

**FILED**

NOV 07 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 29937-6

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

LAURIE RENNE  
n/k/a JUEDES,

Appellant,

v.

SCOTT RENNE,

Respondent

---

APPEAL FROM THE SUPERIOR COURT  
FOR OKANOGAN COUNTY  
THE HONORABLE JACK BUCHARD

---

BRIEF OF RESPONDENT

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## **I. RESTATEMENT OF ISSUE**

The parenting plan restrained both parties from “mak[ing] any disparaging comments to or about the other parent in the presence of the child.” Here, the trial court found that the mother described the father as “sneaky” in a text message to the younger child. The mother also sent several other text messages to the younger child while she was residing with the father that encouraged the child’s purported dissatisfaction in staying at the father’s home. Did the trial court abuse its discretion in finding the mother in contempt of the parenting plan?

## **II. RESTATEMENT OF FACTS**

### **A. The Parties’ Parenting Plan Restrained Both Parties From Disparaging Each Other “In The Presence Of The Child.”**

Respondent Scott Renne and appellant Laurie Renne (now known as Laurie Juedes) divorced on June 24, 2009. A parenting plan was entered for the parties’ two minor daughters, then ages 11 and 14. (CP 170) The parenting plan designated Laurie as the primary residential parent. (CP 174) The children, who live in King County with Laurie, would reside with Scott, who lives in Whatcom

County, one weekend per month, any three or four-day weekends, and three full weeks during the summer. (CP 171-73)<sup>1</sup>

No RCW 26.09.191 limitations were entered as part of the parenting plan. (See CP 171) The parenting plan restrained both parties from “mak[ing] any disparaging comments to or about the other parent in the presence of the child.” (CP 178) The parenting plan provided that both parents “shall be allowed to communicate with the children by phone or email when the children are with the other parent without interference from the other parent.” (CP 178)

**B. The Father Filed A Motion For Contempt Of The Parenting Plan.**

On February 2, 2011, Scott brought a motion for contempt against Laurie. (CP 159) Scott asserted that Laurie violated the parenting plan provision restraining the parties from making disparaging comments about the other parent in the presence of the child. (CP 149-52) Scott also asserted that Laurie was interfering with his ability to communicate with the children while they were residing in her home. (CP 148-49) Scott was particularly

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<sup>1</sup> The mother and children lived in Okanogan County when the dissolution action was commenced, and post-decree issues have continued to be litigated there.

concerned that Laurie was poisoning the relationship between him and their younger daughter, who was then age 13. (CP 149)

**1. The Mother's Text Messages.**

In a text message to the younger daughter's cell phone, Laurie referred to Scott as "sneaky:" "Oh well, sneaky scott is what he is, sneaky." (CP 151) Rather than encouraging the younger daughter's residential time with Scott, Laurie also actively undermined the relationship by sending the daughter disparaging text messages while she was in Scott's home. For example, Laurie sent a text message to the younger daughter stating: "im sorry ur at scotts!" (CP 151) Laurie sent another text message to the younger daughter telling her: "The nights r already ticking down, Go home n go 2 bed n when u wake up there will be only 9 more nights left. Lv mom." (CP 151) In another message, Laurie texted: "I know, n with all of the hurtful people around u, i think your feelings are to b expected. I will b by my phone always n will gladly wake up anyti." (CP 152)

Laurie did not initially deny writing these text messages. Instead, she claimed, without further explanation, that they were "out of context" and "possibly alter[ed]." (CP 100) After the hearing

on the father's motion for contempt before the commissioner, the mother filed a declaration denying (for the first time) sending these text messages. The trial court properly struck this declaration because it was not part of the record before the commissioner. (See RP 6, 11-12)

## **2. The Mother's Other Actions.**

When Scott returned the children to Laurie after their summer residential time with him in 2010, Laurie presented the daughters with flowers marked "Survivor," and said "here girls, this is for surviving." (CP 150) When Scott returned the children to Laurie after a three-day weekend, Laurie announced to the daughters, "Three days! You made it!" (CP 151)

At the younger daughter's school performance, Laurie told another parent in the presence of Scott and the younger daughter that it was "so sad" that Scott was "taking [the daughters away for Christmas vacation]," preventing the daughters from spending time with the other parent's daughter during Christmas vacation. (CP 150)

