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Superior Court of Mason Co. Wash.

SUPERIOR COURT OF WASHINGTON
COUNTY OF MASON

In re:

LISA MARIE DRACOBLY,

Petitioner,

and

JASON FREDRICK DRACOBLY,

Respondent.

No. 14-2-00621-1

MEMORANDUM OF LAW IN
SUPPORT OF PETITION FOR
DOMESTIC VIOLENCE
PROTECTION ORDER

I. STATEMENT OF FACTS

On November 6, 2014 Petitioner, Lisa Dracobly, filed her petition for a domestic violence protection order under the above-entitled cause. This petition was first filed in Thurston County under Thurston County Superior Court cause number 14-2-30825-3 because this is where parties agreed to file their dissolution action as Respondent is a Mason County Sheriff's Officer. Thurston County has all the background and access to all the pleadings in this matter. Respondent argued that venue was proper in Mason County since both parties reside in Mason County. Petitioner's petition was denied for lack of jurisdiction. A true and correct copy of the Denial Order is attached as EXHIBIT 1.

Petitioner then filed her action in Mason County.

MEMO OF LAW IN SUPPORT OF PETITION FOR DVPO
Page 1 of 5

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ORIGINAL

II. ARGUMENT

Can Petitioner seek protection under a DVPO when there is an existing restraining order in another action?

Yes.

RCW 26.50.025 states as follows:

(1) Any order available under this chapter may be issued in actions under chapter 26.09, 26.10, or 26.26 RCW. If an order for protection is issued in an action under chapter 26.09, 26.10, or 26.26 RCW, the order shall be issued on the forms mandated by RCW 26.50.035(1). An order issued in accordance with this subsection is fully enforceable and shall be enforced under the provisions of this chapter.

(2) If a party files an action under chapter 26.09, 26.10, or 26.26 RCW, an order issued previously under this chapter between the same parties may be consolidated by the court under that action and cause number. Any order issued under this chapter after consolidation shall contain the original cause number and the cause number of the action under chapter 26.09, 26.10, or 26.26 RCW. ***Relief under this chapter shall not be denied or delayed on the grounds that the relief is available in another action.*** [Emphasis added]

RCW 26.50.030 states as follows:

(1) ***A petition for relief shall allege the existence of domestic violence***, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW 26.27.281 and the existence of any other restraining, protection, or no-contact orders between the parties.

(2) ***A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties*** except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(4).

(3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this section. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section. [Emphasis added]

RCW 26.50.025 clearly states that Ms. Dracobly shall not be denied relief on the grounds that the relief she seeks is available in another action. RCW 26.50.030 states that a petition may be made

1 regardless of other pending actions. Neither statute is ambiguous. An unambiguous statute is not subject
2 to judicial interpretation, and the statute's meaning is derived solely from its language. *Id.* The court may
3 not add language to a clearly worded statute, even if it believes the Legislature intended more. *Id.* Statutes
4 are construed as a whole, giving effect to each provision. *State v. Merritt*, 91 Wash.App. 969, 973, 961 P.2d
5 958 (1998).

6 **Must Petitioner prove current domestic violence to support entry of DVPO?**

7 No. Domestic violence is defined under RCW 26.50.010 as

8 (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily
9 injury or assault, between family or household members; (b) sexual assault of one family or
10 household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or
11 household member by another family or household member.

12 The issue of domestic violence has never been adjudicated in the dissolution case. To date, the
13 restraining orders have been entered by agreement. What has been litigated has been primary residential
14 placement of the parties' son who will be eighteen in January, 2015, an appropriate residential schedule, use
15 of property and financial issues. I would point out that in May 2013, after argument, Thurston County
16 Superior Court required respondent to have supervised residential time with the parties sixteen year old son
17 between May 2013. The requirement for supervision remained in place for the next seven months.
18 Between December 2013 and August 2014 respondent's residential time was restricted to daytime only for
19 eight hours per week. With the exception of one week vacation in August 2014, respondent's residential
20 time continues to be restricted to daytime visits only, eight hours per week despite multiple motions by
21 respondent seeking to change primary placement and seeking expanded residential time. Additionally,
22 Thurston County Superior Court required respondent to surrender his firearms except for his duty weapon
23 after finding by clear and convincing evidence that respondent has used, displayed, or threatened to use a
24 firearm or other dangerous weapon in a felony, or previously committed any offense making him or her
25 ineligible to possess a firearm under 9.41.040. This order is attached as EXHIBIT 2.

