

FILED

DEC 06 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 299376

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF

LAURIE RENNE N/K/A JUEDES,
PETITIONER,

AND

SCOTT RENNE,
RESPONDENT.

REPLY BRIEF OF PETITIONER

MICHAEL T. BRADY,
ATTORNEY FOR PETITIONER

LAW OFFICE OF MICHAEL T. BRADY
P.O. BOX 715
106 BLUFF STREET, NO. 202
WINTHROP, WASHINGTON 98862
(509) 996-5002
WSBA NO. 13895

FILED

DEC 06 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 299376

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF

LAURIE RENNE N/K/A JUEDES,
PETITIONER,

AND

SCOTT RENNE,
RESPONDENT.

REPLY BRIEF OF PETITIONER

MICHAEL T. BRADY,
ATTORNEY FOR PETITIONER

LAW OFFICE OF MICHAEL T. BRADY
P.O. BOX 715
106 BLUFF STREET, NO. 202
WINTHROP, WASHINGTON 98862
(509) 996-5002
WSBA NO. 13895

TABLE OF CONTENTS

ARGUMENT Page 1

I. *Farr* – Far from Relevant 1

 A. In *Farr* Everyone Agreed that the Answering
 Machine Messages Did in Fact “Malign the Other . . .
 In Front of the Children” 2

 B. The *Farr* Father’s Frivolous Argument
 Has Not Been Asserted By Petitioner 3

II. The Words “In the Presence of the Child”
Mean What They Say and Cannot be Ignored 3

III. Mr. Renne’s “Strict [but Rational] Construction
Is Neither Strict Nor Rational 5

IV. Sanctions Are Appropriate Under RAP 18.9 6

CONCLUSION 7

TABLE OF AUTHORITIES

In re Marriage of Farr, 87 Wn.App. 177, 940 P.2d 679
(Wash.App. Div. 1 1997) 1, 2, 3, 6

In re Recall of Feetham, 149 Wn.2d 860, 72 P.3d 741 (2003) 7

Millers Casualty Insurance Co. v. Briggs, 100 Wn2d 9,
665 P.2d 887 (1983) 7

R/L Associates v. City of Seattle, 113 Wn.2d 402, 780 P.2d 838 (1989) . . . 3, 6

State v. Int’l Typographical Union, 57 Wn. 2d 151, 356 P.2d 6 (1960) 4

Terminal Railroad Ass’n of St. Louis v. United States,
266 U.S. 17, 45 S.Ct. 58, 69 L.Ed. 150 (1924) 5

ARGUMENT

Does a text message created outside of a child's presence literally violate the provision: "Neither party shall make any disparaging comments to or about the other parent in the presence of the child?"

Lacking legitimate authority, the Respondent makes up what he needs to answer that question "yes." Mr. Renne attributes a fictitious holding to *Marriage of Farr*, 87 Wn.App. 177, 940 P.2d 679 (1997), *rev. denied*, 134 Wn.2d 1014 (1998), that he asserts is not merely decisive of this question, but which applies with such compelling precedential force that this appeal is rendered utterly frivolous. Respondent's Brief at 11-12. And the words "in the presence of the child" may safely be ignored either because the Parenting Plan was obviously intended to be broader, *id.* at 9-11, or because an oxymoronic "strict [but rational] construction" can conveniently twist the meaning of words into their opposite. *Id.* at 10-11.

I. Farr – Far From Relevant

Farr involved the clause "[n]either parent shall criticize or malign the other in front of the children." 87 Wn.App. at 180. Mr. Renne asserts that *Farr* contained the holding that telephone messages are so clearly within the scope of this clause that the contrary argument was frivolous, Resp. Br. at 12: "the father's claims that he did not violate the parenting plan because he disparaged the mother in voice mails were frivolous."

Supposedly, this holding forecloses this appeal and renders it frivolous, too. *Id.* at 11-12. But *Farr* contains no such holding. Mr. Renne’s argument is premised entirely upon his misrepresentation of that case.

A. In *Farr*, Everyone Agreed that the Answering Machine Messages Did In Fact “Malign the Other . . . in front of the Children.”

In *Farr*, it was undisputed that the *pro se* father’s recordings did in fact “malign the other in front of the children.” The decision makes no reference to a contrary argument and factually states “Moreover, Martin’s answering machine messages openly degrade Farr in violation of the parenting plan.” 87 Wn.App. at 184. As a matter of plain, literal meaning, remotely-created messages can and do literally “malign the other in front of the children” when those recordings are played back in their presence.

Farr has nothing of precedential value for this case because it involved the undisputed violation of a more broadly-worded clause (“[n]either parent shall criticize or malign the other in front of the children”). Text messages, telephone answering machine messages, letters, e-mail, tweets, blogs, and all other remote communications created outside of the presence of the child that are outside of the plain meaning of the provision in this case (neither shall “make any disparaging comments . . . in the presence of the child”) would have violated the *Farr* prohibition.

B. The *Farr* Father’s Frivolous Argument
Has Not Been Asserted by Petitioner.

The frivolous argument asserted in *Farr* – that the father did not give informed consent to the recording of the messages he left on an answering machine – has no counterpart here. Affirming the trial court’s decision to admit the recordings despite a statutory prohibition against evidentiary use of surreptitious recordings, *Farr* explains that by leaving his messages on a machine whose “only function is to record messages,” the father not only freely consented to the recordings, *id.*, but had frivolously asserted otherwise. *Id.* at 188 (“his arguments relating to . . . the state privacy act . . . are frivolous”).

