012); *In re Marriage of Luthra*, 184 Wn. App. 1036 (2014), *review denied at* 183 Wn.2d 1003 (2015); *In re Marriage of Luthra*, 197 Wn. App. 1060 (2017). His motion for discretionary review was No. 72192-5-I and 91741-8 (concluded in 2016). His present appeal is No. 76330-0-I.

specific treatment requirements ordered by Judge Fleck in 2010, from which he did not appeal. In his present recitation of this long litigation history, he claims he undertook a different kind of treatment in 2011 and the court “never directed Luthra to discontinue [that treatment] or question [the provider’s] qualifications to render the ordered therapy.” Petition, at 4. For not the first time, Luthra does violence to the facts.

The father has severe obsessive compulsive disorder. In 2010, after a five-day trial, the court entered findings under RCW 26.09.191(3)(b), (e) and (g). CP 61 (emotional impairment, adverse interest, abusive use of conflict). The court found the child’s best interests “will be served if his father obtains intensive treatment for his OCD so that [the child] can continue to have the regular presence of his father in his life in a way that is healthy for him.” CP 61; see, also, CP 60-63. Accordingly, the court ordered the father into a specific treatment regimen, as recommended by the parenting evaluator. CP 61. Specifically, for example, the court ordered the provider have the relevant expertise and that the therapy should be “home-based,” since the father’s problematic behavior was worst and most affecting at his home. CP 61 (FOF ¶ 2.19).² Again, Luthra did not appeal from this order.

²The court placed these details in the findings to protect the father’s privacy, which would be affected by inevitable dissemination of the parenting plan itself (e.g., to schools, doctors, etc.). CP 66-67.

However, post-trial, Luthra disregarded the specific requirements ordered by the court and undertook to design his own treatment program, consistent with his earlier refusals to stick with programs that promised to ameliorate the effects of his condition. See, e.g., CP 61 (court finding father left a residential program before completion and had not pursued treatment afterward). The parenting evaluator was very clear about the extremity of the father's condition, considering that it was both longstanding and incurable, and was concerned the father would not actively pursue recovery. CP 885. His own therapist (one of the therapists he still claims to be seeing) admitted Luthra's chosen therapy had been inadequate. CP 885. The evaluator noted "[Luthra] will need to change this in order to have a healthy relationship with his son." CP 885. This the father has not done.

The issue of noncompliance with the court's treatment order came up repeatedly in litigation subsequent to the parenting plan's entry. CP 74-79; see, also, Slip. Op., No. 71018-4-I (184 Wn. App. 1036), at 4 (describing Luthra's arguments to Judge Fleck in 2013). The court rejected Luthra's self-designed therapeutic program and reiterated throughout the proceedings that the father must comply with the treatment requirement to gain reinstatement of his midweek visitation. CP 69 ("Father shall commence treatment for his Obsessive Compulsive

Disorder (OCD), as set forth in the Court's Findings of Fact and Conclusions of Law, dated July 8, 2010, within three months from the date of this Order," which was June 6, 2011).

Not only was the father's therapy not of a type that has potential to help him (e.g., it is not home-based), the providers of the therapy did not satisfy the court's orders (no relevant expertise). The court noted, too, that the father's purported OCD therapist had failed to produce credentials, despite requests, and that, on its face, the father's treatment with that provider fell short of what the court ordered. *Id.*

Since this is an intractable condition that [the father] has experienced since the age of seven and he has severe OCD, to meet for an hour once a week with a licensed mental health counselor, on the face of it, does not comply with my definition of a therapist highly experienced in intensive OCD.

CP 74. The court recalled the testimony at trial of the father's regular therapist and of the parenting evaluator who agreed the father "needed more intense treatment" than the regular therapist could provide. *Id.* In her report, the evaluator made plain that the father needed a particular kind of therapy (ERP) in a particular location (i.e., where the OCD manifests most, in this case, the home environment). CP 888. That is, "ERP, especially undertaken in [the father's] environment (outside the office), is the standard treatment for OCD." *Id.* Luthra's chosen OCD therapist,

Griffin, seemed unacquainted with this standard; rather, the court noted with concern, Griffin's statements in 2013 about the condition were "completely contrary to the testimony at trial [calling] into question her knowledge of OCD, her knowledge of [the father's] intractable condition." CP 75.

