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8/30/2017 2:24 PM
Court of Appeals
Division I
State of Washington

94989-1

No. ----------

COA No. 76279-6-I

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

In re the Marriage of

Islam Gamal ElDin Michael Abdel Ghani
Appellant

And

Anne Kari Brewitt
Respondent

ON REVIEW FROM THE SUPERIOR COURT OF

THE STATE OF WASHNGTON FOR KING COUNTY

PETITION FOR REVIEW

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TABLE OF AUTHORITIES

Statutes, Rules, & Other Authorities

A. IDENTITY OF PETITIONER

Islam Gamal ElDin Michael Abdel Ghani, appellant below, asks this court to accept review of the Court of Appeals' decision terminating review, see Appendix A.

B. COURT OF APPEALS DECISION

Petitioner Islam Gamal ElDin Michael Abdel Ghani, seeks review of the Court of Appeals' decision entered on July 31, 2017, affirming the trial court's order of granting the respondent's motion for revision, enforcing a revised permanent domestic violence order for protection which included the minor child and terminating all contacts between the father and his son.

C. ISSUES PRESENTED FOR REVIEW

1- Did the court followed the legislature which expressly provide that the best interests of the child control whether restrictions may be placed on a parent's residential time with his children, and followed the statute which provides that the particular factor or condition that justifies the restrictions must be adverse to the children's interests?

2- Is the court obligated when terminating the parent's residential time with his children to find the nexus between the parental conduct that is found to support the termination and an actual or likely adverse impact of the conduct on the children that justifies the termination?

3- Absent a showing of this necessary nexus between factors said to support termination of residential provisions of a parenting plan and the children's best interests, are the court's findings of the father's conduct still relevant?

4- Did the court properly fail to consider the best interests of the minor child by ignoring the child's need of a father, and did the court followed the legislative purposes that visitation rights must be determined with references to the needs of the child rather than the preferences of the parent?

5- Did the court misread the parties' final parenting plan, and the enforcement of a permanent domestic violence protection order terminating residential provisions acted as a de facto modification of the Parenting Plan?

D. STATEMENT OF THE CASE

Islam and Anne were married on June 10, 2013 at Alexandria, Egypt. They have only one child from their marriage; A.I.G (three and half year-old son). Islam and Anne Separated on September 15, 2014 when Anne abducted A.I.G and fled to US.

Anne commenced the marital dissolution action on October 7, 2014. At the time the petition for dissolution was filed, Anne sought and obtained a temporary domestic violence order for protection. In January 5, 2015 the parties agreed to convert the protection order to a temporary restraining order in exchange for Islam's counsel's agreement to accept service on his behalf of the summons and petition in the dissolution action. The agreed temporary restraining order remained in place until the entry of the final orders in December 2015 and the restraints of the Restraining Order were moved to the Decree of Dissolution. After mediation, the Final Parenting Plan, Order of Child Support and Decree of Dissolution were entered on December 15, 2014. Anne was awarded the custodian parent with whom the child resides.

On September 20, 2016 Anne has filed a motion to enforce decree of dissolution and for a permanent order for protection and sought to terminate the Skype visitations permanently between Islam and the child. In her declaration Anne said that Islam has repeatedly violated the restraints of the final orders, he has sent her WhatsApp messages outside the bounds of organizing the skype calls, sent WhatsApp voice messages for her to play to the child, and also send the child packages through her attorney. With her declaration Anne enclosed a copy of the WhatsApp

messages, CD with a voice message recording and a copy of a gift card. Anne claimed she has the right to obtain a permanent domestic violence order of protection to cease contact because Islam has violated the terms of the agreed restraints in the Decree of Dissolution.

On October 7, 2016 Islam has filed his reply declaration in which he showed the court by evidence that Anne was the one who started to violate and abuse the Restraining Order before the entry of the Final Orders, and other evidence of Anne abusing the terms of the Final Orders.

On October 17, 2106 Anne has filed her reply declaration in which she claimed that the sole issue before the court is whether Islam has violated the non-contact provisions of the Decree of Dissolution which then triggers the entry of a domestic violence protection order. In her reply declaration Anne admitted that she occasionally had tried to make some casual conversation with Islam all with the hope that they could get to a place where they have a civil relationship for the sake of the son. Anne also admitted she allowed Islam to send voice messages to the son but she never played these messages for him. Anne has admitted that she started the contact with Islam before the entry of the Final Orders while the Restraining Order was still in place, at that time Islam has filed a motion to dismiss for lack of subject matter, Anne invited Islam to see his son for

the first time after a long time of her taking him out Egypt in return for Islam to abandon his litigation.

On October 19, 2016 the case was heard in King County Superior Court before Commissioner Bonnie Canada-Thurston and Anne was granted an order for permanent protection order against Islam, and order was entered on October 19, 2016 excluding the minor child and Final Parenting Plan remained in effect.

On October 28, 2016 Anne through her attorney has filed a Motion for Revision of Commissioner Thurston's Orders. In his motion attorney of Anne claimed that Commissioner erred in not enforcing parties' agreement, erred by finding the parties didn't agree for the child to be included in the protection order, and erred by overruling the parties' agreement based on erroneous application of legal authority, case In re Marriage of Barone, 100 Wu.App. 241, 996 P.2d 654 (2000).