II. The Words “In The Presence of the Child”
Mean What They Say and Cannot be Ignored.

The parties here agree on the controlling law: “In a contempt proceeding, an order will be enforced according to the plain meaning of its terms when read in light of the issues and purposes surrounding its entry.” Resp. Br. 9 (quoting *R/L Assocs. v. City of Seattle*, 113 Wn.2d 402, 410, 780 P.2d 838 (1989)). They disagree on the purpose of the clause at issue here, and on whether or not its purpose swallows up and supersedes the plain meaning of its words. (They also disagree on the facts recited in the Respondent’s Brief at 1-7, but which Ms. Juedes will not address because they are irrelevant to this appeal.)

According to its plain meaning, the clause at issue was not intended to prohibit all disparagement for all time, in all places, and by all means because of its specific time, place, and manner restrictions. It only prohibits making certain “comments” in the presence of the child. As written it anticipates live encounters in conversational proximity such as during the residential exchanges covered in the parenting plan (CR 172-77) or when both parents attend a child’s activities, as anticipated by fifth entry under the “Other Provisions” heading at CR 179.

Mr. Renne denies that making comments “in the presence of the child” means what it says. Resp. Br. at 9 (“There is nothing in the parenting plan that limits the prohibited conduct to ‘face-to-face’ actions.”). Instead, Mr. Renne asserts that the words’ literal meaning yields to the parties’ intent and that “it is obvious that the purpose of this provision of the parenting plan is to prohibit a parent from disparaging the other to the child.”

But even if prohibiting disparagement in general was the intent of the clause at issue here, this Court cannot correct the parties’ drafting error by ignoring the literal meaning of the words they actually agreed upon, or by adjusting their meaning to conform to the parties’ intent (or “intendment”): In contempt cases, the order being construed “will not be expanded by implication or intendment beyond the meaning of its terms....” *State v. Int’l Typographical Union*, 57 Wn. 2d 151, 158, 356 P.2d 6, 10 (1960) (quoting and

adopting “the applicable rule” stated in *Terminal Railroad Ass’n of St. Louis v. United States*, 266 U.S. 17, 29, 45 S.Ct. 58, 69 L.Ed. 150 (1924).

Hedging his bets, Mr. Renne alternatively argues that if “in the presence of the child” means what it says, then the parenting plan has a loophole large enough to allow a tsunami of textual disparagement to engulf the other “by phone, email, or, as here, by text message.” Resp. Br. at 9. But this threat was anticipated and addressed when the Court Commissioner admonished Ms. Juedes about inappropriate written communications and backed up that warning with the threat of enforcement, *id.* at 6 (citing CP 33) (“if this is a problem that doesn’t get resolved, I expect that it will be brought to my attention”). And at the father’s request the Superior Court has also prohibited the parties from contacting each other directly, now requiring their communications to go through a communications facilitator, CR 186-88, who “shall guide the mother and father in the wording, tone, etc., of their communications with each other.” CR 187.

III. Mr. Renne’s “Strict [but Rational] Construction” Is Neither Strict Nor Rational.

Finally, Mr. Renne makes up a new “strict [but rational] construction,” under which “in the presence of the child” can mean “outside of the presence of the child.” *See, e.g.*, Resp. Br. at 11 (“By sending the child a text message . . . the mother disparaged the father ‘in the child’s presence.’”). By ignoring the words used or by turning their meaning into

their opposites, this is the antithesis of a strict construction. And without the certainty of meaning upon which reasoned, logical argument depends, a construction that allows words to mean their opposite (or nothing) at a party's unprincipled whim has no place in rational discourse.

Mr. Renne's proposed construction is precluded by the legal authority he cites ("an order will be enforced according to the plain meaning of its terms," *R/L Assocs.*, 113 Wn.2d at 410), but he asserts no "good faith argument for the extension, modification, or reversal of existing law or the establishment of new law" for it as allowed by CR 11(a). Like the phantom holding of *Farr*, Mr. Renne just made it up because nothing else will win.

IV. Sanctions Are Appropriate Under RAP 18.9.

The Respondent made up the holding he attributes to *Farr* (Resp. Br. at 12 "the father's claims that he did not violate the parenting plan because he disparaged the mother in voice mails were frivolous"), and premises his principal arguments on that fictitious holding. Those arguments are frivolous.

Mr. Renne's remaining arguments to avoid a literal construction of the parenting plan are flatly precluded by the authority he cites. He thus presents "no debatable issues upon which reasonable minds might differ" and his arguments are "so totally devoid of merit that there was no reasonable possibility' of success." *In re Recall of Feetham*, 149 Wn.2d 860,

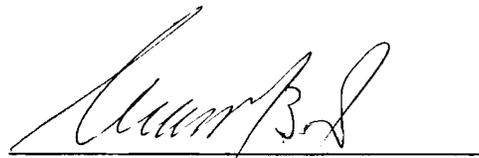
872, 72 P.3d 741(2003) (quoting *Millers Cas. Ins. Co. v. Briggs*, 100 Wn.2d 9, 15, 665 P.2d 887(1983)) (defining “frivolous” argument).

Under RAP 18.9, this Court should award Petitioner’s attorneys’ fees as a sanction for replying to the meritless Brief of Respondent.

CONCLUSION

The Court should reverse the trial court’s holding of contempt and sanction Respondent under RAP 18.9 by requiring the Respondent to pay for the Petitioner’s attorneys’ fees for replying to entirely frivolous argument.

Respectfully submitted this December 5, 2011,



MICHAEL T. BRADY,
Attorney for Petitioner
WSBA no. 13895

Law Office of Michael T. Brady
P.O. Box 715
106 Bluff Street, No. 202
Winthrop, Washington 98862
(509) 996-5002