1 The issue of a showing of a recent act of abuse was argued in the case of *Spence v. Kaminski*, 103
2 *Wash.App.* 325. EXHIBIT 3. *Spence* found that "Neither the language of the statute nor legislative intent
3 supports this requirement. *Spence* 333. *Spence* goes on to state

4 "In light of the Legislature's intent to intervene *before* injury occurs, and in recognition that RCW
5 26.50.020 and RCW 26.50.060 do not require an allegation of recent domestic violence, we decline
6 to read into these statutes a requirement of a recent violent act." *Spence* 334.

6 III. CONCLUSION

7 The intent of the Legislature of Washington State is to intervene before injury occurs. Ms.
8 Dracobly has provided ample evidence to support a long-term history of domestic violence. Jason
9 Dracobly told her for years that

10 "He knows how to make evidence disappear and he knows where to hide bodies where they'll
11 never be found, that he's mitigated anything that might come from her disappearing because he's
12 told all their friends and family that she's unstable and having an affair so if she disappears no one
13 will think twice."

14 Ms. Dracobly believes him and this Court should too. Mr. Dracobly continues to harass Ms. Dracobly
15 through the legal process and/or through third parties. Mr. Dracobly continues to have access to weapons
16 twenty-four hours per day, seven days per week despite a finding by clear and convincing evidence that
17 respondent has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or
18 previously committed any offense making him or her ineligible to possess a firearm under 9.41.040. Mr.
19 Dracobly violated the restraining order several times with no consequent, and has failed to comply with
20 Court orders clearly showing the Court that he believes rules don't apply to him.

21 On behalf of Petitioner, Lisa Dracobly, I respectfully request that this Court enter a protection order
22 protecting Ms. Dracobly. In the alternative, I respectfully request that this Court enter a temporary
23 protection order and allow for a full hearing where Ms. Dracobly has an opportunity to present witnesses.

24 Filed separately is a summary of the Thurston County Family and Juvenile Court dissolution
25 action, cause number 13-3-00742-9, and relevant pleadings for the Court's review.

1 Finally, Petitioner respectfully requests that she be granted attorneys' fees incurred in bringing this
2 based upon RCW 26.50.060(g).

3 Respectfully submitted this 7th day of November, 2014.

4
5 **MADISON LAW FIRM, PLLC**

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7 Amy L. Perlman, WSBA No. 42929
8 Attorney for Petitioner, Lisa Dracobly
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EXHIBIT 1

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2014 NOV -6 PM 2:07

BETTY J. GOULD, CLERK

STATE OF WASHINGTON

County of Thurston

I, Betty J. Gould, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the following is a true and correct copy of the original as the same appears on file and of record in my office containing three pages, IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court.

DATED: Nov 6, 2014

BETTY J. GOULD

County Clerk, Thurston County, State of Washington
by [Signature] Deputy

**Superior Court of Washington
For Thurston County
Family and Juvenile Court**

No. 14-2-30825-3

Denial Order

☒ Domestic Violence

☐ Antiharassment

☐ Vulnerable Adult

☐ Sexual Assault

☐ Stalking

(Optional Use) (ORDYMT)

☐ Clerk's Action Required

Next Hearing Date/Time: _____

At: **2801 32nd Avenue SW**

Tumwater, Washington 98512

(360) 709-3268 or (360) 709-3275

Lisa Dracably

Petitioner (Protected Person)

vs.