In short, though Luthra makes it sound like he has been engaging in his preferred therapy for years with the court's tacit approval, the reality is completely opposite. In 2013, the court emphatically rejected Luthra's substitute therapy and ordered him to get the treatment specified in 2010. Still, Luthra did not comply, as Judge O'Donnell found beginning in 2015. CP 256-257. The court threatened jail time if Luthra did not make a plan to comply within two weeks. 1RP 26, 29, 41. Luthra made no substantial progress and the court ordered work crew and again threatened jail time. CP 353.

In January 2016, Luthra remained in contempt, but the court suspended work crew because of an injury to Luthra's arm. CP 844-866; 2RP 24-27. The court also noted any lack of "supplemental information" related to the OCD treatment and ordered Luthra to provide documentation of compliance by the next review hearing. *Id.*; 2RP 28 (Luthra conceding no evidence of his claims of treatment-related efforts); 2RP 29-31.

On March 18, 2016, the court again found Luthra “remains in contempt.” CP 765. However, Luthra did not appear at the hearing. The court noted Luthra’s failure to document his volunteer activity and his failure to provide supplemental information on treatment as ordered. CP 766. “As a further coercive sanction,” the court ordered Luthra “to complete 30 additional work crew days.” CP 770. The court ordered \$350 in attorney fees for the continuing contempt and his failure to appear. CP 770. See, also, CP 569-571 (ordered fees for Luthra’s violation of court rules governing motions for reconsideration).

In advance of the next review hearing, Luthra complained about the hardships he suffered from performing volunteer work and work crew due to his OCD. CP 573. In response, Forrest noted these complaints contradicted Luthra’s oft-repeated claim that his OCD was well-controlled by the treatment regimen he preferred (to the one the court ordered). CP 616-617.³

Luthra also repeated his claim to financial constraints on his ability to afford treatment. CP 573. Forrest pointed out that Luthra failed to document his financial circumstances and that his luxury cars and a recent major remodel to his home suggested his claims of poverty were false. CP

³ Luthra repeats this claim in his brief in the Court of Appeals. Br. Appellant, at 26-27 (“he is highly functional despite his diagnosis and is properly managing his condition with proper medical care”).

617-618, 620-623. Forrest also rebutted Luthra's claim that there were no treatment providers willing to do home-based therapy. CP 618, 627.

Luthra attempted to make an appointment with the therapist Forrest easily found, but complained his insurance might only reimburse him for half the cost. CP 628-629. He asked for a continuance to June 3 for time to make an appointment. CP 630.

The court held review hearings on May 17 and June 3, 2016 and entered an order on June 13 finding Luthra "remains in contempt." CP 767. Luthra still had "not obtained an appointment with a qualified provider who will do home based OCD treatment to comply with Judge Fleck's original order [...] despite the Court's admonition to do so before the June 3 hearing in order to avoid potential incarceration as a coercive sanction." CP 769.⁴ The court gave Luthra until June 17 to provide "written verification from a qualified treatment provider" that he has either commenced treatment or scheduled an appointment, or else face incarceration as a potential "further coercive sanction" at another review hearing to be set by the court. CP 770. The court also ordered 15

⁴ The ellipsis represents the court's footnote reciting again the requirements of Judge Fleck's 2010 order. CP 769 n.1.

additional work crew days and attorney fees. CP 770. Luthra filed another notice of appeal.⁵ He also challenged orders on child support.

The Court of Appeals affirmed the trial court's orders, noting Luthra failed in six years to comply with Judge Fleck's order. Slip Op., at 10-11. The court also rejected Luthra's Eighth Amendment challenge because this constitutional provision applies to punishment and the court's orders were coercive, not punitive. *Id.* The court also rejected other arguments not raised here.

D. ARGUMENT WHY REVIEW SHOULD NOT BE GRANTED.

Again, Luthra fails to establish any basis for review of the Court of Appeals' decision, which affirmed contempt orders entered consistent with the court's authority to enforce its orders and to coerce compliance with those orders. RAP 13.2(b).

1. LUTHRA MAY ONLY SEEK REVIEW OF THE ISSUES RAISED AND DECIDED IN THE COURT OF APPEALS.

As has happened in previous pleadings filed by Luthra, he identifies the issues then argues other issues. He asks for review of the decision below upholding the orders finding him in contempt of a 2010 parenting plan requirement and rejecting his "cruel and unusual" argument. In his argument section, he adds other issues, ones that dispute

⁵ Luthra did not designate any of these notices. RAP 9.6(b)(1)(A).

the 2010 order, rather than disputing he has ignored the order. Petition, at 5-9. He also argues the 2010 order is tantamount to a medical directive, exceeds the court's authority, and is unjustified by a compelling state interest. Petition, at 13-15. As elaborated upon below, the 2010 order cannot be challenged in these proceedings, just as it could not be challenged in the multiple appellate proceedings that preceded this one.

