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Washington State
Court of Appeals
Division Two

June 17, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of EUGENE SOOTO, Respondent, and CARA SOOTO, Appellant.	No. 58056-0-II UNPUBLISHED OPINION

GLASGOW, J.—Cara Valentine and Eugene Sooto were married for several years and had one child together, ES.[1] Valentine and Sooto agree that they had a high-conflict marriage. Sooto acknowledges he had a history of domestic violence that led to a protection order against him.

At the dissolution trial, when ES was four years old, Valentine asked the court to impose limitations on Sooto's residential time with ES under RCW 26.09.191 based on Sooto's history of domestic violence. Valentine also asked for sole decision-making authority. Sooto requested equal residential time and joint decision-making. The record does not show that Sooto requested any RCW 26.09.191 findings or restrictions against Valentine.

[1] Cara's last name was changed from Sooto to Valentine in the final dissolution order. In addition, the record shows that ES's correct pronouns were she/her at the time of trial. Seeing no update in the parties' briefs to this court, we use she/her pronouns for ES in this opinion.

In its final parenting plan, the trial court determined that both parents were subject to limitations under RCW 26.09.191, but the written orders do not explain the underlying factual bases for its conclusions. In its oral ruling, the trial court explained that Sooto had a history of domestic violence. The trial court also concluded that Valentine had a history of domestic violence based on a vague finding that she engaged in kicking and yelling. The trial court also said that Valentine engaged in abusive use of conflict through a pattern of false allegations against Sooto, but the trial court did not explain which of Valentine's statements it found to be false and abusive or why. Moreover, the trial court did not find that any of Valentine's allegations against Sooto that the court believed were the basis for abusive use of conflict also created a danger of damaging ES's psychological development. Finally, the court said that Valentine withheld ES from Sooto without good cause, but the court did not identify the time period or factual circumstances that constituted withholding. The trial court specifically found that Valentine's sexual and physical boundaries were too fluid for the average person to follow, but it is unclear how this finding influenced the court's RCW 26.09.191 determinations. Based only on its RCW 26.09.191 determinations, without addressing the factors listed in RCW 26.09.187 regarding the best interest of the child, the trial court entered a final parenting plan ordering joint decision-making and equal residential time.

We hold that the court erred because the court's minimal factual findings do not support its conclusions that Valentine's conduct met the statutory definitions of domestic violence, abusive use of conflict, and unreasonable withholding of ES from Sooto under RCW 26.09.191. The court's inadequate findings also fail to support the conclusion that limitations against Valentine were warranted in the final parenting plan. To the extent the court's finding about Valentine's

boundaries factored into its imposition of RCW 26.09.191 restrictions, we hold that the finding is contrary to modern law regarding consent and cannot support restrictions under RCW 26.09.191. Moreover, it was legal error to order joint decision-making because the applicable version of RCW 26.19.191 bars joint decision-making when any parent has a history of domestic violence.[2] Because the trial court relied on its incorrect application of RCW 26.09.191 to determine the residential schedule, decision-making authority, and other conditions of the parenting plan, we reverse the final parenting plan in its entirety. Though Valentine raises other arguments, we do not consider them.

We acknowledge that it has been years since the parenting plan at issue was entered, in part because of several delays in briefing the case to this court. Circumstances have undoubtedly changed. As a result, the trial court is not limited to consideration of the evidence presented at the prior dissolution trial and is free to manage the proceedings on remand in the way that the trial court concludes will best resolve the issues necessary to establish a parenting plan in the best interest of ES.

Finally, Valentine requests reasonable attorney fees under RCW 26.09.140. We deny her request because she has not filed an affidavit of financial need.

[2] We must apply the law as it is currently written. We note, however, that the legislature adopted and the governor recently signed into law significant legislation amending RCW 26.09.191 and related statutes. LAWS OF 2025, ch. 166, § 1. The new legislation will become effective at the end of July 2025. *Id.* We do not have the applicability of the new statute before us and we leave it to the parties to argue and the trial court to determine on remand the applicability of the statutory amendments.

FACTS

I. BACKGROUND

A. Marriage

Valentine and Sooto were married in 2013. They had one child together, ES, who was born in 2018.

Valentine and Sooto agree that early in their marriage, Sooto covered Valentine's mouth with his hand during an argument. Valentine testified that this occurred as he pushed her back against a kitchen counter so she could not get away. They also agree that on one occasion, Sooto dragged Valentine by the wrists from the bedroom into the hallway during an argument, then shut the door. Sooto admitted that he pulled Valentine off her feet onto the ground and then dragged her five feet. According to Sooto, he did this to get away from Valentine because she was hitting him in the groin with a towel. Valentine testified that afterwards she had scrapes and bruises. Sooto said that during this argument, Valentine kicked a hole in the door, but Valentine denied this.

