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SUPERIOR COURT OF WASHINGTON  
COUNTY OF MASON

~~In re the Marriage of:~~

LISA MARIE DRACOBLY,

Petitioner,

and

JASON FREDRICK DRACOBLY,

Respondent.

No. 14-2 00621-1

MEMORANDUM OF  
AUTHORITIES IN OPPOSITION  
TO DOMESTIC VIOLENCE  
PROTECTION ORDER

I. STATEMENT OF FACTS

The Petitioner, LISA DRACOBLY, filed a Petition for Domestic Violence Protection Order on the 6<sup>th</sup> day of November 2014 in Thurston County, Washington. The Court in Thurston County found that it lacked jurisdiction and referred the Petitioner to Mason County where she resides. On the 6<sup>th</sup> day of November 2014, the Petitioner then sought to have an ex parte Protection Order entered in Mason County, Washington. She cites "long-term abuse" as her basis for the protection order.

On the 30<sup>th</sup> day of October, 2014, the parties entered an agreed Restraining Order as part of a settlement negotiation under the dissolution of their marriage under Thurston County Superior Court Cause Number 13-3-00742-9, in which the Respondent agrees to the restraints but denies any history or pattern of abuse towards the Petitioner. (See attached).

1 In the Petition for Domestic Violence Protection Order, the Petitioner relies heavily on a  
2 therapeutic journal that was written by the Respondent upon the suggestion of a friend who is a  
3 counselor, and supported by the marriage counselor who the parties were utilizing during the  
4 initial stages of the parties' failing marriage. The journal was written when the Respondent  
5 learned of the Petitioner's on-going amorous, intimate relationship with another man despite her  
6 consistent denials of the same. Given the long-term marriage, the Respondent was emotionally  
7 shaken by the ordeal and sought counseling to deal with his pain. The journal was a means of  
8 venting the emotions and feelings and nothing more.  
9

10 The Petitioner alleges that the "abuse" was long-term, yet there are no reports by her to  
11 anyone, friend or professional, during the marriage or the period following her affair, of the  
12 abuse she now alleges occurred.

13 Additionally, the Petitioner relies on the current agreed Restraining Order entered on  
14 October 30, 2014, as a basis for the Protection Order citing that the Respondent is now hiding or  
15 secreting firearms in violation of that Restraining Order. The prior agreed Restraining Orders  
16 included language that the Respondent was permitted to carry "duty firearms" and the boilerplate  
17 language of "government/department issued firearms" was stricken. The last three Orders  
18 entered contained a scrivener's error in that the language was not stricken as before. These orders  
19 were intended to be temporary pending the final dissolution, and clearly, the parties were in  
20 agreement that the restraining order would be for a two (2) year period. The negotiations  
21 included the agreement that the restraining order would be for two years and the petitioner would  
22 not request a DVPO. The Respondent did not stipulate or agree that there was a history of  
23 domestic violence. He was not concerned about entry of the order because he has had not had  
24 contact with Petitioner except for court and the birthday of the parties' grandchild. It was a  
25