On November 1, 2016 the Motion for Revision was assigned for hearing to the Honorable Judge Douglas North.

On December 16, 2016 the Motion for Revision was heard in King County Superior Court before Judge Douglas North, both parties appeared, Islam appeared by phone.

Judge Douglas North granted Anne's Motion for Revision, granted her motion to Enforce Decree of Dissolution and for order of Protection. The court has signed a revised Permanent Domestic Violence Order for Protection which included the mother and the minor Child. Judge Douglas North has terminated permanently all contacts between Islam and his son with no future provisions.

The ruling of Judge North was based on the following findings; the father has violated the no-contact provisions of the Decree of dissolution and the parenting plan, the mother has, as a matter of right, to obtain a permanent domestic violence protection order as per paragraph 3.15 of the Decree, also Court found that Enforcement of the parties' agreement and entering a permanent protection order that includes the child and the mother does not result in a "de facto modification" of the final parenting plan, and the facts and holding of Barone are very different from and not applicable to the present case.

Islam appealed and Division One affirmed, reading that the parties have agreed in the Decree of Dissolution that the mother have the right to obtain a permanent domestic violence order for protection for her and for the son if the father violates the no-contact restraints, and since the parenting plan is incorporated by reference in the Decree and it expressly

states "the father's visitation is contingent upon his compliance with the restrictions set forth in this plan.", the Court of Appeals found the parenting plan provides for such relief of terminating the residential provisions and the enforcement of the permanent order for protection is not a de facto modification of the parenting plan.

Islam Seeks review in this court.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Under the Parenting Act of 1987 (Chapter 26.09 RCW), the best interests of the child continues to be the standard by which the trial court determines whether restrictions may be placed on a parent's residential time with his children. The statute also provides that the particular factor or condition that justifies the restriction must be adverse to the children's best interests. And when a limitation is placed in a parenting plan, the trial court must find a nexus between the parental conduct that is found to support the limitation and an actual or likely adverse impact of the conduct on the children that justifies the restriction. In re Marriage of Watson, 132 Wn. App. 222, 233-34, 130 P.3d 915 (1996).

Three years ago, this court held that restrictions imposed under RCW 26.09 must be reasonably calculated to prevent relatively severe physical, mental, or emotional harm to a child. ***In Re Marriage of Chandola, 180 Wn.2d 632, 327 P.3d 644 (2014).*** Unfortunately, here In this case, the Court of Appeals' acted afoul of all these rules when affirming the trial court's ruling of terminating the residential provisions between the father and the minor child without establishing any evidence supporting that the parent's conduct was adverse to the child's best interests. In the same time the Court of Appeals did not consider the severe mental and emotional harm this termination of child-parent relation will have on the child, by ignoring the child's need of a father, the trial court failed to properly consider the best interests of the child as required.

For these reasons, Court of Appeals' decision conflicts with numerous state cases declaring the rules and standards of the statute, in the same time this case presents an issue of substantial public interests. RAP 13.4(b)(1),(2) and (4).

Moreover, the Court of Appeals by misreading the parties' final parenting plan and in affirming the trial court ruling of terminating the residential provisions of the parenting plan has acted

against and defeated the statutory scheme which seeks to serve the best interests of children when specified certain steps required before modifying parenting plans and restricting or limiting the residential provisions. Here in this case, Court of Appeals' decision is in conflict with several state cases which hold that a domestic violence protection order cannot operate as a de facto modification of a parenting plan, and of substantial public interests the issue of simply filing a request for protection order to get a relief of restricting the residential provisions in the parenting plan. RAP 13.4(b)(1),(2) and (4).

Finally, the Court of Appeals in terminating the father's residential visits with his minor child ignored the due process clause of the Fourteenth Amendment to the United States Constitution, which protects a parent's fundamental right to "autonomy in Parenting. RAP 13.4(b)(3).

This case merits review for all the aforementioned reasons.

1- TRIAL COURT MUST FIND THE ADVERSE EFFECT TO THE CHILD BEST INTERESTS BEFORE IMPOSING PARENTING PLAN RESTRICTIONS UNDER RCW 26.09. RESTRICTIONS IMPOSED UNDER THE STATUTE MUST BE REASONABLY CALCULATED TO PREVENT RELATIVELY SEVERE PHYSICAL, MENTAL, OR EMAOTIONAL HARM TO THE CHILD

RCW 26.09.191(3) bars the trial court from "preclud[ing] or limit[ing] any provisions of the parenting plan" (i.e., restricting parental conduct) unless the evidence shows that "[a] parent's ... conduct may have an adverse effect on the child's best interests." ***In Re Marriage of Chandola, 180 Wn.2d 632, 327 P.3d 650 (2014).***

RCW 26.09.191(3)(g) is a catchall provision. It allows courts to "preclude or limit any provisions of the parenting plan" in light of "[s]uch other factors or conduct as the court expressly finds adverse to the best interests of the child." RCW 26.09.191(3)(g). *Id.*

Before imposing RCW 26.09.191(3)(g) restrictions, a trial court must find "`more than the normal ... hardships which predictably result from a dissolution of marriage.'" *Katare*, 175 Wash.2d at 36, 283 P.3d 546 (alteration in original) (quoting *Littlefield*, 133 Wash.2d at 55, 940 P.2d 1362). While the court "need not wait for actual harm to accrue before imposing restrictions," it may impose restrictions only where substantial evidence shows "`that a danger of... *damage* exists.'" *Id.* at 35-36, 283 P.3d 546 (emphasis added) (alteration in original) (quoting and citing *In re Marriage of Burrill*, 113 Wn.App. 863, 872, 56 P.3d 993(2002)).