Near the end of their marriage in 2019, Valentine and Sooto entered counseling at a sexual assault resource center to improve their communication around consent and physical boundaries. Valentine told the counselor that she considered some of Sooto's prior behavior with her to be sexual assault and said she was concerned about Sooto's understanding of consent. Sooto "'expresse[d] an understanding that past sexual experiences with [Valentine] are considered sexual assault.'" 1 Verbatim R. of Trial Proc.(VRTP) (Jan. 11, 2023) at 97 (quoting record). Sooto agreed that from then on, he would ask Valentine before initiating sexual touch.

Valentine and Sooto slept in separate bedrooms, and Sooto regularly brought ES into Valentine's room in the morning with Valentine's permission. One morning, Sooto brought ES

into Valentine's room and then began kissing Valentine on the mouth while she was still sleeping. Sooto did not ask before kissing Valentine, even though they had agreed he would do so. According to Sooto, Valentine left to brush her teeth and then returned and resumed kissing with him, but Valentine denied this. Valentine testified that she woke up to Sooto on top of her, pinning her arms and kissing her, and she was able to divert him by pointing out that ES needed to be fed. Later that morning, Valentine told Sooto that she considered that incident to be sexual assault.

B. Separation

Valentine and Sooto separated in September 2020. At first, Sooto visited ES frequently for full day visits. Valentine disagreed with some of Sooto's parenting and thought he was "aggressive" and "violent" when placing ES in timeout. 1 VRTP (Jan. 12, 2023) at 208. Valentine began to require that another adult be present during Sooto's visits with ES.

The next month, Valentine sought a temporary domestic violence protection order based on Sooto's history of domestic violence. In her petition, she described the incident when she woke up with Sooto on top of her pinning her down, the incident where he held his hand over her mouth, and another incident when the police were called. She also alleged other incidents of physical and sexual violence over the course of their relationship and claimed Sooto was rough with ES. The court granted the temporary protection order and limited Sooto to "Daily Video Contact" with ES. Clerk's Papers (CP) at 69.

II. PRETRIAL DISSOLUTION PROCEEDINGS

A. Unsupervised Visitation

About two weeks later, Sooto petitioned for dissolution. The first temporary parenting plan contained a finding that Sooto had a history of domestic violence but ordered that Sooto would

have unsupervised visitation with ES. Those visits went well and continued for about four months until Valentine and ES moved to Arizona.

Then, a guardian ad litem (GAL) filed a report recommending that Sooto continue to have unsupervised visitation and undergo a domestic violence evaluation and a psychological evaluation. Additionally, the GAL recommended that RCW 26.09.191 restrictions against Sooto be maintained based on the finding of domestic violence underlying the court's earlier protection order.

The court entered a new temporary parenting plan adopting the GAL's recommendations and again ordering unsupervised visitation for Sooto. This temporary plan added that Sooto's visitation should increase to overnights when he completed the recommended evaluations and any recommended treatments. Sooto had difficulty immediately scheduling the evaluations, but visitation went well under this plan, despite the cost and inconvenience involved in travelling to Arizona for visits.

B. Trip to Mexico

About six months later, both parties and ES attended a family wedding in Mexico, even though a protection order was still in place limiting contact between Sooto and Valentine. Before the wedding, several family members agreed on a plan to ensure Valentine and Sooto could attend without issue. They agreed that Valentine and Sooto would not have any direct contact with each other and all communication would go through a liaison, the bride's father.

However, Sooto deviated from the plan by approaching Valentine to exchange ES. There was some testimony that Sooto did this because the liaison was too drunk to facilitate at that point

in the evening. They also had contact when Sooto placed his hand on Valentine's hip during a family photo as directed by the photographer. Valentine disagreed that the contact was justified.

C. Supervised Visitation

About two months later, Sooto visited ES in Arizona and Valentine noticed at the exchange that ES was not wearing underwear. Sooto explained that he had tried to take ES swimming, but could not because the hotel was out of towels. According to Valentine, ES later said that Sooto touched her genitals inappropriately and demonstrated the contact in great detail. Valentine reported the suspected abuse to ES's primary care provider, who recommended having ES evaluated. Then, the alleged abuse was reported to the local Arizona authorities, who began an investigation.

The next month, Sooto underwent his domestic violence evaluation. The evaluator assessed Sooto as a level three offender because he admitted to behavior suggesting a high risk for re-offense. The evaluator recommended a parenting course and 52 weeks of domestic violence treatment.

The Arizona investigation ultimately resulted in a determination that the sexual abuse allegations were "unsubstantiated." 1 VRTP (Jan. 19, 2023) at 339. However, the order requiring supervised visitation remained in effect. In summer 2022, Valentine returned to Washington in part because she needed cancer treatment. Sooto began his 52-week domestic violence treatment but he never started attending the parenting class.

III. DISSOLUTION TRIAL

The case went to trial in January 2023, and Valentine requested that supervised visitation continue with gradual increases in visitation time as Sooto completed additional assessments and

treatment. Valentine also requested sole decision-making authority and asked that Sooto's decision-making be limited based on his history of domestic violence under RCW 26.09.191.

