

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY
DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

CASE NUMBER: 42996-9-11

SCOTT E. CRUMP

Appellant,

v.

MARIA R. CRUMP

Respondent.

BRIEF OF RESPONDENT

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ORIGINAL

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A. STATEMENT OF THE CASE

The parties were married August 2, 2004 in the Dominican Republic and separated August 13, 2009. CP page 51, lines 12 to15. The parties have one child, Roberto Crump. CP page 53, lines 8 to12.

Scott Crump was previously married and divorced in 2002. He had three children from that marriage. The Permanent Parenting Plan entered by agreement in Tennessee placed serious and permanent restrictions on Scott Crump. Cp 54, lines 1 to2. His residential time was restricted because of: 1) physical abuse, sexual abuse, or a pattern of emotional abuse, 2) a history of acts of domestic violence or an assault or sexual assault which has caused grievous bodily harm or the fear of such harm, 3) neglect or substantial non-performance of parenting functions; 4) a long term emotional or physical impairment which interferes with the performance of parenting functions, 4) absence or substantial impairment of emotional ties between the child and parent, 5) abusive use of conflict by the parent which creates the danger of serious damage to child's psychological development, 6)

withholding the child from the other parent for a protracted period of time without good cause. Additionally, the Mother was granted permanent sole decision in regard to the children. From the date of entry of the parenting plan in Tennessee until the date of trial in this matter, Scott Crump did nothing to regain any contact with his three children.

During the marriage of Scott Crump and Maria Crump, there were times when Scott Crump was away from the home for military service, during these deployments; Maria Crump would travel to the Dominican Republic to stay with her family. Her trips to the Dominican Republic were agreed to by Scott Crump and were appropriate. CP page 54, lines 3to7.

In 2007, Scott Crump returned permanently to Washington State. At that time he did not want Maria Crump or the child to travel to the Dominican Republic any more. CP page 54, lines 7to9. Scott Crump began to keep track of Maria Crump's activities and monitor where she was and what she was doing. CP page 54, lines 9to10. In fact, when Maria Crump was working at State Farm, Scott Crump called and came by her office so often that State

Farm banned him from coming to the workplace. CP page 54, lines 11 to 14.

Maria Crump was the primary parent caring for the child until temporary orders were entered after the couple separated in 2009. CP page 55, lines 7 to 9. At trial, the court found that the temporary parenting plan, naming Scott Crump primary residential parent, was based on some misunderstanding. CP page 55, lines 13 to 14. And that, the temporary plan giving primary residential placement to the father for approximately the past two years can't affect what the best situation is for this child at time of trial. CP page 56 lines 23 to 24.

Leading up to the separation in 2009, conflict between the parties escalated into physical fights. During these fights, Maria Crump threw objects and was engaged in other acts of anger toward Scott Crump. The trial court found that Scott Crump displays characteristics of a perpetrator who is in need of domestic violence treatment and that Maria Crump is a person who has a serious anger management problem and is in need of treatment and counseling. CP page 54, lines 20 to 23. However, the court

found that these acts by Maria Crump were not acts of domestic violence. CP page 56 line 25 to page 57 line 1.

During trial on this matter, the appointed Guardian ad Litem James Berg testified that Scott Crump should remain the primary parent because that would be in the best interest of the child per RCW 26.09.187. RP page 103, lines 19 to 20. RP page 104 line 19 to page 108 line 11.

In addition to appointing a Guardian Ad Litem, the court also appointed Jennifer Goodwin MA, LNHC, CDP to conduct domestic violence assessments of both Scott and Maria Crump. Her testimony was in stark contrast to James Berg's testimony. She testified that Scott Crump was guarded and hostile during his evaluation with her, that he was not truthful and that his version of the story consistently contradicted collateral contacts. RP page 335, line 23 to page 336 line 6. She noted that he had engaged in a pattern of coercive control toward Maria Crump and recommended that he enroll in a State certified domestic violence treatment program. RP page 336, lines 10 to 15. And, that Scott Crump had engaged in similar patterns of

behavior during his marriage in Tennessee. RP page 329 lines 8 to 18. RP page 329 line 25 to RP page 330 line 5.

Additionally, she noted that Scott Crump has a criminal history with multiple charges of soliciting prostitution. RP page 342 lines 1 to 6. That he had played strip poker with a sixteen year old in Tennessee. RP page 337 lines 14 to 20. That he had offered Maria Crump money for sex, which was coercive and insulting. RP page 342 lines 8 to 11. Based on her evaluation of Scott Crump, she recommended that he obtain a psycho-sexual evaluation to determine if he suffers from sexual deviancy or sexual addiction issues. RP 336 line 23 to RP page 337 line 20.

Jennifer Goodwin MA. LMHC, CDP testified that Maria Crump was initially distraught and anxious. RP page 326 lines 15 to 16. And, that she had been affected by the pattern of coercive control exerted over her by Scott Crump. RP page 328 line 23 to RP page 329 line 10. Ms. Goodwin found that Maria Crump was a truthful reporter, verified by collateral contacts. RP 326 lines 23 to 24.