Jason Dracably

Respondent (Restrained Person)

This Matter having come on for hearing upon the request of (name) Lisa Dracably,
for a:

☒ Temporary Order

☐ Full Order

☐ Renewal Order

☐ Modification Order

☐ Termination Order

and the **Court Finding**:

☐ Petitioner ☐ Respondent did not appear.

☐ Petitioner requested dismissal of petition.

☐ The order submitted has not been completed or certified upon penalty of perjury.

☐ This order materially changes an existing order. A hearing after notice is necessary.

☐ No notice of this request has been made or attempted to the ☐ vulnerable adult ☐ opposing party.

☐ The petitioner has failed to demonstrate that there is sufficient basis to enter a temporary order without notice to the ☐ vulnerable adult ☐ opposing party.

Domestic Violence:

☐ The domestic violence protection order petition does not list a specific incident and approximate date of domestic violence.

☐ A preponderance of the evidence has not established that there is domestic violence.

- ☐ The respondent proved by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the protection order expires.
- ☐ For Respondent's motion to modify or terminate a domestic violence Order for Protection effective longer than two years,
 - ☐ A preponderance of the evidence **failed** to establish that:
 - ☐ the modification is warranted.
 - ☐ for a modification to shorten the duration or remove restrictions against domestic violence acts or threats, or for termination, there has been a substantial change of circumstances such that the respondent is unlikely to resume acts of domestic violence against the petitioner or other persons protected in the order, to wit:
 - ☐ since the protection order was entered, the respondent ☐ has committed or threatened domestic violence, sexual assault, stalking, or other violent acts; ☐ has exhibited suicidal ideation or attempts; ☐ has been convicted of criminal activity; ☐ neither acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order nor successfully completed domestic violence perpetrator treatment or counseling;
 - ☐ the respondent has continued to abuse drugs or alcohol, if such was a factor in the protection order.
 - ☐ the petitioner ☐ has ☐ has not voluntarily and knowingly consented to terminating the protection order
 - ☐ the respondent or petitioner moving further away from the other party will stop acts of domestic violence.
 - ☐ other: _____
 - ☐ the respondent proved that there has been a substantial change of circumstances; however, the court declines to terminate the Order for Protection because the acts of domestic violence that resulted in the issuance of the Order for Protection were of such severity that the order should not be terminated.

Sexual Assault:

- ☐ The sexual assault protection order petition does not list a specific incident and approximate date of nonconsensual sexual contact or nonconsensual sexual penetration.
- ☐ For a temporary sexual assault protection order, reasons for denial of the order are:

- ☐ A preponderance of the evidence has not established that there has been nonconsensual sexual contact or nonconsensual sexual penetration.

Vulnerable Adult:

- ☐ The vulnerable adult protection order petition does not list specific incidents and approximate dates of abandonment, abuse, neglect, or financial exploitation of an alleged vulnerable adult.
- ☐ A preponderance of the evidence has not established that there has been abandonment, abuse, neglect, or financial exploitation of an alleged vulnerable adult.
- ☐ The vulnerable adult protection order petition does not demonstrate that the petitioner is an "interested person" under the definition as stated in RCW 74.34.020(9).

Stalking:

- ☐ The stalking protection order petition does not list specific incidents and approximate dates of stalking conduct.
- ☐ A preponderance of the evidence has not established that there has been stalking conduct.

- ☐ The respondent proved by a preponderance of the evidence that the respondent will not resume acts of stalking conduct against the petitioner or the petitioner's children or family or household members when the protection order expires.

Harassment:

- ☐ The harassment protection order petition does not list specific incidents and approximate dates of harassment.
- ☐ A preponderance of the evidence has not established that there has been harassment.
- ☐ The respondent proved by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the protection order expires.

☒ Other: Petitioner Resides in Mason County.
Thurston County does not have jurisdiction.