Sooto requested equal residential time and equal decision-making authority. Sooto did not ask the court to find that Valentine had a history of domestic violence or find any other basis for restriction under RCW 26.09.191.

A. Evidence of Conflict Between Valentine and Sooto

During their testimony, both parties described heated arguments during their marriage, some of which turned physical. Sooto described a time when Valentine "went to a type of rage" after he made a mistake. VRTP (Jan. 11, 2023) at 25. When asked to describe the rage, he said: "Name calling, screaming at the top of her voice . . . Calling me names, saying that I was suppressing her voice, saying that I don't listen to her, saying that I don't -- that she doesn't matter to me, things like that." *Id.* at 26. Sooto tried to walk away and Valentine followed. Sooto testified: "I put my hand over her mouth and told her to quit talking to me -- well, I think I told her to shut up" *Id.*

They also presented conflicting versions of the time Sooto dragged Valentine by the wrists during an argument. Specifically, Sooto testified that Valentine was the first to use physical force by hitting him five or six times in the groin with a rolled up towel, so his dragging Valentine was done in self-defense. Sooto also testified that after he dragged her into the hallway, Valentine kicked a hole in the door, something he failed to mention in a prior deposition, and Valentine denied this.

Sooto's psychological evaluator agreed that Sooto was forthcoming about the ways he contributed to abuse in the home and that he was open to feedback and changing his behavior. But

he had only attended a few weeks of his required 52 weeks of treatment and the domestic violence treatment instructor said it was "too early to tell" whether Sooto was making changes based on what he learned in the program. Verbatim Rep. of Trial (VRT) at 17. Sooto also said he had not attended parenting classes because he forgot they were recommended.

Valentine had not been evaluated for domestic violence at the time of trial, but Sooto's domestic violence evaluator said she "believe[d] there was a lot of control and abuse in that relationship" and was concerned because ES "witnessed and experienced both parents being volatile." VRT at 23, 36. The evaluator explained that Sooto "did not have the skill to remove himself from situations" in healthy ways. VRT at 28. But she found him to be "receptive and open to understanding that what he did wasn't okay." VRT at 36.

B. Evidence of Sexual Boundary Issues and Alleged Sexual Assaults

Both parties testified that Sooto did not consistently respect Valentine's boundaries during the marriage, especially regarding consent to sexual activity. They also agreed that Valentine reevaluated her sexual and physical boundaries over time and told Sooto that she viewed some of his prior actions as assault after the fact.

Valentine testified that in 2016, she began to reflect on sexual abuse she suffered as a child and realized that some of Sooto's earlier sexual contact was assault in her view. Valentine said that she told Sooto not to touch her in certain ways, and that Sooto "would sexually assault [her], touch [her] without permission and in ways that he knew violated [her] boundaries" even after she communicated her discomfort. 1 VRTP (Jan. 12, 2023) at 216. This was consistent with Sooto's testimony that they had agreed he would ask before initiating sexual or romantic contact, but he did not ask before kissing Valentine in her bed. Sooto's psychological evaluator said it was likely

that the couple had different definitions of consent as a result of their backgrounds and that was common in abuse survivors. And the evaluator testified that after Sooto learned more about Valentine's boundaries in counseling, Sooto was willing to accept that feedback and was open to "attempting to change his behavior to meet what her expectations were of consent." 1 VRTP (Jan. 30, 2023) at 455.

C. Evidence of Alleged Abuse Toward ES

Sooto and Valentine agreed that Sooto used timeouts to discipline ES, but Valentine said that he did so in an aggressive and violent manner that she considered abusive. Similarly, Valentine's mother said that Sooto's use of timeouts was abusive because he placed ES "[r]oughly" in the chair repeatedly, and for "way too long" for ES's age. VRT at 44-45. Sooto agreed that he "stern[ly]" picked up ES and put her in the chair repeatedly as punishment. 1 VRTP (Jan. 11, 2023) at 132. The visitation supervisor said that Sooto used timeouts at the beginning of their work together, but timeouts "w[ere]n't working" with ES's temperament. 1 VRTP (Jan. 30, 2023) at 406. Based on the supervisor's feedback, Sooto stopped using timeouts and became more responsive to ES's emotional needs.

Witnesses also testified about Valentine's report of possible sexual abuse in Arizona, the investigation, and the resulting unfounded finding. Sooto denied touching ES inappropriately but did not accuse Valentine of reporting her concerns in bad faith or out of malice. Valentine testified about finding trauma-informed counseling for ES after the incident.

IV. FINAL PARENTING PLAN

A. Factual Findings

The court entered RCW 26.09.191 findings against both parents. It determined that both Sooto and Valentine each "ha[d] a history of domestic violence as defined in RCW 7.105.050," warranting limitations on their parenting time and decision-making. CP at 89. The court also determined that Valentine "use[d] conflict in a way that may cause serious damage to the psychological development of [ES]" and "kept the other parent away from [ES] for a long time, without good reason." CP at 90. The written orders did not explain what underlying facts the trial court relied on to support the RCW 26.09.191 limitations.