Scott also alleged that Laurie violated the parenting plan by interfering with his ability to communicate with the parties'

daughters, in particular the older daughter, then age 16. (CP 148-49) Scott purchased a cell phone for the older daughter so that they could communicate, because it was difficult to reach anyone on Laurie's home phone. (CP 148) Laurie unilaterally took the cell phone away, making it "impossible" for Scott to speak to the older daughter. (CP 149) Laurie denied taking the phone from the daughter, and claimed that the daughter "lost" the phone. (CP 91)

**C. The Court Commissioner Admonished The Mother For Her Inappropriate Conduct With The Children.**

The parties appeared before Okanogan County Superior Court Commissioner Rick Weber on March 8, 2011. (CP 2) The commissioner found that Laurie called Scott "sneaky" to the younger daughter, stating it "is not appropriate. It's a poor choice of words, and its harmful to the children to include something like that." (CP 32) The commissioner also found that it was inappropriate that Laurie said to Scott in front of the daughters, "try not to lie to the children." (CP 33) The commissioner found that the mother commenting negatively to the children about spending time with the father was also not appropriate, and "it's really important that you don't encourage any animosity or negativity."

(CP 33) The commissioner told the mother, “You know you’re an adult, you’re a big person, you can do this.” (CP 33)

Despite the commissioner finding Laurie’s actions “troubling,” he did not find the mother in contempt of the parenting plan. (CP 32, 181-82) Instead, the commissioner stated, since it “already had a talk with [the mother], and I expect to be around here for a while and if this is a problem that doesn’t get resolved, I expect that it will be brought to my attention.” (CP 33)

**D. On Revision, The Trial Court Found The Mother In Contempt For Disparaging The Father To The Younger Daughter.**

Scott moved for revision. The motion was heard by Okanogan County Superior Court Judge Jack Buchard on April 14, 2011. (RP 1) The trial court found “there is substantial evidence that [Laurie] generated a text message to her daughter on July 1<sup>st</sup>, 2010, calling the father sneaky. Only nine more nights and he is sneaky.” (RP 43) The trial court did not find Laurie in contempt for her other actions, but found Laurie “in contempt for the July 1<sup>st</sup>, 2010, text in which she found the father to be sneaky, where she stated the father was sneaky.” (RP 44) The trial court found that

"[Laurie] had the ability to comply with the court order and that she will comply in the future and she may purge the contempt by not using such language in describing the father in the future." (RP 44)  
The trial court entered an order granting Scott's motion for revision and holding Laurie in contempt. (CP 168-69)

Laurie appeals. (CP 164)

### III. ARGUMENT

#### A. **The Trial Court Properly Found The Mother In Contempt Because She Disparaged The Father To The Child In Violation Of The Parenting Plan.**

"An attempt by a parent [ ] to refuse to perform the duties provided in the parenting plan [ ] shall be deemed bad faith and shall be punished by the court by holding the party in contempt of court and by awarding to the aggrieved party reasonable attorneys' fees and costs incidental in bringing a motion for contempt of court. RCW 26.09.160(1); **Marriage of Rideout**, 150 Wn. 2d 337, 352, 77 P.3d 1174 (2003). "Whether contempt is warranted in a particular case is a matter within the sound discretion of the trial court; unless that discretion is abused, it should not be disturbed on appeal." **King v. DSHS**, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988); **Marriage of Davisson**, 131 Wn. App. 220, 224, ¶ 6, 126 P.3d 76, *rev. denied*, 158 Wn.2d 1004 (2006) (trial court's findings on

contempt of a parenting plan reviewed for abuse of discretion). “Discretion is abused if the court’s exercise of discretion was based on untenable grounds or untenable reasons.” *Davisson*, 131 Wn. App. at 224, ¶ 6.

Here, the parenting plan restrained both parties from “mak[ing] any disparaging comments to or about the other parent in the presence of the child.” (CP 178) The mother disparaged the father by describing him as “sneaky” in a text message to the child’s cell phone; the child was the intended recipient. (CP 151: Oh well, sneaky scott is what he is, sneaky. What did you get 4 a gift?) In defending against the contempt in the trial court, the mother stated: “From my direct experiences with Scott during our decades of time together, I can attest to the fact that Scott enjoys being ‘sneaky’ and actually considers it to be one of his more useful personality traits.” (CP 101)

The mother’s only argument on appeal is that “there is no evidence that Ms. Juedes created the text message in the presence of the child.” (App. Br. 3) The mother argues that the parenting plan only prohibits “live, face-to-face comments made by one

parent ‘to or about the other parent in the presence of the child.’” (App. Br. 3) But the parenting plan is not so limited.