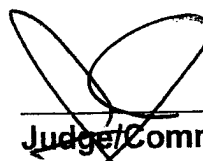
The court orders that:

- ☐ The request to waive the filing fee is denied.
- ☐ The request for a temporary order is denied and the case is dismissed.
- ☐ The request for a full order is denied, and the petition is dismissed. Any previously entered temporary order expires at _____m. today.
- ☐ The request for a temporary order is denied and the clerk is directed to set a hearing on the petition.
- ☐ The request before the court is denied, provided that it may be renewed after notice has been provided to the ☐ vulnerable adult ☐ opposing party according to the Civil Rules.
- ☐ The request to modify, terminate, or renew the order dated _____ is denied.
- ☐ The parties are directed to appear for a hearing as shown on page One.
- The requesting party shall make arrangements for service of the petition/motion and this order on (name) _____ via law enforcement, professional process server, a person who is 18 or older who is not a party to the case. A Return of Service shall be filed with the clerk at or before the hearing.

Failure to Appear at the Hearing May Result in the Court Granting All of the Relief Requested in the Petition or Motion.

This order is dated and signed in open court.

Date: 11/6/14 / Time: 2:00p



Judge/Commissioner

Copy Received:

Copy Received:

Amy R. O'Connell 42929 11-6-14
Petitioner Date

Respondent

Date

EXHIBIT

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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2013 MAY 29 AM 9:15

BETTY J. GOULD, CLERK

EX PARTE

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY FAMILY AND JUVENILE COURT	
LISA DRACOLBY	3-28-67
Petitioner	DOB
vs.	
JASON DRACOLBY	2-25-67
Respondent	DOB

NO. 13-3-00742-9

ORDER TO SURRENDER
WEAPON (ORWPN)
(Clerk's Action Required)

THIS MATTER CAME ON regularly before the court on a Petition for Surrender of Weapon. Based upon the petition, testimony, and the case record, the court finds:

☒ By clear and convincing evidence that ☐ Petitioner ☒ Respondent has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense making him or her ineligible to possess a firearm under RCW 9.41.040,

AND IT IS THEREFORE ORDERED that said party:

☒ Surrender any firearm or other dangerous weapon to ☒ the sheriff of Mason County ☐ chief of police of city of _____ ☐ that party's counsel

☐ Other: _____

☐ Surrender any concealed pistol license issued under RCW 9.41.070; and

☐ Is prohibited from obtaining or possessing a firearm or other dangerous weapon or concealed pistol license.

☐ By a preponderance of the evidence that ☐ Petitioner ☐ Respondent has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense making him or her ineligible to possess a pistol under RCW 9.41.040,

OR

☐ That possession of a firearm or other dangerous weapon by the nonmoving party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual,

(Continued on next page)

AND IT IS THEREFORE ORDERED that said party:

- ☐ Surrender any firearm or other dangerous weapon to ☐ the sheriff of _____
County; ☐ chief of police of city of _____; ☐ that party's counsel;
☐ other _____.
- ☐ Surrender any concealed pistol license issued under RCW 9.41.070.
- ☐ Is prohibited from obtaining or possessing a firearm or other dangerous weapon or
concealed pistol license.

☐ This order expires on _____
(date)

The clerk of the court shall forward a copy of this order on or before the next judicial day to the
Mason County Sheriff's Office or _____ Police
Department where petitioner lives which shall enter this order in any computer-based criminal
intelligence system available in this state used by law enforcement to list outstanding warrants.

☒ Mason County Sheriff's Office or _____ Police
Department where respondent lives which shall personally serve the respondent with a
copy of this order, the Temporary Order, and the Petition, and shall promptly complete and
return to this court proof of service.

Respondent may possess ~~some~~ duty weapons while on duty.

DATED 8/29/13 at 845 a.m. pm.

JUDGE/COMMISSIONER

JONATHON LACK

Presented by:

I acknowledge receipt of a copy of this order.