In its oral ruling, the trial court explained that it was imposing RCW 26.09.191 limitations against Valentine:

> [U]nder 26.09.191(3) I am finding that there has been a pattern of abuse through allegations, false allegations against the father. I am also finding that the mother engaged in her own acts of domestic violence against Mr. Sooto. . . . There was evidence of kicking, yelling.
>
> . . . .
>
> It's clear that at times, Ms. [Valentine], there were times that you could not effectively parent. There was a period of time you actually left the child. There is a -- boundary issues in this case were always discussed and they remained fluid. I make a finding that Ms. [Valentine]'s definition of boundary issues were often not able to be followed by the average person.
>
> It's clear, Ms. [Valentine], that you have mental health issues and those have not been thoroughly fleshed out because the commissioners did not order psychological evaluations for both parties.

1 VRTP (Feb. 27, 2023) at 483-84. Regarding Sooto's domestic violence, the court explained in its oral ruling that its finding was required due to earlier orders. The trial court then stated:

> I am finding Eugene Sooto and Cara [Valentine] engaged in domestic violence and has a history of domestic violence. . . . I am finding that Cara [Valentine] engaged in abusive use of conflict and withheld the child unreasonably.

1 VRTP (Feb. 27, 2023) at 484-85.

Regarding its credibility determinations, the trial court told the parties, "much of my decision turned on the credibility of the parties," and that "the evaluators and the guardian ad litem in this case didn't have all the information I have, and they didn't have the benefit of seeing people testify under oath." 1 VRTP (Feb. 27, 2023) at 482. The trial court was largely silent on which testimony it found credible, except when it explained the following:

> And there was clear evidence that the Mexico wedding, the father I am finding did not intentionally violate the order or the spirit of the court orders, but he was trying to take care of the needs of his child. So I do not find that he violated that order.
>
> . . . .
>
> There was testimony about inappropriate discipline by the father. The court is not making that finding.
>
> It is also clear that Mr. Sooto in order to save his marriage or save the peace or be able to parent his child, he told evaluators what they wanted to hear, what Ms. [Valentine] wanted to hear, and so some of the evaluations I do not find totally helpful.

1 VRTP (Feb. 27, 2023) at 483-84.

B. Decision-Making, Residential Schedule, and Further Requirements

The trial court ordered joint decision-making and equal residential time. The parenting plan explained, "Both parties have limitations under RCW 26.09.191. However, decision-making must be allocated. The child will reside with the parents on alternating weeks. Joint decision-making is necessary and in the best interests of the child." CP at 91. The court also imposed other limitations, including a requirement that the parties work with a communication counselor, that Valentine undergo psychological and domestic violence evaluations and comply with recommendations, and that Sooto comply with the treatment recommendations from his earlier evaluations. Additionally,

the parenting plan provided that after the civil protection order expired, ES would be exchanged at each parent's home.

The oral ruling did not provide further detail about the basis for these elements of the parenting plan. The court did not mention in its oral ruling any of the statutory factors under RCW 26.09.187 for evaluating what residential schedule would be in the child's best interest. The final parenting plan did not address any of the RCW 26.09.187 factors, it simply stated that "[t]his *Parenting Plan* is in the best interest of the [child]." CP at 96.

Valentine appeals.

ANALYSIS

I. RCW 26.09.191 FINDINGS AGAINST VALENTINE

Valentine argues that the trial court erred by determining that she had a history of domestic violence, engaged in abusive use of conflict, and withheld ES from Sooto without good cause within the meaning of RCW 26.09.191. Valentine also argues that the court erred as a matter of law by ordering joint decision-making despite language in RCW 26.09.191 that bars joint decision-making when any parent has a history of domestic violence. We agree.

A. Statutory Framework

"A parenting plan's overriding purpose is to do what is in the best interest of the child." *In re Parentage of C.M.F.*, 179 Wn.2d 411, 419, 314 P.3d 1109 (2013). To that end, trial courts have broad discretion to develop parenting plans "within the confines of applicable statutes." *In re Marriage of French*, 32 Wn. App. 2d 308, 314, 557 P.3d 1165 (2024). A parenting plan must allocate decision-making authority and set a residential schedule that is "consistent with the criteria in RCW 26.09.187 and 26.09.191." RCW 26.09.184(5)(a), (6).

RCW 26.09.191 sets forth mandatory and discretionary restrictions in parenting plans. Relevant here, RCW 26.09.191(1)(c) provides that a permanent parenting plan "*shall not* require mutual decision-making" if the court has found that a parent has "a history of acts of domestic violence." (emphasis added). Similarly, RCW 26.09.191(2)(a)(iii) requires limitations to parenting time if a trial court finds that a parent has a history of domestic violence. The operative statute defines "domestic violence" as, "Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner." RCW 7.105.010(9)(a).

