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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Parenting and Support of A.J.B.,	)	No. 79993-2-I
	)	DIVISION ONE
A minor child.	)	
MAKIS BROOKS,	)	
Appellant,	)	UNPUBLISHED OPINION
v.	)	
KRYSTAL LINK,	)	
Respondent.	)	

BOWMAN, J. — Makis Brooks appeals RCW 26.09.191 restrictions limiting his residential time and decision-making authority as to his three-year-old daughter A.J.B. He argues sufficient findings of fact do not support the court's conclusion that he engaged in an act of physical abuse of a child and the court lacked jurisdiction to order the restrictions. We conclude that the facts as determined by the trial court do not establish that Brooks engaged in an act of physical abuse of a child. We reverse and remand to strike the restrictions and revise the permanent parenting plan.

FACTS

Makis Brooks and Krystal Link are the parents of A.J.B. Brooks and Link ended their relationship when A.J.B. was a year old. Two years of litigation to establish a permanent parenting plan followed. During that time, the court ordered a temporary parenting plan that imposed a 50/50 residential schedule and authorized mutual parental decision-making.

The court heard several days of testimony at the trial on the parenting plan, residential schedule, and child support. The testimony established that A.J.B. is a happy, bright, well-adjusted child with strong attachments to both of her parents. The guardian ad litem recommended continuing the 50/50 residential schedule and mutual decision-making in the permanent parenting plan.

Much of the testimony at trial was about Brooks' relationship with his older son J.B. J.B. is the son of Brooks and May Quayle. He was 10 years old at the time of trial. Brooks was J.B.'s residential parent and J.B. mostly lived with Brooks and Link during their relationship.[1] J.B. became the focus of the trial when Link raised allegations that Brooks regularly used corporal punishment to discipline him. Link urged the court to impose RCW 26.09.191 restrictions limiting Brooks' residential time with A.J.B. based on Brooks' treatment of J.B. Link, Quayle, and Brooks all testified about Brooks' use of physical discipline.

The trial court discounted much of the testimony because "Ms. Quayle appeared to be using [the] proceeding to re-litigate her grievances against Mr.

[1] Three months before the trial, Brooks and Quayle entered into a 50/50 residential schedule for J.B.

Brooks, and appeared to have enlisted Ms. Brooks in this effort." But the court also concluded that Brooks' testimony that he "never spanked" J.B. was not credible. The court determined that the credible testimony established only one act of corporal punishment. The court found:

> There was credible evidence that there was at least one instance in which [J.B.] was disciplined by Mr. Brooks using a belt and that Mr. Brooks['] use of a belt was inappropriate discipline of a child. The Court finds that this inappropriate discipline by Mr. Brooks merits RCW 26.09.191[ ] restrictions against Mr. Brooks.

Based on these findings, the court concluded that Brooks "abused or threatened to abuse a child" and imposed RCW 26.09.191 restrictions limiting Brooks' residential schedule with A.J.B. to every other weekend and only three hours every Wednesday evening. Despite the restriction, the court concluded that Brooks did not need supervised visitation because it did not "think that there's an issue with respect to [A.J.B.] at this point." The court also awarded Link primary decision-making authority about all education and medical issues for A.J.B.

Brooks appeals.

ANALYSIS

Brooks argues that the trial court's findings are not sufficient to support its decision to impose parenting restrictions under RCW 26.09.191. He contends that the findings do not support a conclusion that he engaged in an act of physical abuse of a child. We agree.[2]

[2] Brooks also argues that the trial court lacked jurisdiction to impose RCW 26.09.191 restrictions. Because we conclude that the court's findings are not sufficient to support the parenting restrictions, we do not reach that issue.

We review a trial court's decisions on a parenting plan for abuse of discretion. In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). A trial court abuses its discretion if the decision is manifestly unreasonable or based on untenable grounds. Littlefield, 133 Wn.2d at 46-47. A court bases its decision on untenable grounds if the record does not support the factual findings, the court used an incorrect standard, or the facts do not meet the requirements of the standard. In re Marriage of Mansour, 126 Wn. App. 1, 8, 106 P.3d 768 (2004).

A trial court must restrict mutual decision-making and limit a parent's residential time with a child if the court finds that the parent has engaged in an act of physical abuse of a child. RCW 26.09.191(1)(b), (2)(a)(ii). RCW 26.09.191 does not define "physical abuse of a child." But we can find guidance in other chapters of Title 26 RCW. See Associated Press v. Wash. State Leg., 194 Wn.2d 915, 926, 454 P.3d 93 (2019) (We may "consider related statutes for purposes of discerning the plain meaning of a provision.").

RCW 26.44.020(1) defines "abuse" of a child as "injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100," the criminal statute regarding use of force on children. RCW 9A.16.100(6) provides that an action "used to correct or restrain a child" is "presumed unreasonable" when it "is likely to cause" and "does cause bodily harm greater than transient pain or minor temporary marks." The statute specifically establishes that "the physical discipline of a child is not unlawful when it is reasonable and moderate and is

inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child." RCW 9A.16.100. The "age, size, and condition of the child and the location of the injury" are all factors to consider when determining whether discipline is "reasonable." RCW 9A.16.100.

And RCW 26.44.015(2) explains, "Nothing in this chapter may be used to prohibit the reasonable use of corporal punishment as a means of discipline."

The trial court has broad discretion to determine whether evidence presented at trial meets the requirements of RCW 26.09.191. In re Parenting & Support of L.H., 198 Wn. App. 190, 194, 391 P.3d 490 (2016). But physical "abuse" of a child is inherently serious and is distinguishable from "reasonable corporal punishment." See RCW 9A.16.100. Here, the court found that there was "credible evidence" of "at least one instance in which [J.B.] was disciplined by Mr. Brooks using a belt and that Mr. Brooks['] use of a belt was inappropriate discipline of a child." But there are no findings about whether the discipline resulted in injury, the location of any injury, J.B.'s size and condition, or whether the discipline caused "harm greater than transient pain or minor temporary marks." RCW 9A.16.100. The findings fail to distinguish Brooks' conduct from reasonable corporal punishment. As such, they are not sufficient to support a determination that Brooks engaged in "physical . . . abuse of a child" as contemplated under RCW 26.09.191(1)(b) and (2)(a)(ii).

We reverse and remand to the trial court to strike the restrictions and revise the permanent parenting plan.[3]

Brennan, J.

WE CONCUR:

Chun, J.

Andrus, A.C.J.

[3] Link requests reasonable attorney fees on appeal under RAP 18.1 and RCW 26.26B.060 because Brooks "dragged out this matter months beyond when it should have been heard" and asserted frivolous claims. We have reviewed the request and financial declaration and decline to award fees. Further, Brooks' success on appeal demonstrates that his claim is not frivolous.