Moving Party

Date

Receiving Party

Date

EXHIBIT 3

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103 Wn.App. 325 (Wash.App. Div. 3 2000)

12 P.3d 1030

Sarah SPENCE, Respondent,

v.

Michael S. KAMINSKI, Appellant.

No. 18521-4-III.

Court of Appeals of Washington, Division 3, Panel Two.

October 5, 2000

Publication Ordered Nov. 21, 2000.

[12 P.3d 1031] [Copyrighted Material Omitted]

[12 P.3d 1032]

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Michael T. Schein, Douglas W. Ahrens, Maltman, Reed, North, Ahrens & Malnati, Seattle, for Appellant.

Peter D. Nansen, Nansen & Nansen, Bellingham, for Respondent.

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SCHULTHEIS, J.

After notice and a hearing to investigate allegations of domestic violence, an Okanogan County Superior Court judge issued a permanent order restraining Michael Kaminski from contacting or getting near his ex-wife, Sarah Spence. RCW 26.50.030; .060. Mr. Kaminski appeals, contending the order violates statutory and constitutional law because it is not based on a recent act of domestic violence. Because we find that neither the United States Constitution nor the relevant state statutes require a recent act of domestic violence, we affirm.

FACTS

Ms. Spence petitioned the court in May 1999 for an order of protection from Mr. Kaminski. In the standard form petition she stated that Mr. Kaminski

has stalked, trespassed [sic] & harassed me since January 1993. He had made death threats[: "Its [sic] \$50 & an airplane ticket when I'm ready to get rid of you."

The recent closure of my Mother's estate was closely followed by custodial interference (often threatened but

never this aggressive) [and he] has me in fear that he is ready to act on other threats.

Ms. Spence also sought to restrain Mr. Kaminski from contacting their daughter, who was in Ms. Spence's primary custody.

At the hearing two weeks later, Mr. Kaminski appeared with counsel. Ms. Spence, appearing pro se, presented the court with numerous declarations from witnesses who stated that they had seen Mr. Kaminski threaten Ms. Spence or that they had observed Ms. Spence's fear of Mr. Kaminski. Ms. Spence also presented evidence that her ex-husband had interfered with custody and had frightened their daughter. None of the events described in the declarations

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with the exception of the custodial interference--appear to have occurred within the past few years. Most of Ms. Spence's testimony rehashed violence that had occurred during the marriage and dissolution proceedings five years earlier. More recently, she testified, he had made harassing telephone calls to her. He had also put his fist through his daughter's bedroom door, although not in Ms. Spence's presence.

Noting that the parties were currently seeking modification of their parenting plan in Skagit County, the Okanogan court refused to grant a protection order for the daughter and advised Ms. Spence to address allegations of child abuse or neglect in the Skagit modification hearing. The court then turned its attention to the protection requested for Ms. Spence and declared, "I tend to [12 P.3d 1033] feel that if a person presents a case that, based on history and recent events, they are afraid of another person, they are afraid of domestic violence, that they can obtain protection for themselves[.]" Ultimately the court found that, although Mr. Kaminski's recent custodial interference might justify a contempt order, it did not amount to domestic violence. On the other hand, the court found, the total history of the couple's relationship, including threats and violence, supported Ms. Spence's conclusion "that she may be in danger." On that basis, the court granted Ms. Spence's request for an order restraining Mr. Kaminski from causing her harm, from contacting her or from coming within a mile of her home.

The amended protection order filed in mid-June 1999 allowed Mr. Kaminski limited contact as required for visitation under the Skagit County parenting plan and did not include the one-mile restriction. The standard form order includes the following language handwritten by the court: "the long history of allegations back to ... 1992 have been investigated by law enforcement[, ICPS or others. All this court can determine is that Mr. Kaminski

has threatened Ms. Spence in the past and she is afraid of him." The court checked the box indicating that the order for protection is

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permanent. Directly under this statement the order form includes the following preprinted language: "If the duration of this order exceeds one year, the court finds that an order of less than one year will be insufficient to prevent further acts of domestic violence." Mr. Kaminski immediately appealed to this court.