Parenting time limitations must be "reasonably calculated" to protect the child from harm and to provide for the safety of the at-risk parent. RCW 26.09.191(2)(m)(i). Parenting time limitations "include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment." *Id.* Although residential time limitations are mandatory, a court may decline to impose residential time limitations on a parent with a history of domestic violence if it makes certain express findings under RCW 26.09.191(2)(n).

Additionally, RCW 26.09.191(3) authorizes discretionary limitations based on findings that a parent engaged in abusive use of conflict or withheld the child from the other parent for a protracted period without good cause. RCW 26.09.191(3)(e)-(f). Abusive use of conflict means that the parent uses conflict in a way that "creates the danger of serious damage to the child's psychological development." RCW 26.09.191(3)(e). The statutory definition exempts a parent's report of suspected child abuse if the report is "made in good faith to law enforcement, a medical professional, or child protective services." *Id.*

Before the trial court imposes limitations based on RCW 26.09.191(3), it must find that the parent's actions may adversely affect the child's best interests. *In re Marriage of Katare*, 175 Wn.2d 23, 36, 283 P.3d 546 (2012); *In re Marriage of Watson*, 132 Wn. App. 222, 232, 130 P.3d 915 (2006). This requires "more than the normal distress suffered by a child because of travel, infrequent contact of a parent, or other hardships which predictably result from a dissolution of marriage." *In re Marriage of Littlefield*, 133 Wn.2d 39, 55, 940 P.2d 1362 (1997). If the limitations of RCW 26.09.191 are not dispositive of a child's residential schedule, the trial court must consider seven statutory factors to assess the child's best interest in RCW 26.09.187(3)(a)(i)-(vii).

B. Standard of Review

We are reluctant to disturb a parenting plan on appeal because "extended litigation can be harmful to children." *In re Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003). And "[i]n matters dealing with the best interests of children, a trial court enjoys the great advantage of personally observing the parties." *In re Marriage of Timmons*, 94 Wn.2d 594, 600, 617 P.2d 1032 (1980).

We review parenting plans for abuse of discretion, meaning the court's decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644 (2014). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard." *Littlefield*, 133 Wn.2d at 47. A ruling "is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *Id.* "A trial court necessarily abuses its discretion if its decision is based on 'an erroneous view of the law' or if its decision 'involves incorrect legal analysis.'" *Shrauner v. Olsen*, 16 Wn. App. 2d 384,

401-02, 483 P.3d 815 (2020) (internal quotation marks omitted) (quoting *In re Marriage of Selley*, 189 Wn. App. 957, 959, 359 P.3d 891 (2015)). "In addition, this court reviews de novo whether the trial court's findings of fact support its conclusions of law." *Id.* at 402.

Although we typically refer to RCW 26.09.191 "findings" of domestic violence, abusive use of conflict or withholding, we note that these determinations inherently involve the application of statutory definitions and requirements to the trial court's findings of the underlying facts. To the extent that a trial court determines the relevant statutory definitions or requirements are satisfied, that is a conclusion of law that must be supported by the trial court's underlying findings of fact. *See Schrauner*, 16 Wn. App. 2d at 402 (explaining in a family law case that we review de novo whether the trial court's conclusions of law are supported by the findings of fact).

We treat the court's factual findings as verities so long as they are unchallenged or are supported by substantial evidence, meaning evidence that is sufficient to persuade a fair-minded and rational person. *Chandola*, 180 Wn.2d at 642; *In re Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041 (2017). We do not disturb the trial court's credibility determinations or reweigh the evidence, even if we disagree with the trial court. *Black*, 188 Wn.2d at 127. However, "[w]hen findings of fact in reality pronounce legal conclusions, they may be treated as such." *State v. Niedergang*, 43 Wn. App. 656, 659, 719 P.2d 576 (1986). A true finding of fact states "whether evidence shows that something occurred or existed, . . . but if the determination is made by a process of legal reasoning from facts in evidence, it is a conclusion of law." *Id.* at 658-59

C. Credibility Determinations

As a preliminary matter, we note the court said generally that its findings and conclusions were based on its credibility determinations. But for the most part, the court failed to specify which

testimony it found credible and which testimony it did not. And it did not make a sweeping determination that one party was credible and the other was not. The record in this case contains much conflicting testimony—of course the court made its ruling based on credibility determinations—but without knowing *what testimony* the court found credible, we cannot ascertain how the court's credibility determinations supported its RCW 26.09.191 limitations against Valentine. Merely stating that the court reached its ultimate legal conclusion based on its assessment of the parties' credibility does not insulate the court's application of RCW 26.09.191 from review.

D. History of Domestic Violence

Valentine first challenges the court's imposition of RCW 26.09.191 restrictions against her based on its determination that she had a history of domestic violence. The parenting plan and the trial court's other written orders do not state the factual basis for the trial court's finding, but the court explained in its oral ruling that it was imposing restrictions because "[t]here was evidence of kicking, yelling." 1 VRTP (Feb. 27, 2023) at 483. We agree with Valentine that this factual finding is so minimal that it is legally insufficient to support the court's ultimate determination that Valentine had a history of domestic violence as defined in the statute.