RCW 26.09.191(3)(g) does require a particularized finding of a specific level of harm before restrictions may be imposed. ***In Re Marriage of Chandola, 180 Wn.2d 632, 327 P.3d 651 (2014).***

A trial court's decision is reviewed for an abuse of discretion, which "occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Katare,* 175 Wn.2d 23, 35, 283 P.3d 546 (2012) (citing *In re Marriage of Littlefield,* 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)). The trial court's findings of fact are treated as verities on appeal, so long as they are supported by substantial evidence. *Id.* (citing *Ferree v. Doric Co.,* 62 Wn.2d 561, 568, 383 P.2d 900 (1963)). "Substantial evidence" is evidence sufficient to persuade a fair-minded person of the truth of the matter asserted. *Id.*

Here in this case the trial court did not bother to show the nexus between the father's conduct that is found to support the restriction and the adverse impact of that conduct on the minor child that justifies the termination of the residential provisions. The Court of Appeals in affirming the trial court ruling did not show any evidence of the father's conduct being adverse to the child's best interests.

No fair-minded person would judge the WhatsApp messages, voice message recordings and the packages of toys and clothes sent by the

father to his son and which were provided by the respondent as the only evidence of the father's violation of the No-Contact restraints in the Decree of Dissolution that they are of potential harm or adverse effect on the child. Islam in his reply brief has detailed the contents of the WhatsApp messages and that it did not bear any threatening language or inflicting any fear on the mother and that it was only begging for extra time to see the child, and contrary to the mother's allegations and trial court findings, Islam did not discuss the mother's attire or appearance in the these messages. Reply Br. Appellant 19-21. At the same time Islam showed the court that the voice message recordings he sent to his son through the mother were only to let the son knows how much the father loves him, misses him and wants to play with him, and the same for the packages. Id.

Here, one additional thing Islam wants to make clear to this court; in some WhatsApp messages, Islam was badly asking the mother for some mercy to let him see his son for extra time and has used religious expressions reminding her that God is watching and that God will not have mercy for her in the other life the same she does to Islam depriving him from his son. These expressions cannot be regarded by any mean as threatening or were inflicting fear on the mother, the other life and the divine punishment of God are not by any means threats

because neither Islam nor any one on earth can interfere or has an input for that and thus the claim that these messages are threatening and inflicting fear and come under RCW 26.50.010 is totally absurd and illogical.

Here in this case, with the absence of substantial evidence establishing a nexus between Islam's violations of the No-Contact restraints of the decree of dissolution and the adverse effect and harm that this caused to the child, the trial court erred in enforcing a permanent domestic violence order for protection that terminates the residential provisions of the final parenting plan and the Court of Appeals erred affirming that ruling was under RCW 26.09.191 (3)(g).

This court in Chandola has concluded that by requiring trial courts to identify specific harms to the *child* before ordering parenting plan restrictions, RCW 26.09.191(3) prevents arbitrary imposition of the court's preferences.(citing Wicklund, 84 Wash.App. at 770-71, 932 P.2d 652. (Distinguishing trial court's disapproval of homosexuality from a finding of harm sufficient to justify parenting plan restrictions (citing *In re Marriage of Cabalquinto,* 43 Wn.App. 518, 519, 718 P.2d 7 (1986))). ***In Re Marriage of Chandola, 180 Wn.2d 632, 327 P.3d 656 (2014).***

Moreover, this court in Chandola has decided that RCW 26.09.191(3)(g) must be read in light of chapter 26.09 RCW's statement of policy, codified at RCW 26.09.002. And In light of this policy, as well as the nature of the specific grounds for parenting plan restrictions listed RCW 26.09.191(3)(a)-(f), this court has concluded that the legislature intended RCW 26.09.191(3) restrictions to apply only where necessary to "protect the child from physical, mental, or emotional harm," RCW 26.09.002, similar in severity to the harms posed by the "factors" specifically listed in RCW 26.09.191(3)(a)-(f). A trial court abuses its discretion if it imposes a restriction that is not reasonably calculated to prevent such a harm. Id at 652.

Here in this case the restrictions imposed by the trial court were severe, the ruling terminated the father-child relationship and the court has decided on its own the minor child does not need a father, neither the trial court nor the Court of appeals has justified this termination of residential provisions with the finding of relatively severe harm required by RCW 26.09.191(3)(g).

For all the aforementioned reasons, this court should accept the review, reverse the Court of Appeals' decision and exclude the minor child from the permanent order for protection.