DOES A PERMANENT RESTRAINING ORDER REQUIRE A RECENT ACT OF VIOLENCE?

Mr. Kaminski contends the trial court's findings are insufficient to support a permanent order for protection. In particular, he argues that the Legislature intended to require that such orders be based on a recent act of domestic violence.

The Domestic Violence Prevention Act, RCW 26.50, authorizes a victim of domestic violence to petition the court for an order for protection. RCW 26.50.030. The petition for relief must allege "the existence of domestic violence" and must be accompanied by an affidavit under oath that states specific facts and circumstances supporting relief. RCW 26.50.030(1). "Domestic violence" is defined in part as "[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members[.]" RCW 26.50.010(1). Noting that victims of domestic violence often have difficulty completing the petition paperwork, the Legislature in 1992 called for refinements in standard petition forms "so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created." Laws of 1992, ch. 111, § 1 (restated in Laws of 1993, ch. 350, § 1). To that end, the administrator for the courts was directed to develop instructions, informational brochures, standard petitions, and standard "order for protection" forms consistent with the statute. RCW 26.50.035.

Ms. Spence's standard form petition for relief indicates that Mr. Kaminski had stalked, trespassed, and harassed

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her since 1993. She also states that she recently became fearful after the closure of her mother's estate and her ex-husband's subsequent custodial interference--"often threatened but never this aggressive." The handwritten statement of facts on the petition form, while not formally made "under oath," is followed by her signature and the statement, "I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct." The petition was accompanied by numerous declarations from witnesses and the record from the

dissolution proceedings and custody disputes from Skagit County. In all, the petition and supporting documents meet the threshold requirements of RCW 26.50.030 and justify the court's decision to set a hearing for the protection order.

RCW 26.50.060 authorizes the trial court, after notice and a hearing, to issue a protection order. *City of Seattle v. Edwards*, 87 Wash.App. 305, 310, 941 P.2d 697 (1997). Among other forms of relief, the court may [12 P.3d 1034] restrain the respondent from committing domestic violence, from entering the residence or workplace of the petitioner, and from making contact with the petitioner. RCW 26.50.060(1). If the court finds that the respondent "is likely to resume acts of domestic violence against the petitioner ... when the order expires," the court has discretion to enter a permanent order of protection. RCW 26.50.060(2). The statute does not require any particular wording in the order. *Edwards*, 87 Wash.App. at 310, 941 P.2d 697. Beyond specifying the types of relief provided, the order is required only to specify the date it expires (if at all), the type and date of service of process used, and a notice of the criminal penalties resulting from violation of the order. RCW 26.50.035(1)(c); .060(6). On the other hand, if the court declines to issue an order for protection, it must "state in writing on the order the particular reasons for the court's denial." RCW 26.50.060(7).

Mr. Kaminski contends the order for protection contains insufficient findings to support the conclusion that a permanent order is called for. Citing *In re Detention of LaBelle*,

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107 Wash.2d 196, 728 P.2d 138 (1986), he argues that preprinted findings on a form are insufficient to indicate the factual basis for the court's conclusions. The statutory basis for the decision in *LaBelle*, an involuntary commitment case, is distinguishable.