The operative definition of "domestic violence" includes "[p]hysical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault" as well as "coercive control; unlawful harassment; or stalking," among other things. RCW 7.105.010(9)(a). This definition encompasses a wide variety of conduct that could cause grave psychological harm to children including when physical harm is absent. *See Rodriguez v. Zavala*, 188 Wn.2d 586, 597, 398 P.3d 1071 (2017). This is for good reason—the legislature has recognized that significant

harm can occur from more than physical or sexual violence, including acts that inflict a fear of physical harm or involve coercive control. But the breadth of the definition of domestic violence makes it important for trial courts in parenting plan cases to do more than enter a conclusory finding to support a determination that a party's conduct satisfied the definition and warranted restrictions under RCW 26.09.191.

Here, the trial court did not mention what part of the domestic violence definition it was applying, and our review of the rest of the record does not provide the needed clarity. The record before us does not show that Sooto requested a finding that Valentine had a history of domestic violence, so we cannot look to his asserted basis. And the court's findings are so vague that they are legally insufficient to support a finding that any of the various forms of domestic violence occurred. Where, as here, the trial court's written and oral findings under RCW 26.09.191 do not reflect how it applied the statutory standard and the factual findings the trial court did enter fall woefully short of satisfying the statutory definition, we must conclude that the trial court's findings are legally insufficient to support the ultimate conclusion that a party has a history of domestic violence.

Specifically, the trial court's finding that "kicking" and "yelling" occurred is too ambiguous to support the ultimate determination that Valentine had a history of domestic violence under RCW 26.09.191, when the court did not mention what part of the domestic violence definition it was applying. The court's reference to "kicking" seems to imply that Valentine kicked Sooto, but no testimony in our record supports such a finding. It is true that Sooto described Valentine kicking a hole in the door after he dragged her into the hallway by her wrists. We do not doubt that the act of kicking a door can constitute domestic violence—in some circumstances, it

could create the fear of an assault or injury, or it could be an aspect of a pattern of coercive control. *See* RCW 7.105.010(9)(a). But even assuming that Valentine kicked the door, that finding alone does not support a conclusion that Valentine had a history of domestic violence, when Sooto did not testify that he feared assault or injury from Valentine kicking the door, and it does not appear he argued that it was a form of coercive control. On this record, therefore, the court's finding that "kicking" occurred is legally insufficient as a basis for finding a history of domestic violence under the operative statutory definition for purposes of RCW 26.09.191.

Likewise, we do not doubt that yelling can be behavior that contributes to domestic violence, and Sooto testified that Valentine screamed at him during their arguments. But here, the trial court's findings do not support its ultimate legal conclusion that Valentine's yelling amounted to domestic violence. As deferential as we tend to be in reviewing RCW 26.09.191 findings, the trial court failed to state which aspect of the definition of domestic violence it was relying on and did not make additional findings of fact that would show that Valentine's yelling was severe enough to amount to domestic violence.[3]

In sum, the trial court's deficient findings fail to support its conclusion that Valentine had a history of domestic violence under the statutory definition of the term.

E. Abusive Use of Conflict

Valentine next challenges the court's determination that she engaged in abusive use of conflict under RCW 26.09.191(3)(e). In its oral ruling, the trial court said, "I am finding that there

[3] Finally, we note that Sooto also testified that Valentine hit him in the groin, and the evaluator was concerned about Sooto's statements indicating that ES "witnessed and experienced both parents being volatile." VRT at 23. But the trial court did not refer to this testimony or evaluate its credibility in its oral or written ruling.

has been a pattern of abuse through allegations, false allegations against the father" but did not further explain the basis for its abusive use of conflict determination. 1 VRTP (Feb. 27, 2023) at 483. Again, the court's factual findings do not support its ultimate legal determination that Valentine's behavior was an abusive use of conflict within the operative statutory definition.

RCW 26.09.191(3)(e) authorizes discretionary limitations based on a finding that a parent engaged in abusive use of conflict. Abusive use of conflict means that the parent uses conflict in a way that "creates the danger of serious damage to the child's psychological development." RCW 26.09.191(3)(e). The statutory definition exempts a parent's report of suspected child abuse if the report is "made in good faith to law enforcement, a medical professional, or child protective services." *Id.*

False allegations against another parent can constitute an abusive use of conflict under RCW 26.09.191(3)(e). But merely finding that one parent made false allegations against the other parent is not enough—the false allegations must cause a risk of psychological harm to the child, for example, through invasive exams or repeated questioning of the child. *See In re Marriage of Burrill*, 113 Wn. App. 863, 871-72, 56 P.3d 993 (2002).