1 compromise to satisfy her "threat" to file for a DVPO which he believes is a very real threat to  
2 his continued employment with the Mason County Sheriff's office. There is a motion before the  
3 Superior Court in Thurston County to correct that scrivener's error. (See attached) However,  
4 the Petitioner immediately took advantage of our failure to notice that the language was not  
5 corrected as it had been previously to "duty weapon/firearm" instead of the boiler plate language  
6 of "department/government issued" firearms and filed a notice with her employer, the Thurston  
7 County Sheriff's Office, of the alleged violation because, in the process of drafting the final  
8 decree the Respondent listed the three (3) duty weapons that he uses for his employment. Those  
9 weapons were not included in the decree drafted by Petitioner's counsel. When Respondent  
10 reviewed the proposed decree, he realized that the three "duty weapons" were not listed as  
11 firearms that should be awarded to him in the decree. Those weapons were purchased by the  
12 parties and were disclosed to the Petitioner through discovery, (interrogatories), and she never  
13 raised any objections. Further, these weapons are not in his possession during off-duty hours.  
14 (See declaration of Respondent's employer). He is required by his employer to have access to  
15 these weapons during duty hours. When he is off duty, two of the three weapons are locked up  
16 in the gun safe at the Mason County Sheriff's office. Since the Respondent is on duty "24/7" the  
17 third duty weapon remains locked in the Respondent's County-owned vehicle when he is not on  
18 duty. The Mason County Sheriff's Office believes that it is necessary that Respondent has  
19 access to one duty weapon in the event of call out which saves valuable time when the duty  
20 weapon is in his vehicle which eliminates the necessity of traveling first to the Sheriff's Office  
21 and retrieving the weapon from the County Gun Safe. Mason County Sheriff's office is aware of  
22 the Respondent's requirements under the dissolution action and supports that these weapons do  
23 not create a violation of the restraining order.  
24  
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1 The Respondent is very concerned that the Petitioner is merely seeking another avenue to  
2 destroy any form of existence he might have after the dissolution is finalized, by further  
3 interfering with his ability to remain employed. The Petitioner has held the filing of the DVPO  
4 over the Respondent's head for several months as leverage to obtain control of the residential  
5 time the Respondent has with the parties' son and to insure that she can obtain more and more  
6 assets through the dissolution action. When the Respondent finally reached a point that he  
7 refused to give in further, the Petitioner immediately filed the DVPO against him as promised.  
8 The Respondent is fearful that the Petitioner will continue to harass him and threaten him even  
9 after their dissolution is completed. She has raised additional threats that her paramour or former  
10 paramour will file for a Protection Order as well if she is not successful with this action. She has  
11 continually made derogatory comments to all of her co-workers and mutual friends, including  
12 those who work in the Mason County Sheriff's office, statements that are inflammatory and  
13 slanderous regarding the Petitioner's character and professionalism. These statements include  
14 false allegations of theft of her property long after they have not had any contact, abandonment  
15 of her and their child both physically and financially, statements that he has withdrawn all of the  
16 community funds and left her without any resources, and the like. Through her campaign against  
17 the Respondent she has now involved the Thurston County Sheriff's office in her complaint  
18 against the Respondent involving his violation of the restraining order, alleging her "fear" that he  
19 has possession of guns unknown to her. This has caused Thurston county Sheriff's Office to  
20 contact Mason County Sheriff's Office in an attempt to resolve the issue. This behavior may  
21 well begin to interfere with her own employment because of her continual complaints. In her  
22 Petition for DVPO, she states that she is fearful that the Respondent will appear or jump out of  
23 the bushes at her. These "fears" are nothing more than her own irrational beliefs based on her

1 sensationalized statements to anyone who will listen. Additionally she is making statements that  
2 there are insurance policies against her life that she knew nothing about, yet the payment for  
3 those policies are taken from her separate checking account, a move she made independent of the  
4 Respondent as they were originally taken from their joint account. The parties have insurance  
5 policies in which each names the other as the primary beneficiary. Respondent's brother was  
6 named as an alternate beneficiary so that he could assist the parties' two children. Yet, Ms.  
7 Dracobly would ask the Court to believe that the Respondent has a large insurance policy on her  
8 life. We have attached information regarding one of the insurance policies.

9  
10 None of the Petitioner's allegations were raised until the Respondent sought to have  
11 increased residential time with the parties' now 17-year old son. The Petitioner had initially  
12 refused any and all contact between the Respondent and their son, (except for supervised  
13 visitation with a supervisor who she agreed to and who would follow her "ground rules"). (See  
14 statement of Jeff Rhoades which was filed in the Thurston County Dissolution action). This  
15 restriction on visitation appeared to be placed on the Respondent because the Petitioner was  
16 angry that Danny learned of her affair from his father. Eventually the Respondent has been  
17 allowed eight (8) hours each Sunday. Only after filing a motion with the Court requesting a one  
18 (1) week period of time for "summer" visitation, has the Respondent been allowed an overnight  
19 visit with this seventeen (17) year old young man. To insure that the Respondent would be able  
20 to attend the Seahawks game on Sunday November 9, 2014, we had the Court sign an order  
21 allowing more than eight (8) hours. At this time, the Respondent again is not allowed overnight  
22 visits with his son. The Petitioner has made a heavy-handed, concerted effort to destroy any  
23 credibility the Respondent has with either of their children or his friends and employment,  
24 including extortion through the DVPO action.  
25