RCW 71.05, the commitment statute interpreted in *LaBelle*, authorizes involuntary confinement for those individuals who pose a substantial risk of harm to themselves or to others or who are gravely disabled. *LaBelle*, 107 Wash.2d at 201-02, 728 P.2d 138. Noting that involuntary confinement is a "massive curtailment of liberty," the court concluded that due process requires sufficiently specific findings to support review of such an order. *Id.* at 201, 728 P.2d 138 (quoting *Humphrey v. Cady*, 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972)), 218. The commitment order in *LaBelle* stated only that clear and cogent evidence showed the respondent was gravely disabled. This finding, the court held, did not indicate the factual bases for the ultimate conclusion and did not show which alternative statutory definition of gravely disabled was relied on by the trial court. *Id.* at 219, 728 P.2d 138. However, the court also found that inadequate findings may be supplemented by

the trial court's oral decision or statements on the record. *Id.*

Unlike the involuntary commitment statute in *LaBelle*, the protection order authorized by RCW 26.50 does not result in a massive curtailment of Mr. Kaminski's liberty. The final amended order issued to protect Ms. Spence restrains Mr. Kaminski from committing acts of domestic violence against her, from contacting her except when arranging visitation for their child, and from entering her residence. None of these restrictions are unreasonable if based on a demonstrated need to protect Ms. Spence from domestic violence. In a section on the preprinted form named "OTHER," the court found that the long history of domestic abuse supports the conclusion that Mr. Kaminski has threatened Ms. Spence in the past and that she continues to be afraid of him. This language indicates that the court relied on the "infliction of fear of

Page 333

imminent physical harm" alternative definition of domestic violence. RCW 26.50.010(1). While much of the evidence presented at the hearing concerned past acts and threats, the court found that the continuing relationship of the parties, who still struggled over custody issues, presented ongoing opportunities for conflict. Additionally, the court stated at the hearing that Ms. Spence exhibited fear of her ex-husband. Her credibility is not reviewable by this court. *State v. Camarillo*, 115 Wash.2d 60, 71, 794 P.2d 850 (1990). The history of abuse and the court's belief that Ms. Spence fears future abuse are sufficient to persuade a rational person that she had been put in fear of imminent physical harm. [1] 1035

But Mr. Kaminski contends more than a history of domestic abuse is required. He argues that the statute implicitly requires proof of a recent act of domestic abuse, which is missing in this case. Without a recent act, he asserts, there is no abuser and no victim who needs protection. Neither the language of the statute nor legislative intent supports this requirement.

Under the general principles of statutory construction, the court's fundamental duty is to ascertain and carry out the intent of the Legislature. *State v. Chester*, 133 Wash.2d 15, 21, 940 P.2d 1374 (1997). An unambiguous statute is not subject to judicial interpretation, and the statute's meaning is derived solely from its language. *Id.* The court may not add language to a clearly worded statute, even if it believes the Legislature intended more. *Id.* Statutes are construed as a whole, giving effect to each provision. *State v. Merritt*, 91 Wash.App. 969, 973, 961 P.2d 958 (1998).

Facially, the provisions of RCW 26.50 regarding

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the issuance of a permanent order for protection are not ambiguous. The petition must allege that the victim "has been the victim of domestic violence," RCW 26.50.020(1), defined in part as the infliction of fear of imminent physical harm, RCW 26.50.010(1). Nothing in these provisions requires a recent act of domestic violence. On the other hand, in the temporary protection order statute, RCW 26.50.070, the application must allege that an immediate order is necessary to protect against "irreparable injury[.]" RCW 26.50.070(1). Irreparable injury includes situations in which the respondent "has recently threatened petitioner with bodily injury[.]" RCW 26.50.070(2). The temporary protection order is issued ex parte, without the notice and hearing found in the permanent or fixed-time protection order processes that protect the respondent's due process rights. The immediacy of the threat to the victim justifies a temporary infringement on the constitutional rights of the alleged abuser. RCW 26.50.070(4) (the temporary order shall be effective for a fixed period of not longer than 14 days, or 24 days if notice was served by publication or mail, and a full hearing is required at the end of that period). The process for issuing a permanent protection order provides adequate notice and ability to be heard. RCW 26.50.060. In light of the Legislature's intent to intervene *Before* injury occurs, [2] and in recognition that RCW 26.50.020 and RCW 26.50.060 do not require an allegation of recent domestic violence, we decline to read into these statutes a requirement of a recent violent act.

