

FILED

SEP 21 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.

BRIEF OF PETITIONER

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WSBA NO. 13895

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ASSIGNMENT OF ERROR

The Parenting Plan in this case prohibits one parent from making disparaging comments about the other “in the presence of the child.” The court below erred by holding Laurie Juedes in contempt for creating a text message outside of the child’s presence.

STATEMENT OF THE CASE

This divorce proceeding commenced in October 2007. The Parenting Plan that was entered on June 24, 2009 states “Neither party shall make any disparaging comments to or about the other parent in the presence of the child.” CP 179.

On January 27, 2011, Scott Renne filed a motion seeking to hold Ms. Juedes in contempt, CP159-61. Mr. Renne’s Declaration supporting that motion, CP 148-58, presented six examples of allegedly contemptuous conduct under the heading “Verbal examples of disparaging comments made

in front of the children,” CP 149, and described other incidents under the separate heading “Disparaging Text Messages Sent to Julienne by Laurie.” CP 151. Under the “Text Messages Sent” heading, Mr. Renne asserted that among the “hundreds of texts” that “were sent to Julienne by Laurie Juedes,” one stated in part “Oh well, sneaky scott is what he is, sneaky.” *Id.*

At the show-cause hearing on March 8, 2011, CP 1-35, the Court Commissioner entirely absolved Ms. Juedes of contempt. CP 32.

Following a motion to revise this ruling, a hearing was held before Okanogan County Superior Court Judge Jack Burchard on April 14, 2011, RP 1-47, at which Judge Burchard found “substantial evidence that she generated a text message to her daughter on July 1st, 2010, calling the father sneaky.” RP 43. Judge Burchard reversed the Commissioner, holding “the mother in contempt for the July 1st, 2010 text . . . ,” *id.* 44, and stated his findings on the record. *Id.* at 47 (“It’s very simple, one incident. I’ve said exactly what I found.”).

An order holding Ms. Juedes in contempt was entered on April 29, 2011, CP 168-69. With the timely filing of a Notice of Appeal, CP 164-67, this appeal followed.

ARGUMENT:

BECAUSE COURT ORDERS ARE STRICTLY CONSTRUED FOR PURPOSES OF CONTEMPT, A TEXT MESSAGE CREATED OUTSIDE OF A CHILD'S PRESENCE DOES NOT VIOLATE AN ORDER PROHIBITING COMMENTS MADE "IN THE PRESENCE OF THE CHILD"

A trial court's holding of contempt in a dissolution proceeding is reviewed for abuse of discretion. *Schuster v. Schuster*, 90 Wn.2d 626, 630, 585 P.2d 130 (1978) (quoting *State v. Caffrey*, 70 Wash.2d 120, 122-23, 422 P.2d 307 (1966)). In such a review, this Court will "look for facts constituting a plain order violation and [will] strictly construe the order." *In re Marriage of Davisson*, 131 Wn.App. 220, 224, 126 P.2d 76, 77 (Wash.App. Div. 3 2006) (citing *In re Marriage of Humphreys*, 79 Wash.App. 596, 599, 903 P.2d 1012 (1995) (Div. III) ("the court must strictly construe the order alleged to have been violated, and the facts must constitute a plain violation of the order.")).

The Parenting Plan does not prohibit disparaging comments however and whenever made. It only prohibits live, face-to-face comments made by one parent "to or about the other parent in the presence of the child." CP 179. This Parenting Plan simply did not anticipate or address written comments prepared remotely and sent after completion.

There is no evidence that Ms. Juedes created the text message in the presence of the child. To the contrary, Scott Renne swore in his declaration that the text message was "sent to Julianne by Laurie Juedes, her mother."

CP 151. Messages “sent to” a child do not, by definition, originate in that child’s presence.

The literal words of the Parenting Plan cannot be interpreted or construed as covering what happened here (say, for example, on the theory that because of near-instantaneous transmission text messages are “virtually created” in the presence of their recipients). As the Washington Supreme Court explained, since the results of a civil contempt holding “are severe, strict construction is required” of the order alleged to have been violated. *Johnston v. Beneficial Mgmt. Corp.*, 96 Wn.2d 708, 712-13, 638 P.2d 1201, 1203 (1982). When strictly construed, an order “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)).

The Parenting Plan does not cover the creation and transmission of text messages because the plain meaning of the phrase “in the presence of the child” does not mean its opposite.

CONCLUSION

The court below abused its discretion when it held Laurie Juedes in contempt and should be reversed.

Respectfully submitted this 20th day of September 2011

A handwritten signature in black ink, appearing to read "M. Brady", is written over a horizontal line.

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