1 The Respondent initially sought to have alternate residential time or shared-residential  
2 placement with the parties' child, who was then sixteen (16) and who now will be eighteen on  
3 January 29, 2015. The Petitioner had early in the process requested that a Guardian ad Litem be  
4 appointed for Danny. The parties, through counsel, subsequently agreed that Danny's counselor,  
5 Doctor Joel Wagman, would talk with Danny and assist the parties with a residential schedule for  
6 their child. Doctor Wagman was counseling Danny because of the distress and anxiety Danny  
7 was experiencing as a result of his parents' dissolution. After Doctor Wagman provided the  
8 parties with Danny's wishes through a letter to the parties (see Wagman letter), the Petitioner  
9 then made the allegation that the Respondent was abusive to prevent that contact from occurring.  
10  
11 At no time did the Petitioner allege that the Respondent had physically abused her in any  
12 manner. She filed with the Court a copy of the Respondent's personal therapeutic journal as the  
13 basis for her allegations when she knew that the Respondent did not know that she had accessed  
14 that journal without his knowledge or consent, violating HIPPA laws in the process. The  
15 Respondent objected to the journal being used. Erring on the side of caution, the court ordered  
16 the Respondent to participate and comply with a Domestic Violation assessment conducted by a  
17 court-approved provider in spite of that objection.

18  
19 The Respondent immediately made every effort to comply with the court's order in that  
20 he immediately sought an assessment with Dr. David B. Hawkins, a licensed, certified provider  
21 in the State of Washington and accepted by Courts throughout the State of Washington, even  
22 though he is not specifically listed as an approved provider by Thurston County. The  
23 Respondent completed the ten (10) sessions of anger management as suggested by Dr. Hawkins.  
24 Dr. Hawkins' assessment was filed with the court under Sealed Medical Records on the 14<sup>th</sup> day  
25 of November, 2013 and a copy was provided to the Petitioner. The evaluation was accepted by

1 the Court, and the Respondent complied with the recommendations contained in that assessment  
2 and completed the required ten (10) one-on-one anger management sessions with Doctor  
3 Hawkins. Petitioner objected to the validity of Doctor Hawkins assessment and the Court  
4 ultimately requested a second assessment.

5 As the second assessment had been requested because the Respondent was seeking more  
6 visitation with the parties' minor child, Respondent offered to forego additional contact with the  
7 child, except for visits as approved by the Petitioner. Several months passed, and the Petitioner  
8 did not raise any objection until the Respondent filed a request with the court to increase his  
9 residential time. The Petitioner then renewed her objection to Doctor Hawkins assessment and  
10 demanded that the court find that the assessment was invalid because Dr. Hawkin's certification  
11 had lapsed for one (1) day during the process due to nonpayment of fees to the State. Petitioner  
12 requested that the Respondent should be in contempt. The Respondent requested that the Court  
13 vacate the order requiring him to complete another assessment. The Court found the Respondent  
14 in contempt for the reason that he did not timely comply with the order for the second assessment  
15 and required the Respondent to complete another assessment.

16  
17 The Respondent then obtained the second evaluation from STOP in Shelton. The Court, on  
18 the record, specifically approved the use of Shelton STOP, over the objection of Petitioner,  
19 acknowledging that the Thurston County Family Court has utilized the use of Shelton STOP in  
20 other matters and specifically in another matter where Ms. Boothe represents one of the parties.  
21 The second evaluation report was filed under Sealed Medical Reports with the court on the 30<sup>th</sup>  
22 day of April, 2014, and a copy was provided to the Petitioner. The STOP assessment did not find  
23 that the Respondent should be required to enter Domestic Violence Treatment. The Petitioner did  
24  
25

1 not raise any further objection to the second assessment and the Respondent did not request  
2 additional residential time with the parties' son.