2- THE PARTIES' FINAL PARENTING PLAN DOES NOT PROVIDE FOR A RELIEF TO TERMINATE RESIDENTIAL VISITS BETWEEN THE FATHER AND THE MINOR CHILD IF THE FATHER VIOLATES THE NO-CONTACT PROVISIONS

In this case it was clear that both trial court and Court of Appeals have misread the parties' Final parenting Plan.

Paragraph 3.10 of the Parenting Plan states:

> "The father shall have no residential time with the child except as identified in paragraph 3.1. The father visitation is contingent upon his compliance with the restrictions set forth in this plan". CP 9.

It is very important that "contingent upon his compliance with the restrictions set forth in this plan" be construed within the context of the whole plan and not isolated in this paragraph 3.10 only. The plain and unambiguous language of paragraph 3.1 where it details the two types of residential schedules and the restrictions under each part clearly explain what meant by "contingent upon his compliance with the restrictions....."as temporary halt of visitation that will resume with the father's compliance with these restrictions. The plan was expecting violations would occur and provided for provisions for these violations; an example is the plan's authorization to the mother to terminate **the single Skype call** if the father becomes emotional during the call or if it happens and he discusses the mother's personal life. CP

79. Here the plan did not authorize the termination of skype visitations in total, it was very clear from the language that it meant the single call. Other provisions were placed for the mother to assign a third party of her choosing to monitor the Skype visitations. Id. Islam in his reply brief has detailed several restrictions under the two types of the residential schedule and how the plan provided for the provisions for violations of restrictions. *Reply Br. Appellant 1-2, 11-12.*

Had the plan intended by "contingent upon his compliance with these restrictions...." permanent termination of residential schedule, it would not have provided for provisions for the violations, or it would have specified the maximum number of violations by which the residential schedule will terminate. But that was not the case of parties' Parenting Plan which never discussed terminating the father's contact with the minor child nor provided for a relief terminating the residential visits.

Here in this case both the trial court and Court of Appeals erred in their reliance that the final parenting plan authorizes the termination of the father's residential visits with his minor child if he violates the no-contact restraint based on their misinterpretation of "The father visitation is contingent upon his compliance with the restrictions set

forth in this plan". The ruling of including the child in the permanent domestic violence protection order should be reversed, the parenting plan does not authorize such inclusion and the child cannot be part of that order.

Moreover, here in this case the enforced permanent order for protection that terminated the father's contact with the minor child acted as a de facto modification of the parenting plan and both the trial court and Court of Appeals acted against the statute which required certain number of steps under RCW 26.09.260 and 270 before the parenting plan can be modified. The trial court based its ruling on an erroneous misreading of the parties' final plan that it authorizes the termination of the residential visits if the father violates the no-contact restraints and concluded there was no need for a separate modification petition and the Court of Appeals' affirmed that error.

This issue is of substantial public interest and in the same time the Court of Appeals has acted against the statutory scheme, a protection order was filed to modify the parenting plan and terminating the father's contact with the minor child, for this reason this court should accept review, reverse the Court of Appeals' decision and exclude the minor child from the permanent order for protection and maintain the provisions of the parenting plan in effect with no changes.

F. CONCLUSION

This case raises unprecedentedly very serious issues for the first time in the history of the state of Washington, a minor child has been terminated all contacts with his father who lives in another country and who was denied the visa entry to US and the Skype visits were the only resort for the father to see and contact his son, the trial court has decided the child does not need his biological father, the court did not consider the child best interests before terminating the residential visits and did not care to follow the standard establishing the evidence that the father's conduct of sending WhatsApp messages to the mother begging for extra time to see the son was of potential harm and adverse effect on the child, the Court of Appeals has also defeated the statutory scheme affirming that ruling. Both courts decided to adopt the respondent's interpretation of the parties' final parenting plan construing paragraph 3.10 of that plan in isolation of the whole context and justifying by that narrow interpretation that the plan authorizes permanent termination if the father violates the no-contact restraints and taking that as a reason to terminate the parent-child contact, defending that the relief issued with the permanent order for protection is not a de facto modification of the parenting plan.

The consequences of this ruling are severe for both the father and the son, the statute was defeated, and thousands of kids will be the victims to that ruling in the future when this case be taken as legal authority. Islam is respectfully asking this court to take review and to reverse the Court of Appeals and remand this case to King County Superior Court to exclude the minor child from the permanent domestic violence order for protection and to maintain the Final Parenting Plan entered in December 2015 with its provisions in effect.