2. LUTHRA CONTINUES TO DEFY THE 2010 ORDER,
FROM WHICH HE DID NOT APPEAL AND WHICH
THE COURT HAS REPEATEDLY RESTATED.

Still and again, Luthra takes issue with the kind of therapeutic treatment the court ordered in 2010, as described above. He did not appeal the court's treatment order; he ignored it.

Judge Fleck restated these orders in 2013. In proceedings from 2015-2016, Judge O'Donnell has found Luthra in contempt of these orders. Luthra has the ability to comply with the order but chooses not to do so. Rather, he continues to try to relitigate it over and over again by presenting the same evidence rejected by Judge Fleck in 2013 (and at trial in 2010). Indeed, his own therapist told the parenting evaluator her therapy with Luthra was inadequate. Luthra's conduct exceeds the bounds of reason, continues to risk his child's well-being, and burdens Forrest with endless, costly litigation (i.e., fees awarded but not paid).

3. BECAUSE THE COURT’S CIVIL CONTEMPT ORDERS ARE COERCIVE, NOT PUNITIVE, THE EIGHTH AMENDMENT DOES NOT APPLY. IN ANY CASE, WORK CREW PARTICIPATION IS NOT CRUEL OR UNUSUAL.

Luthra engages in the kind of abusive litigation predicted by the parenting evaluator. He raises issues supported neither by law nor fact. He argues the court violated the Eighth Amendment’s prohibition against cruel and unusual punishment when it attempted to coerce compliance by ordering him to participate in a work crew, in lieu of jailing him. Petition, at 12. Luthra mistakes forbearance for cruelty, given how much reason he gave the judge to put him in jail. Further, by asserting his OCD makes work crew cruel, he contradicts his own claims that his therapy has rendered his OCD a non-issue. Br. Appellant, at 26-27; see Petition, at 13 (not “incapacitated”). In any case, the Eighth Amendment does not apply here. Rather, “it was designed to protect those convicted of crimes.” *Ingraham v. Wright*, 430 U.S. 651, 664, 97 S. Ct. 1401, 1409, 51 L. Ed. 2d 711 (1977). Here, the court’s orders are coercive. *See In re M.B.*, 101 Wn. App. 425, 438, 3 P.3d 780, 787–88 (2000) (“[r]emedial sanctions are civil rather than criminal and do not require criminal due process protections”).

Luthra makes no rational argument that the court did anything other than exercise its civil contempt powers. He cites to a section of the

Parenting Plan that cautions against violations of the residential schedule by citing to the custodial interference statute. Petition, at 10. Luthra has not been charged with custodial interference. Luthra argues the work crew order, intended expressly to coerce his compliance, is punitive because it is onerous. Petition, at 11-12. Coercion tends to be onerous, such as jail time. It is a tool the court has to deal with intractable parties. And that is the point Judge O'Donnell has been trying to make. Luthra can avoid work crew and jail if he finally complies with the 2010 Parenting Plan, and gets the help he desperately needs to protect the parties' child from the harms specifically identified by Judge Fleck.

E. MOTION FOR ATTORNEY FEES

The father's abusive use of conflict manifests in either litigating or prompting litigation by defying court orders. Rather than getting the help he was proven to need, he has fought the court's order at every turn, resulting in many costs to the child and the mother, including litigation costs. In this petition, the father continues this intransigent conduct. Indeed, in these 2015-2016 proceedings, not only did Luthra continue to make arguments repeatedly rejected by the court in the past six years, he resisted paying child support and sought to have Forrest held in contempt.⁶

⁶ See, e.g., CP 354-355, 779-843, 849-848; 2RP 1-24. Luthra did not appeal from this order.

At every turn, he substantiates the court's 2010 finding of abusive use of conflict.

In Washington, an award of attorney fees is justified where the conduct of one of the parties causes the other "to incur unnecessary and significant attorney fees." *Burrill v. Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993, 998 (2002). The father should pay for the costs the mother incurs litigating in this matter, including here.

F. CONCLUSION

For the foregoing reasons, Aradhna Forrest respectfully asks this Court to deny review of Vikas Luthra's petition and to award her fees.

Dated this 7th day of April 2017.

RESPECTFULLY SUBMITTED,
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