3 On the 25<sup>th</sup> day of September, 2014, the Respondent filed a Motion to Compel Answers to  
4 Interrogatories and Motion for Continuance of the Settlement Conference because the Petitioner's  
5 answers had not been timely provided, inasmuch as the Interrogatories had been sent to Petitioner  
6 in late February. In response, the Petitioner filed a Motion to Renew Restraining Order and for an  
7 order requiring Respondent to complete 52 weeks of DV Treatment, alleging that the Respondent  
8 was avoiding compliance with the court's order. Petitioner raised the same objections that had  
9 earlier been considered by the Court. Petitioner attached a copy of a report generated by another  
10 treatment provider, Jennifer Goodwin, who had been provided both *sealed medical Domestic*  
11 *Violence evaluations* filed with the Court. Petitioner provided Respondent's sealed records  
12 without the Respondent's knowledge or permission and without prior order of the Court in  
13 violation of Federal HIPPA statutes. Miss Goodwin's report was generated solely on her review of  
14 the privileged documents improperly provided to that provider, including Respondent's therapeutic  
15 journal. Ironically, even though she has never contacted the Respondent, or any of his collateral  
16 contacts, she has concluded that Mr. Dracobly should be required to complete a 52-week domestic  
17 violence treatment program.

18  
19 The Petitioner has alleged that the Respondent made it

20  
21 "clear that he did not feel that the rules applied to him and he clearly had no intention of  
22 complying with the Court's order, I submitted the records to a provider on Thurston  
23 County's list of approved providers and filed herein under seal is Olympia  
Psychotherapy's September 23, 2014 review and recommendation that Jason submit to  
domestic violence treatment."

24 However, that is an issue for a court to decide, not the Petitioner. The Petitioner failed to  
25 file a motion to request such records be released by the Respondent, taking the law into her own



1 hands and submitting personal health records to a treatment provider without the Respondent's  
2 knowledge or the court's approval of such action.

3 Further, it appears that the treatment provider, Jennifer Goodwin, of Olympia  
4 Psychotherapy, Inc., accepted and used the medical records without a Consent or release from  
5 the Respondent, but noted in her response that she never intended for her report to be used in  
6 court against the Respondent.

## 7 II. ARGUMENT

8  
9 The Legislature has defined the appropriate steps a person must take when seeking a  
10 DVPO in court. Those guidelines are set out in RCW 26.50 and are in place to prevent those  
11 who would abuse the system for their own justification and needs.

12 RCW 26.50.010 defines "domestic violence" as follows:

13 (1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the  
14 infliction of fear of imminent physical harm, bodily injury or assault, between family  
15 or household members; (b) sexual assault of one family or household member by  
16 another; or (c) stalking as defined in RCW 9A.46.110 of one family or household  
17 member by another family or household member.

18 Domestic violence offenses are defined under RCW 10.99 as follows:

19 Unless the context clearly requires otherwise, the definitions in this section apply  
20 throughout this chapter.

21 (1) "Agency" means a general authority Washington law enforcement agency as  
22 defined in RCW 10.93.020.

23 (2) "Association" means the Washington association of sheriffs and police chiefs.

24 (3) "Family or household members" means spouses, former spouses, persons who  
25 have a child in common regardless of whether they have been married or have lived  
together at any time, adult persons related by blood or marriage, adult persons who are  
presently residing together or who have resided together in the past, persons sixteen years  
of age or older who are presently residing together or who have resided together in the  
past and who have or have had a dating relationship, persons sixteen years of age or older  
with whom a person sixteen years of age or older has or has had a dating relationship, and

1 persons who have a biological or legal parent-child relationship, including stepparents  
2 and stepchildren and grandparents and grandchildren.

3 (4) "Dating relationship" has the same meaning as in RCW 26.50.010.