RESPECTFULLY SUBMITTED on this 30th day of Aug, 2017

Islam Abdel Ghani

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No. 76279-6-I

COURT OF APPEALS, DIVISION I,

OF THE STATE OF WASHINGTON

In re Marriage of: **ISLAM GAMAL EL DIN MICHAEL ABDEL GHANI,** **Appellant** **and** **ANNE KARI BREWITT,** **Respondent**	**DECLARATION OF SERVICE**

Islam Gamal ElDin Michael Abdel Ghani certifies as follows:

On the 30th day of August, 2017, I caused to be delivered via electronic mail in pdf format true and correct copy of the Petition for Review addressed to the following:

Caleb M. Oken-Berg
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Dated this 30th day of Aug, 2017

Islam Abdel Ghani

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FOUR SEASONS HOTEL

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Transmittal Information

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Appellate Court Case Title:	Anne Kari Brewitt, Respondent v. Islam Gamal El Din Michael Abdel Ghani, Appellant
Superior Court Case Number:	14-3-06685-0

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July 31, 2017

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CASE #: 76279-6-I
Anne Kari Brewitt, Respondent v. Islam Gamal El Din Michael Abdel Ghani, Appellant

King County, Cause No. 14-3-06685-0.SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Affirmed."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of $200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

emp

Enclosure

c: The Honorable Douglass North

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

ANEE KARI BREWITT, Respondent, v. ISLAM GAMAL EL DIN MICHAEL ABDEL GHANI, Appellant.	No. 76279-6-I UNPUBLISHED OPINION FILED: July 31, 2017

VERELLEN, C.J. — When Anne Brewitt and Islam Gamal El Din Michael Abdel Ghani dissolved their marriage, they expressly agreed that if Ghani violated any of the contact restraints in the decree or final parenting plan, Brewitt would be entitled to enforce the decree by means of a permanent protection order for herself and the parties' child. After Ghani violated the contact restrictions, Brewitt enforced the decree under chapter 26.09 RCW and obtained a permanent protection order for herself and the child. Ghani appeals, arguing the trial court abused its discretion in including the child in the permanent protection order against him. We disagree and affirm.

FACTS

In June 2013, Anne Brewitt, an American citizen, and Islam Gamal El Din Michael Abdel Ghani, an Egyptian citizen, married in Egypt. Their son was born in Egypt in April 2014.

Brewitt's 24-page declaration submitted to the trial court stated the following facts. Ghani subjected Brewitt to frequent physical, verbal, and emotional abuse. He would control what she could wear and the temperature of their apartment, and sometimes confined her and their son to their apartment for 15 hours alone, not allowing Brewitt to even open the balcony. Ghani would yell at Brewitt and hit her in the presence of their child. In one incident, Ghani returned home from work in a rage and slapped Brewitt in the face while she sat on the couch with the child. Brewitt attempted to protect the child by shielding him with her body, but Ghani hit both of them. In his declaration, Ghani disputed Brewitt's descriptions of their relationship and his alleged domestic abuse, but he did admit to having slapped her face at least once.

In September 2014, Ghani became enraged after he broke into Brewitt's cell phone and found a picture she had sent to her mother and girlfriend when she was pregnant. The picture showed Brewitt fully dressed but not wearing a veil. Ghani told Brewitt she had three days to leave Egypt without their son and took the child's passport. Brewitt sought assistance from the United States embassy in Cairo. Based on her sworn statement, the United States issued an emergency passport for the child based on the threats to Brewitt's life. The embassy kept Brewitt and the child in a safe place and helped them leave Egypt for the United States on September 15, 2014. They moved to Seattle in October 2014.

Shortly after arriving in Seattle, Brewitt filed for dissolution and a domestic violence protection order in King County Superior Court. The trial court issued a temporary domestic violence protection order for Brewitt and the child and awarded Brewitt temporary custody of the child.

In November 2014, Ghani obtained counsel to appear on his behalf. In January 2015, after two months of negotiations, Ghani agreed for his counsel to accept service of the dissolution pleadings on his behalf and consented to personal jurisdiction in King County. On February 10, 2015, Ghani filed a response to Brewitt's dissolution petition. Brewitt learned for the first time by way of Ghani's response that he had unilaterally obtained a divorce in Egypt on January 17, 2015. Brewitt received no notice of the Egyptian divorce proceedings, nor was she given any opportunity to participate. Ghani subsequently filed an appeal in Egypt, again with no notice to Brewitt, seeking to terminate Brewitt's custody rights on the grounds that she was an apostate.

Ghani filed a CR 12(b)(1) motion to dismiss the child custody action in King County for lack of subject matter jurisdiction. The trial court rejected Ghani's theory that the Egyptian court made a valid custody decision. The court also found that Ghani had "committed frequent and repeated acts of serious domestic violence against [Brewitt]," and that Washington had exclusive continuing subject matter jurisdiction over their son.[1]

On September 1, 2015, a court-appointed parenting evaluator issued a parenting plan evaluation which included recommendations that the parties' son reside with Brewitt, that Brewitt have sole decision-making authority for the child's education, religious upbringing, and nonemergency health care, and that restrictions be placed on Ghani's contact with the child based on a history of acts of domestic violence.

On November 24, 2015, the parties and their attorneys attended a mediation where they agreed to final orders in their dissolution action. Specifically, the parties

[1] Clerk's Papers (CP) at 318, 323-24.

agreed to maintain all the existing restraints against Ghani from the temporary restraining order, but those restraints were moved into the decree of dissolution. The parties also agreed that if Ghani violated any of the restraints set forth in the decree, Brewitt had the right to a permanent domestic violence protection order, "which shall include at minimum the provisions set forth in this paragraph 3.15."[2] Paragraph 3.15 of the decree included provisions expressly prohibiting Ghani from contacting Brewitt or their child, "except as set forth in the final parenting plan."[3] The parties' final parenting plan incorporated the parenting evaluator's findings that there was a basis for restrictions and limitations on Ghani's residential time under RCW 26.09.191 based on a history of domestic violence.