Here, the trial court determined that Valentine engaged in abusive use of conflict by making "false allegations" against Sooto. 1 VRTP (Feb. 27, 2023) at 483. But the court did not name the allegations that formed the basis for this finding, nor did it determine that the instances created a "danger of serious damage to the child's psychological development." RCW 26.09.191(3)(e). This is a required finding for abusive use of conflict and without it, the court did not have authority to impose limitations on this basis.

Elsewhere in its oral ruling, the court mentioned two ways it disagreed with Valentine's characterization of Sooto's conduct, but it did not specifically say those allegations constituted abusive use of conflict. First, the court expressly declined to find that Sooto used "inappropriate discipline" by roughly putting ES in a chair for timeout. 1 VRTP (Feb. 27, 2023) at 484. Assuming this was a basis for the abusive use of conflict finding, the court did not explain, nor did Sooto argue, that ES was at risk of psychological harm due to Valentine's allegation that Sooto's timeouts were inappropriate. Even the parenting supervisor seemed to laud Sooto for no longer using timeouts. Thus, the record would not support a finding that Valentine's disagreement with Sooto's use of timeouts would cause a risk of psychological harm to ES, where undisputed testimony showed timeouts were not "working" for ES. 1 VRTP (Jan. 30, 2023) at 406.

The second way the trial court disagreed with Valentine related to Sooto's conduct at the wedding in Mexico—the trial court found that Sooto was trying to parent ES, not intentionally getting too close to Valentine. The trial court did not say this constituted abusive use of conflict. Again, the trial court's findings are insufficient to support a conclusion that Valentine used conflict in a way that "create[d] the danger of serious damage to the child's psychological development." RCW 26.09.191(3)(e).

Finally, though the trial court did not mention it, we also acknowledge the testimony about Valentine's report of possible sexual abuse in Arizona, the investigation, and the resulting unfounded finding. But a good faith report of suspected child abuse is not considered abusive use of conflict under RCW 26.09.191(3)(e). The trial court did not make a finding that this report was made in bad faith and Sooto did not testify that he thought Valentine made the report maliciously.

And Valentine sought out specialized counseling for ES to alleviate any psychological harm from the incident.

Importantly, the court did not find, nor is it apparent from the record how these instances that the trial court relied on could cause "the danger of serious damage to the child's psychological development." RCW 26.09.191(3)(e). The absence of this required finding warrants reversal of the conclusion that abusive use of conflict warranted restrictions against Valentine, as does the absence of underlying factual findings to support the conclusion.

F. Withholding

Valentine also challenges the trial court's finding that Valentine "kept the other parent away from [ES] for a long time, without good reason." CP at 90. The court did not explain its withholding finding in its oral ruling, it merely stated it found Valentine "withheld the child unreasonably." 1 VRTP (Feb. 27, 2023) at 485. The trial court did not identify the relevant time when Valentine withheld ES from Sooto, nor did the court explain how the withholding was unreasonable at the time. The trial court's findings therefore do not support its conclusion that Valentine engaged in conduct meeting the criteria in RCW 26.09.191(3)(f).

A trial court may impose discretionary limitations based on a finding that one "parent has withheld from the other parent access to the child for a protracted period without good cause." RCW 26.09.191(3)(f). Sooto characterizes a wide range of Valentine's choices as withholding within the meaning of the statute—"from moving the child, to time restrictions, to making visitation financially burdensome, to knowingly making false allegations." Br. of Resp't at 27. But we have no way of knowing which of these acts, if any, formed the basis of the court's finding of withholding. The trial court's underlying findings are insufficient to support its bald conclusion

that this factor was met, especially in the absence of any discussion of good cause, a necessary consideration under the statute. We therefore reverse this conclusion as well.

G. "Boundary Issues" Do Not Support Limitations Under RCW 26.09.191

Valentine also challenges the trial court's finding that "boundary issues in this case were always discussed and they remained fluid" and that "Ms. [Valentine]'s definition of boundary issues were often not able to be followed by the average person." 1 VRTP (Feb. 27, 2023) at 484. Valentine acknowledges that the record does not show how this finding affected the final orders, but she situates the finding in the context of the trial court's finding that she made false allegations against Sooto, and the court's comments expressing doubt about whether a domestic violence finding against Sooto was appropriate. Sooto agrees that this finding "shaped" the court's parenting plan but does not explain how. Br. of Resp't at 15.

Troublingly, the finding seems to imply that Valentine was wrong to reevaluate her own boundaries throughout her marriage—that because her boundaries evolved over time and differed from what the court saw as "normal," her boundaries were not entitled to respect. But our legislature has shifted the law toward the modern view that consent must be freely and affirmatively given "at the time of the act of sexual intercourse or sexual contact." RCW 9A.44.010(2); Stephen J. Schulhofer, *Consent: What It Means and Why It's Time to Require It*, 47 U. PAC. L. REV. 665, 671-74 (2016) (describing shifting social and legal norms). And crucially, the modern legal definition of consent applies regardless of whether the parties are married. *See State v. Knapp*, 197 Wn.2d 579, 601-03, 486 P.3d 113 (2021) (McCloud, J., concurring); LAWS OF 2021, ch. 142, § 1 (removing nonmarriage as an element of various sex crimes). This means that a person, even a married person, can consent to certain sexual activity in one instance and decline

to consent to the same sexual activity in another instance without having to explain why. *State v. Hudlow*, 99 Wn.2d 1, 9, 659 P.2d 514 (1983) (acknowledging that prior consent to sexual conduct "is usually of little or no probative value in predicting the victim's consent to sexual conduct on the occasion in question."). A person can also withdraw consent.