4 (5) "Domestic violence" includes but is not limited to any of the following crimes  
5 when committed by one family or household member against another:

6 (a) Assault in the first degree (RCW 9A.36.011);

7 (b) Assault in the second degree (RCW 9A.36.021);

8 (c) Assault in the third degree (RCW 9A.36.031);

9 (d) Assault in the fourth degree (RCW 9A.36.041);

10 (e) Drive-by shooting (RCW 9A.36.045);

11 (f) Reckless endangerment (RCW 9A.36.050);

12 (g) Coercion (RCW 9A.36.070);

13 (h) Burglary in the first degree (RCW 9A.52.020);

14 (i) Burglary in the second degree (RCW 9A.52.030);

15 (j) Criminal trespass in the first degree (RCW 9A.52.070);

16 (k) Criminal trespass in the second degree (RCW 9A.52.080);

17 (l) Malicious mischief in the first degree (RCW 9A.48.070);

18 (m) Malicious mischief in the second degree (RCW 9A.48.080);

19 (n) Malicious mischief in the third degree (RCW 9A.48.090);

20 (o) Kidnapping in the first degree (RCW 9A.40.020);

21 (p) Kidnapping in the second degree (RCW 9A.40.030);

22 (q) Unlawful imprisonment (RCW 9A.40.040);

23  
24 (r) Violation of the provisions of a restraining order, no-contact order, or protection  
25 order restraining or enjoining the person or restraining the person from going onto the  
grounds of or entering a residence, workplace, school, or day care, or prohibiting the

1 person from knowingly coming within, or knowingly remaining within, a specified  
2 distance of a location  
(RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.5  
3 0.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);

4 (s) Rape in the first degree (RCW 9A.44.040);

5 (t) Rape in the second degree (RCW 9A.44.050);

6 (u) Residential burglary (RCW 9A.52.025);

7 (v) Stalking (RCW 9A.46.110); and

8 (w) Interference with the reporting of domestic violence (RCW 9A.36.150).

9 (6) "Employee" means any person currently employed with an agency.

10 (7) "Sworn employee" means a general authority Washington peace officer as defined  
11 in RCW 10.93.020, any person appointed under RCW 35.21.333, and any person  
12 appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.

13 (8) "Victim" means a family or household member who has been subjected to  
14 domestic violence.

15 The Petitioner would have the court believe that the actions of the Respondent meet the  
16 definition of domestic violence and cites certain events that, as she tells the story, paint him as  
17 such. However, the events as she relates them only serve to paint the Respondent in the  
18 necessary light to meet the criteria here. Throughout the dissolution action, her allegations have  
19 escalated in nature, each time she adds more "facts" to try to reach the baseline criteria for  
20 domestic violence. The Respondent is fearful that she will stop at nothing to obtain her goal of  
21 systematic eradication of his life and livelihood.

22 The Petitioner alleges several events during the parties' marriage in 2012 in which she  
23 leads the court to believe that the Respondent had sex with her against her will, yet she never  
24 reported any of these events to anyone during the period of time they allegedly occurred. Neither  
25 does the Petitioner admit that she initiated each of these events as an act of her own free will and

1 participation. She is now using them as a means to further threaten the Respondent's safety and  
2 security to extract his compliance with her demands under the dissolution action.

3 None of these allegations were raised until recently. The Petitioner has continued to  
4 escalate her allegations each time the Respondent refused to agree to certain demands for  
5 property and/or restrictions on the Respondent's access to their child for visitation purposes.  
6 Now we have reached a new level; she is alleging marital rape. In her position at the Thurston  
7 County Sheriff's office, where **she** is and was employed at the time these alleged events  
8 occurred, she had access to sufficient information and help had any of the events occurred as she  
9 now states. She never made any report. Had any of these horrific events occurred, she was in the  
10 very safest place she could be to seek assistance.  
11

12 To meet the threshold for a DVPO RCW 26.50.070 sets out certain requirements that  
13 include the following:

14 (2) Irreparable injury under this section includes but is not limited to situations in which  
15 the respondent has recently threatened petitioner with bodily injury or has engaged in acts  
16 of domestic violence against the petitioner. (emphasis added)