Under the final parenting plan, Ghani was permitted to have Skype visitation with his son once a week for 15 minutes. The plan specifically states that Brewitt and Ghani may have contact during the Skype visitation "only to the extent necessary to initiate and facilitate the Skype visitation. If either party needs to reschedule the Skype visitation, the parties may email or use Viber to communicate with each other for this limited purpose only."[4] The plan also specifically states, "The respondent shall be prohibited from discussing the mother or her personal life or any legal matters with the child. If the father violates these provisions or becomes emotional during the call, the mother may terminate the Skype call."[5] At paragraph 3.10 of the parenting plan, the

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[2] CP at 33.

[3] CP at 32-33.

[4] CP at 7.

[5] CP at 7.

parties agreed that the "father's visitation is contingent upon his compliance with the restrictions set forth in this plan."[6]

After entry of the final orders on December 4, 2015, Ghani almost immediately began violating the contact restraints in the decree of dissolution and parenting plan. Ghani repeatedly contacted Brewitt outside the scope of what was permissible, including inquiries about her personal life, the men she was dating, and the religious upbringing of their son. Ghani also made contact with Brewitt through third parties. He sent Brewitt voice messages "almost every day," and pressured her to play the messages for their son.[7] Ghani also frequently sent Brewitt text messages that were threatening, accusatory, and contained religious overtones.

Despite Ghani's violations of the contact restraints in the dissolution decree, Brewitt did not immediately seek enforcement of the decree. She hoped to handle the situation without involving the court. But Ghani's behavior did not stop, and his violations of the contact restraints escalated. On September 20, 2016, Brewitt filed a motion to enforce the decree of dissolution in which she requested that the court enter the permanent protection order that the parties contemplated in the event that Ghani failed to abide by the terms of the child custody agreements.

On November 19, 2016, a family court commissioner expressly found that Ghani had violated "the no contact provisions in the Decree and the contact allowed under the parenting plan," and that the parties had agreed that both Brewitt and the child would be

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[6] CP at 9.

[7] CP at 74.

entitled to a permanent protection order.[8] However, the commissioner determined that the case In re Marriage of Barone[9] "overrule[d] the parties' agreement" and therefore, "the child shall not be included in the protection order."[10]

Brewitt sought revision of the commissioner's order. On December 16, 2016, a superior court judge granted Brewitt's motion and entered a permanent protection order for both Brewitt and her son. The judge "agree[d] with the Commissioner's findings that the father violated the contact provisions in the decree and final parenting plan," but found that "the Commissioner's findings that the father's violations should not result in a permanent protection order that includes the child and mother" were "contradicted by the plain language of both the final parenting plan and decree of dissolution entered in this matter."[11] The court further found:

> The decree of dissolution specifically states that if the father violates the no-contact provisions, then the mother has, as a matter of right, to obtain a permanent domestic violence protection order 'which shall include at minimum the provisions set forth in this paragraph 3.15.' The no-contact provisions of Paragraph 3.15 specifically cover both the mother and the minor child, not just the mother, and include a prohibition against the father from having any contact with the minor child. In addition, the parties' final parenting plan clearly states that the father's ongoing contact and visitation with the child is contingent upon his compliance with the restrictions set forth in the plan. The commissioner's decision to enter a protection order that excludes the minor child is a clear violation of the parties' decree.[12]

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[8] CP at 131-32.

[9] 100 Wn. App. 241, 996 P.2d 654 (2000).

[10] CP at 132.

[11] CP at 199-200.

[12] CP at 200.

The judge also found that the holding from Barone did not apply to the present facts because the parenting plan was not being modified with the entry of a protection order specifically contemplated by the parties. The judge explained that Brewitt's right to obtain a protection order was "agreed to at the time the parenting plan and decree were entered into,"[13] and that enforcement of the parties' agreement and entering a permanent protection order that included Brewitt and the minor child did "not result in a 'de facto modification' of the final parenting plan."[14]

Ghani appeals.

ANALYSIS

Ghani argues the trial court misread the parties' child custody agreements by including the parties' son in the permanent protection order. We disagree.

"A trial court's disposition of a case involving rights of custody and visitation will not be disturbed on appeal unless the court manifestly abused its discretion."[15] Evidentiary decisions and decisions to grant or deny a protection order are also reviewed for abuse of discretion.[16] An abuse of discretion "occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons."[17]

We review the effect of a dissolution as a question of law.[18] When the parties incorporate an agreement into a dissolution decree, we must ascertain the parties'

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[13] Report of Proceedings (RP) (Dec. 16, 2016) at 20; CP at 200.

[14] CP at 200.

[15] Matter of Marriage of Cabalquinto, 100 Wn.2d 325, 327, 669 P.2d 886 (1983).

[16] Hecker v. Cortinas, 110 Wn. App. 865, 869, 43 P.3d 50 (2002).