At the conclusion of the trial in 2011, the court went

against the recommendation of the guardian ad litem and found that Maria Crump should be the primary residential parent for Roberto. In doing so, the trial court found that Maria Crump's actions were not domestic violence. CP page 56 line 25 to CP page 57 line 1. In making this decision the court found that because Scott Crump displays characteristics of a domestic violence perpetrator it would not be healthy for Roberto to be raised by his Father, Scott Crump. CP page 57 lines 4-6. Additionally, the court required that the parenting plan contain RCW 26.09.190(1) limitations on Scott Crump because he displays characteristics of a domestic violence perpetrator. CP page 57, lines 2-3.

B. ARGUMENT

1. The correct standard of review is Abuse of Discretion.

The court reviews trial court decisions dealing with the welfare of children for abuse of discretion. *In re Marriage of McDole*, 122 Wash.2d 604, 610, 859 P.2d 1239 (1993).

Whether conduct rises to the level of domestic violence that requires RCW 26.09.191 restrictions be included in the parenting plan is the issue before the trial court. It is obviously an issue related to the welfare of the child. Therefore the imposition of such restrictions by the trial court must be reviewed for an abuse of discretion. De novo is an improper standard of review and should not be applied.

2. The trial court may enter an order that is against the findings of the Guardian Ad Litem.

A trial court may go against the recommendation of the Guardian Ad Litem where it is within the best interest of the child to do so.

The trial court receives the guardian's report and recommendation, and considers the other parties' comments and criticisms. Then, it "balance[s] the interests of all parties involved, while keeping in mind that the child's interests are paramount." It "is not bound" by the guardian's report or recommendation, but instead must make its own assessment of the child's best interests. (emphasis added)

Marriage of Swanson, 944 P.2d 6, 88
Wn.App. 128 (Wash.App. Div. 2 1997)

Here, the court considered testimony of the parties and witnesses along with testimony of the Guardian Ad Litem and Jennifer Goodwin MA, LMHC, CDP. Based on the entirety of the information before it, the court ordered a parenting plan in the best interest of the child. It held that Maria Crump is the primary residential parent and that the parenting plan must contain RCW 26.09.190(1) limitations on Scott Crump. CP page 57 lines 2 to 3.

2. The trial court did not abuse its discretion when it ordered mandatory .191 restrictions for Scott Crump under RCW 26.09.191.

RCW 26.09.191(2) in part states:

The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: ... (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

RCW 26.50.010(1) defines domestic violence as:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

Substantial evidence in the record supports the trial courts finding that Scott Crump engaged in a history of domestic violence. This evidence is contained in the report and testimony of Jennifer Goodwin MA, LMHC, CDP. She testified that Scott Crump had engaged in a pattern of coercive control in the relationship, with at least one incident of physical violence, at least one incident of sexual violence and high degrees of sexual jealousy. And, that Scott Crump had exhibited a similar pattern of behavior in his prior marriage. RP page 328 line 23 to page 329 line 18.

Further evidence is contained in the testimony of Maria Crump. She testified about specific instances of stalking; that Scott Crump would follow her to work and come by her work often and that she feared for her safety. This occurred to such an extent that her employer, State

Farm, banned Scott Crump from the premises. RP page 308 at 13 to 23.

Maria Crump also testified about specific instances of violence, such as when Scott Crump hit her in the temple hard enough to render her unconscious. RP page 314, lines 4 to 6.

Here, there is substantial evidence in the record to support the trial court's finding that Scott Crump engaged in multiple acts of domestic violence of a period of time sufficient to establish a history of acts of domestic violence. Because the language of the statute is that the court *shall* impose restrictions, there can be no abuse of discretion in imposing such restrictions after a finding of a history of domestic violence.

3. Fees on appeal should be awarded pursuant to Federal Rule of Civil Procedure 11 and RCW 26.09.140.

This appeal is a frivolous claim. Scott Crump has no underlying justification in fact to support this appeal. The trial court acted well within its discretion in finding that

substantial evidence existed to find Scott Crump had engaged in a history of acts of domestic violence. Where such a finding is made, the .191 restrictions are mandatory and must be imposed by the trial court. RCW 29.09.191.

Pursuant to Federal Rule of Civil Procedure 11, when a claim is frivolous the court may award the prevailing party reasonable fees in defending the appeal, including attorneys fees. Pursuant to RCW 26.09.140 the Appellant Court may, in its discretion award the costs to the other party of maintaining the appeal. Maria Crump therefore requests attorney's fees.

C. CONCLUSION

For the reasons stated above, the decision of the trial court should be upheld and Maria Crump should be awarded her reasonable fees and costs for defending this appeal.

RESPECTFULLY SUBMITTED this 25th day of July, 2012.


for Jason P. Benjamin
WSB #25133 43725

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STATE OF WASHINGTON

D. CERTIFICATE OF SERVICE

I certify that on the 25th day of July, 2012, I caused a BY cm
DEPUTY

true and correct copy of this Brief of Respondent to be
served on the following persons in the manner indicated
below:

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DATED this 25th day of July, 2012 at Lakewood, Washington.


Elaine Andrus