Mr. Kaminski last contends that the failure to allege a recent act of domestic violence violates due process, equal protection, and the First Amendment. Throughout his argument, he suggests that the trial court's failure to find a recent act constitutes failure to find *any* act of domestic violence. On the contrary, the trial court here found that Mr. Kaminski had committed domestic violence in the past,

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including threats of violence, and found that Ms. Spence had been the victim of that violence. RCW 26.50.020(1). A close examination of his argument leads to the conclusion that a permanent protection order based on these findings violates no constitutional rights:

I. Due Process. Determining the degree of procedural due process afforded in a particular case requires a balancing of the private interest to be protected, the risk of erroneous deprivation of that interest, and the government's interest in maintaining the procedures. *State v. Lee*, 82 Wash.App. 298, 312-13, 917 P.2d 159 (1996) (citing *Morris v. Blaker*, 118 Wash.2d 133, 144-45, 821 P.2d 482 (1992)), *aff'd*, 135 Wash.2d 369, 957 P.2d 741 (1998). As discussed above, the protection order here does not intrude on a substantial privacy interest of Mr. Kaminski. The hearing investigating the history of domestic violence and the

credibility of Ms. Spence's fear of future violence creates minimal risk that Mr. Kaminski's liberty would be erroneously deprived. Finally, the Legislature has shown that it has a strong interest in preventing domestic violence. A requirement that the victim must wait until further threatened acts actually occur Before seeking [12 P.3d 1036] a protection order would undermine that intent.

II. Equal Protection. The principle of equal protection requires that all persons similarly situated with respect to the legitimate purposes of the law must receive like treatment. *Davis v. Department of Licensing*, 137 Wash.2d 957, 972, 977 P.2d 554 (1999). Mr. Kaminski contends that the court's failure to find a recent act of domestic violence prevents the court from recognizing a basis to logically distinguish between those who should have an order entered against them and those who should not. His argument essentially challenges the sufficiency of the evidence, which was discussed above. Further, the legitimate purpose of the Domestic Violence Prevention Act--to prevent domestic violence--is rationally related to the issuance of a protection order based on a respondent's history of domestic

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violence and the petitioner's demonstrated fear of future acts of domestic violence.

III. First Amendment. The freedom to travel is a First Amendment protected liberty interest. *State ex rel. Public Disclosure Comm'n v. 119 Vote No! Comm.*, 135 Wash.2d 618, 647, 957 P.2d 691 (1998) (Talmadge, J., concurring). But that freedom of movement cannot be used to impair the individual rights of others. *Lee*, 135 Wash.2d at 390, 957 P.2d 741. As with the stalking statute, RCW 9A.46.110, the protection order of RCW 26.50 curtails an abuser's right to move about when such movement is harmful or illegal and interferes with the victim's right to be free of invasive, oppressive and harmful behavior. *Lee*, 135 Wash.2d at 391-92, 957 P.2d 741. The protection order does not interfere with Mr. Kaminski's legitimate freedom of movement or right to travel. It, like the stalking statute, is a reasonable exercise of police power requiring one person's freedom of movement to give way to another person's freedom not to be disturbed. *Id.* at 392, 957 P.2d 741.

Affirmed.

BROWN, A.C.J., and KATO, J., concur.

Notes:

[1] Mr. Kaminski's assertion that the trial court found no abuse is a misreading of the record. In discussing its decision to deny a protection order for the child, the court noted that while Mr. Kaminski's custodial interference

might constitute contempt, it did not indicate there had been abuse of the child. The court cancelled visitation until the Skagit County court entered a new parenting plan and stated, "I am making this order, even though I cannot show that there has been abuse." In the context, it is clear that the trial court was referring solely to abuse of the child.

[2] See *State v. Dejarlais*, 136 Wash.2d 939, 944, 969 P.2d 90 (1998) (RCW 26.50 reflects the Legislature's belief that the public has an interest in preventing domestic violence).