[17] Katare v. Katare, 175 Wn.2d 23, 35, 283 P.3d 546 (2012).

[18] In re Marriage of Gimlett, 95 Wn.2d 699, 705, 629 P.2d 450 (1981).

intent at the time of the agreement.[19] "If the language of the decree is unambiguous, there is no room for interpretation."[20]

The general rules of construction that apply to contracts and other writings also apply to decrees.[21] "We read a decree in its entirety and construe it as a whole to give effect to every word and part, if possible."[22]

Here, the parties expressly incorporated the parties' final parenting plan into the dissolution decree: "The parties shall comply with the Parenting Plan signed by the court on this date . . . . The Parenting Plan signed by the court is approved and *incorporated as part of this decree.*"[23] The decree expressly states, "The parties agree that if the father/respondent violates any terms of this order, the mother shall [have] the right to obtain *a permanent domestic violence protection order* against the father, *which shall include at minimum the provisions set forth in this paragraph 3.15.*"[24] The provisions of paragraph 3.15 in the decree expressly include both Brewitt and the child:

> Respondent is [r]estrained from causing physical harm . . . and from molesting, harassing, threatening, or stalking *the petitioner or the minor child.*
>
> Respondent is restrained from harassing, following, . . . and using telephonic . . . or other electronic means to monitor . . . communication *of petitioner or the minor child.*

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[19] In re Marriage of Smith, 158 Wn. App. 248, 255, 241 P.3d 449 (2010).

[20] Id. at 256.

[21] Id.

[22] Id.

[23] CP at 32 (emphasis added).

[24] CP at 33 (emphasis added).

> *Respondent is* restrained *from coming near and from having any contact whatsoever . . . with petitioner and the minor[ ], except as set forth in the final parenting plan* entered under this cause number.
>
> . . . .
>
> Respondent is excluded *from petitioner's residence, workplace, school; the day care or school of the minor child. . . .*
>
> Respondent is prohibited from knowingly coming within, or knowingly remaining within 500 feet (distance) *of: petitioner's residence, workplace, school; the day care or school of the minor child.*[25]

In addition, the agreed final parenting plan expressly states, "The *father's visitation is contingent* upon his compliance with the restrictions set forth in this plan."[26]

Contrary to Ghani's argument, the trial court did not misread the parties' child custody agreements by including the parties' son in the protection order. When read together, the terms of the decree and final parenting plan unambiguously provide for a permanent protection order for the mother and the child if Ghani violated the contact restraints set forth in the orders. Here, both the commissioner and the superior court expressly found that Ghani violated the contact restraints in the decree and parenting plan. Ghani does not assign error to those findings, so they are verities on appeal.[27]

Ghani argues that under chapter 26.50 RCW, the trial court was restricted to a one-year protection order for the parties' child. Because the order was squarely implemented under chapter 26.09 RCW rather than chapter 26.50 RCW, Ghani's argument fails.

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[25] CP at 32-33 (emphasis added).

[26] CP at 9 (emphasis added).

[27] In re Marriage of Petrie, 105 Wn. App. 268, 275, 19 P.3d 443 (2001).

While a protection order issued under RCW 26.50.060 restraining a parent from contacting his child is restricted to "a fixed period not to exceed one year," "[t]his *limitation is not applicable to orders for protection issued under chapter 26.09*, 26.10, or 26.26 RCW."[28] Here, Brewitt did not petition for a protection order under chapter 26.50 RCW. Rather, she filed a motion to enforce the terms of the parties' dissolution decree, under which Ghani expressly agreed that Brewitt and the child would be entitled to a permanent protection order if he violated the terms of the parties' child custody orders.[29] The revised protection order expressly recognizes: "[T]he parties agreed in the Decree of Dissolution . . . that the Petitioner has the right to obtain this Order for Protection if Respondent violated the terms of the Decree. *This Order is thus an enforcement of the Decree of Dissolution, not a new/separate action.*"[30] Consistent with the agreement of the parties, the court was not limited to a one-year protection order for the child.[31]

Relying on In re Marriage of Stewart,[32] Ghani argues that the trial court erred "in permanently suspending the residential provisions of the parties' [f]inal [p]arenting [p]lan

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[28] RCW 26.50.060(2) (emphasis added).

[29] See CP at 34 ("Motion to Enforce Decree of Dissolution and for Order of Protection"). RCW 26.09.050(1) expressly authorizes the court to make a "provision for the issuance . . . of the restraint provisions of a domestic violence protection order" in entering a decree of dissolution.

[30] CP at 203 (emphasis added).

[31] See generally Muma v. Muma, 115 Wn. App. 1, 7, 60 P.3d 592 (2002) (Fifty-year no-contact order not "invalid" merely because it purports to extend beyond the one-year period allowable under former RCW 26.50.060 (2000)); City of Seattle v. May, 151 Wn. App. 694, 695, 213 P.3d 945 (2009) (permanent protection order was not invalid when it did not contain language showing a specific finding made by the issuing court satisfying the statutory requirement under former RCW 26.50.060 that for orders exceeding one year the court must affirmatively find that the respondent is "likely to resume acts of domestic violence" against his former spouse and child).