“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.” *R/L Associates, Inc. v. City of Seattle*, 113 Wn.2d 402, 410, 780 P.2d 838 (1989). Here, it is obvious that the purpose of this provision of the parenting plan is to prohibit a parent from disparaging the other parent to the child. There is nothing in the parenting plan that limits the prohibited conduct to “face-to-face” actions. To read into the parenting plan a provision that only limits “live face-to-face” disparagement would ultimately render the parenting plan completely ineffective, allowing a parent to freely disparage the other parent to the child as long as the parent did so by phone, email, or, as here, by text message.<sup>2</sup>

This is clearly not what was intended in the parenting plan. See *Marriage of Farr*, 87 Wn. App. 177, 940 P.2d 679 (1997), *rev. denied*, 134 Wn.2d 1014 (1998). The parenting plan at issue in *Farr* had language similar to the parenting plan in this case,

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<sup>2</sup> We leave to another day contemptuous conduct by Facebook, Skype, or Twitter.

prohibiting the parents from “criticiz[ing] or malign[ing] the other in front of the children.” 87 Wn. App. at 180. After the father left ten successive voice messages for the son on the mother’s answering machine, criticizing the mother and alleging that the mother was “harass[ing]” the child by allegedly not passing the father’s calls to the child, the mother moved for contempt. 87 Wn. App. at 180-81.

Like appellant here, the father in *Farr* made a hyper-technical argument to avoid contempt based on the technology used to disparage the other parent, complaining his messages had been illegally recorded on the mother’s answering machine. The courts soundly rejected his defense. The trial court found the father in contempt of the parenting plan for leaving these messages for the son. *Farr*, 87 Wn. App. at 181-82. The Court of Appeals affirmed, holding that the father’s “answering machine messages openly degrade [the mother] in violation of the parenting plan.” *Farr*, 87 Wn. App. at 184.

A “strict [but rational] construction” of the parenting plan also prohibits the mother’s conduct in this case. As in *Farr*, the mother’s text message to the child “openly degrade[d]” the father by calling him “sneaky,” in violation of the parenting plan provision prohibiting

the parties from disparaging the other parent to the child. This is not a case where the mother disparaged the father by sending *him* a text message, which might or might not be read by the child. Instead, the mother clearly intended to convey a disparaging comment about the father directly to the child. By sending the child a text message, which there is no dispute that the child received and read, the mother disparaged the father “in the child’s presence.” The trial court did not abuse its discretion in finding the mother in contempt of the parenting plan.

**B. This Court Should Award Attorney Fees To The Father For Having To Respond To This Appeal.**

Respondent asks this court to award attorney fees to him under RCW 26.09.160(1), RCW 7.21.030(3), and RAP 18.1, for having to respond to this appeal and defend the trial court’s finding of contempt. A party successfully defending an appeal of a contempt order is entitled to attorney fees on appeal. *Marriage of Rideout*, 150 Wn.2d at 359; *R.A. Hanson Co., Inc. v. Magnuson*, 79 Wn. App. 497, 503, 903 P.2d 496 (1995), *rev. denied*, 129 Wn.2d 1010 (1996). This court should also award attorney fees under RAP 18.9 because the mother’s appeal is frivolous. Her argument that she cannot be in contempt of the parenting plan

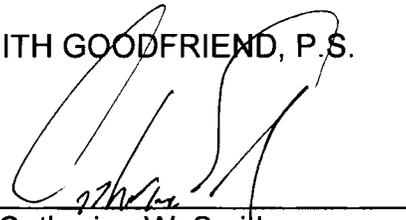
because she did not disparage the father to the child “face to face” is utterly without merit. **Marriage of Farr**, 87 Wn. App. at 188 (awarding attorney fees to mother because the father’s claims that he did not violate the parenting plan because he disparaged the mother in voice mails were frivolous); **Marriage of Healy**, 35 Wn. App. 402, 406, 667 P.2d 114, *rev. denied*, 100 Wn.2d 1023 (1983) (an appeal may be so devoid of merit to warrant the imposition of sanctions and an award of attorney fees).

#### IV. CONCLUSION

The trial court did not abuse its discretion in finding the mother in contempt of the parenting plan. This court should affirm and award the father his attorney fees in responding to this appeal.

Dated this 3<sup>rd</sup> day of November, 2011.

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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on Friday, November 4, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division III 500 N. Cedar St. Spokane, WA 99201	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
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**DATED** at Seattle, Washington this 4<sup>th</sup> day of November 2011.

  
\_\_\_\_\_  
Mia Porteous