17 The Petitioner can offer no "recent threats" by the Respondent and relies on the  
18 Respondent's therapeutic journal and her version of events that occurred almost two (2) years  
19 ago during a very limited time-frame shortly after the Respondent's discovery of her affair. Prior  
20 to that time, and since that time, the Respondent has modeled his typical behavior throughout a  
21 very grueling process in which the Petitioner continues to try to exasperate him by denying him  
22 all but very limited contact with their son, demanding approximately 70% of the community  
23 assets and more under the dissolution process, all the while holding the threat of the DVPO  
24 action over his head as a means to further threaten his livelihood as well. This information is  
25 offered pursuant to ER 408 and is not prohibited for this Court's consideration. Throughout this

1 process, the Respondent has completed two (2) domestic violence evaluations, completed the  
2 recommended ten (10) anger management sessions, was fortunate to meet a woman who he now  
3 cares very deeply about and is making plans to move ahead with his life in spite of the  
4 Petitioner's actions. His only goal as to the Petitioner is to dissolve their marriage and begin co-  
5 parenting his nearly 18-year old son who will be going off to college in the fall.

6  
7 It is the Petitioner who threatens the peace and safety of the Respondent through every  
8 legal means she has available to her. The DVPO is simply an extension of that threat.

9 RCW 26.50.060 Relief — Duration — Realignment of designation of parties — Award  
10 of costs, service fees, and attorneys' fees may provide the following relief:

11 (4) In providing relief under this chapter, the court may realign the designation of the  
12 parties as "petitioner" and "respondent" where the court finds that the original petitioner  
13 is the abuser and the original respondent is the victim of domestic violence and may issue  
14 an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf  
of the victim until the victim is able to prepare a petition for an order for protection in  
accordance with RCW 26.50.030.

15 The Respondent is fearful for his own peace and safety given the vindictive nature of the  
16 attacks by the Petitioner under the dissolution action and now here in this court. He is fearful that  
17 if the Petitioner has her way, he will end up a broken and defeated man without any ability to  
18 provide for himself. All this because he made the mistake of telling their son, after the Petitioner  
19 had left him in the care of his father and moved out of the family home, that the marriage was  
20 ending because of the mother's choice to involve herself with another man. This was factual  
21 information that the son was already aware of. However, the Petitioner reacts as if she could  
22 hide the affair from an intelligent 16-year old boy. She is now seeking to punish the Respondent  
23 for her feelings that she is alienated from her children.  
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### III. CONCLUSIONS

The Petition does not meet the criteria for a DVPO as there are no events, recent or “historical” that justifies the Petitioner’s filing for a DVPO, nor are there any past events that support her “fears” as she now alleges. The Petitioner is using and abusing the legal system to punish the Respondent for not giving in to her every demand that she has made throughout the dissolution action that she initiated. Despite those facts, the Respondent has submitted to two domestic violence evaluations and both independent providers have determined that there is no issue of domestic violence on the part of the Respondent. The Respondent even underwent a polygraph examination to show that he had responded truthfully to the questions asked by Doctor Hawkins. Rick Minnich also asked whether the Respondent had engaged in any violence toward the Petitioner or their children that had not been reported to Doctor Hawkins. Mr. Minnich reported that the Respondent was not deceptive. The Petitioner continues to object to the providers, and she has made every attempt to force the Respondent to continue to undergo domestic violence evaluations until she is successful in finding an evaluator who agrees with her and states that the Respondent is a domestic violence perpetrator. Her actions speak volumes about her motive to place the Respondent in such light so as to eventually keep him from having any contact with the parties’ minor child and to strip him of his ability to remain employed. This behavior should not be condoned or rewarded.

Given the nature of Petitioner’s actions, the Respondent is entitled to relief under RCW 26.50.060 and is entitled to a DVPO that protects him from further abuse at the hands of the

1 Petitioner. Further, the Respondent should be awarded reasonable attorney fees for having to  
2 defend against the frivolous, vindictive actions of the Petitioner.  
3

4 Respectfully submitted this 9th day of November, 2014.  
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7 JEANETTE W. BOOTHE, WSBA #15687  
8 Attorney for Respondent  
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