[32] 133 Wn. App. 545, 137 P.3d 25 (2006).

by enforcing a [domestic violence protection order] that terminates contact between the father and minor child."[33] In Stewart, the mother obtained a one-year protection order under chapter 26.50 RCW that served to temporarily suspend the father's contact with the children while she sought modification of their existing parenting plan.[34] The father appealed, arguing that "the protection order amounted to an improper modification of the residential provisions of the parenting plan."[35] This court disagreed and upheld the one-year protection order, holding that a "temporary suspension pending further proceedings is not a de facto modification" of a parenting plan.[36]

Ghani's reliance on Stewart is misplaced. In Stewart, the mother was required to file a petition for a protection order under chapter 26.50 RCW and a separate petition for modification of the parties' existing parenting plan because the plan in that case did not contemplate or include the contingencies present here—specifically, that the father's visitation with the child depended on his compliance with the terms of the plan. Unlike the mother in Stewart, Brewitt was not required to file a separate modification petition because no changes to the terms of the parties' parenting plan were being sought. Rather, Brewitt sought to enforce the agreed upon terms in the parties' dissolution decree under chapter 26.09 RCW. Similarly, here, the entry of the permanent protection order did not "suspend" Ghani's visitation under the parties' parenting plan given that Ghani did not have any rights to visitation with the child once the court made

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[33] Appellant's Br. at 18.

[34] Stewart, 133 Wn. App. at 549.

[35] Id. at 554.

[36] Id.

undisputed findings that he violated the terms of the plan.

Finally, Ghani argues that in terminating the residential provisions of the parties' parenting plan, the trial court acted against the child's best interest. His argument fails. In fashioning a parenting plan, the trial court exercises discretion and considers the factors of RCW 26.09.187(3)(a) to determine the residential arrangements that best serve the interests of the child. RCW 26.09.187(3)(a)(ii) expressly states that "the court shall consider" the "agreements of the parties, provided they were entered into knowingly and voluntarily." Here, Ghani, while represented by counsel, expressly agreed to the provision that if he violated the contact restraints in the decree and parenting plan, he would forfeit his visitation with the child.

RCW 26.09.191 expressly provides that a "parent's residential time with the child *shall* be limited" if it is found that the parent engaged in "a history of acts of domestic violence as defined in RCW 26.50.010(1)."[37] These limitations must be tailored based on the individual circumstances and could range from limits such as supervised visitation or reduced parenting time, "all the way to suspended parenting time."[38] Furthermore, if a "parent's involvement or conduct may have an adverse effect on the child's best interests," "the court may preclude or limit any provisions of the parenting plan."[39]

Here, the parenting evaluator's report, which was incorporated by reference into the parties' final parenting plan, notes that Ghani has a history of being "unable to focus

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[37] RCW 26.09.191(2)(a), (b) (emphasis added).

[38] 20 SCOTT J. HORENSTEIN, WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW § 33:23, at 326 (2d ed. 2015).

[39] RCW 26.09.191(3)(g).

solely on developing a relationship with the child without questioning the mother or commenting about her appearance and attire," and that this is "[o]f great concern."[40] Based on this behavior and Ghani's acts of domestic violence, the parenting evaluator recommended the entry of a continuing restraining order to protect Brewitt and the child from Ghani's abuse and harassment. In granting Brewitt's request for enforcement of the dissolution decree and a permanent protection order, the superior court specifically found that the very behavior described by the parenting evaluator was ongoing.[41] Ghani does not assign error to the trial court's findings, so they are verities on appeal.[42]

We conclude the court acted in the child's best interest by enforcing the terms of the parties' agreed child custody orders. In essence, Ghani asks this court to believe his version of events over Brewitt's. But the evaluation of witness credibility is the province of the fact finder and is not reviewable by this court.[43] And the extent to which Ghani believes Brewitt manipulated the situation also involves a credibility determination not reviewable by this court.[44] He contends that Brewitt also violated the contact restraints in the parties' child custody agreements but, unlike Ghani, Brewitt was not subject to the restraints.

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[40] CP at 374.

[41] RP (Dec. 16, 2016) at 19 ("I read and reviewed all the messages that were submitted as part of this package, and it's clear that Mr. Abdel Ghani has repeatedly engaged in violations of the restrictions that were contained in the parenting plan and in the decree. He keeps trying to draw the mother into conversation to try and talk to her about her feelings, about her appearance, about what she is doing, and none of that is, of course, allowed.").

[42] Petrie, 105 Wn. App. at 275.

[43] See State v. Andy, 182 Wn.2d 294, 303, 340 P.3d 840 (2014).

[44] Id.

Brewitt requests an award of attorney fees under RAP 18.9 for a frivolous appeal. An appeal is frivolous where it presents no debatable issues or legitimate arguments for an extension of law.[45] While Ghani presents several issues on appeal that are not supported by the facts or the law, he also presented some debatable issues. Accordingly, we conclude Brewitt is not entitled to attorney fees and costs on appeal.[46]

Affirmed.

WE CONCUR:

COX, J.

[45] Harrington v. Pailthorp, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992).

[46] We also decline to award Ghani attorney fees and costs on appeal.

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