Put bluntly, it is legally irrelevant whether Valentine's sexual boundaries were "fluid" or understood by "the average person" when under current law, consent must be communicated between the parties to a sexual act at the time the act occurs. 1 VRTP (Feb. 27, 2023) at 484. The trial court's finding was in conflict with Washington law governing consent. And although the trial court did not state that this finding was a basis for its RCW 26.09.191 determinations, we cannot rule out that possibility. There is no part of RCW 26.09.191 that would allow the court to impose limitations based on the finding it made about Valentine's sexual and physical boundaries.

Therefore, to the extent the court relied on this finding, we hold that doing so was legal error because the finding is contrary to modern law regarding consent and was a manifest abuse of discretion because it was outside the range of acceptable choices under the applicable statutes.

H. Decision-Making Authority

Valentine also argues that the trial court abused its discretion when it ordered joint decision-making despite its finding under RCW 26.09.191 that a parent had a history of domestic violence. We agree that the trial court erred as a matter of law when it imposed joint decision-making.

The interpretation of a statute is a legal question that we consider de novo. *Sprute v. Bradley*, 186 Wn. App. 342, 349, 344 P.3d 730 (2015). Under RCW 26.09.191(1), permanent parenting plans "*shall not* require mutual decision-making . . . if it is found that a parent has

engaged in . . . a history of acts of domestic violence." (Emphasis added.) "On its face, the statute affords no discretion; it prohibits trial courts from requiring mutual decision-making . . . where there is a history of domestic violence." *In re Parenting & Support of C.A.S.*, 25 Wn. App. 2d 21, 27, 522 P.3d 75 (2022); *see also French*, 32 Wn. App. 2d at 315; *In re Marriage of DeVogel*, 22 Wn. App. 2d 39, 46, 509 P.3d 832 (2022).

Here, the trial court made a legal error by ordering joint decision-making authority despite the plain language of RCW 26.09.191(1) barring such an order. We acknowledge that the trial court ordered joint decision-making based on its view that both parents were subject to RCW 26.09.191 limitations, but that does not warrant departing from the plain language of the statute.[4] Ordering joint decision-making was not within the court's available options after the court found that Sooto had a history of domestic violence, regardless of whether Valentine also had such a history. The court misapplied the law by ordering joint decision-making authority.

I. The Parenting Plan Relied on the Trial Court's Unsupported Conclusions and Legal Error

Having concluded that both Sooto and Valentine had a history of domestic violence, and that Valentine engaged in abusive use of conflict and withheld ES from Sooto unreasonably under RCW 26.09.191, the trial court entered the final parenting plan without further analyzing the child's best interest under RCW 26.09.187. Thus, it appears the trial court relied entirely on its RCW 26.09.191 conclusions when establishing the conditions of the parenting plan. Moreover, the trial court misapplied the plain language of the statute's prohibition against joint decision-

[4] If both parents have a history of domestic violence or other RCW 26.09.191 findings, other restrictions on decision-making may be appropriate and the court has broad discretion to impose those limitations. *See In re Marriage of Mansour*, 126 Wn. App. 1, 11, 106 P.3d 768 (2004) (courts may alleviate concerns with sole decision-making by ordering the decision-making parent to provide "sufficient notice" for the other parent "to seek timely court intervention").

making when a party has a history of domestic violence. Because it appears the trial court relied entirely on its incorrect application of RCW 26.09.191 to determine the residential schedule, decision-making authority, and other conditions of the parenting plan, we must reverse the final parenting plan in its entirety.

ATTORNEY FEES

Valentine requests attorney fees under RAP 18.1(a) and RCW 26.09.140. We have discretion to order an award of reasonable attorney fees after considering the parties' financial resources under RCW 26.09.140. Valentine is a substantially prevailing party but has not shown her current financial need by filing an affidavit of financial need as required under RAP 18.1(c), so she is not entitled to appellate fees under RCW 26.09.140.

CONCLUSION

In light of the errors in the trial court's application of RCW 19.26.191, we reverse and remand for the development of a new parenting plan. We acknowledge that it has been years since the parenting plan at issue was entered and circumstances have undoubtedly changed. As a result, the trial court is not limited to consideration of the evidence presented at the prior trial and is free to manage the proceedings on remand in the way that the trial court concludes will best resolve current issues and facilitate development of a permanent parenting plan that complies with the relevant statutes.

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A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

GLASGOW, J.

We concur:

LEE, J.

VELJACIC, A.C.J.