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CASE NO.70909-7

THE COURT OF APPEALS DIVISION ONE OF THE

STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF

DOROTHY MAY KERTIS

AN INCAPACITATED PERSON

APPELLANT'S PETITON FOR DISCRETIONARY REVIEW BY THE WASHINGTON SUPREME COURT

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Identity of Petitioner

Petitioner and appellant Terry L. Kertis (hereafter "Terry") is the son of Dorothy May Kertis. Appellee is Dianna Parish, the Guardian of the estate and person of Dorothy May Kertis. Dorothy suffers from dementia. She is Terry's mother and she resides at Fidalgo Care Center and Rosario Assisted Living (hereafter "Fidalgo"). This appeal concerns the Domestic Violence Protection Order (hereafter "DVPO") against Terry that was first signed as an ex-parte temporary order on May 27, 2010(Cp 124-24); was modified and made effective for one year on June 11, 2010 (Cp. 143) and was further modified on June 10, 201(cp 19-22), and June 4, 2013 (cp 40). The DVPO prevented Terry from having contact with Dorothy or coming on the grounds of Fidalgo for three years until the modification signed June 4, 2013 that allowed him one hour long visit a week.

Citation to Court of Appeals Decisions

Terry was arrested twice in May and June 2010 for going to Fidalgo. On May 17, 2013 he obtained a lawyer to represent him and on May 22, 2013 the Motion to Terminate Restraining Orders Regarding Dorothy May Kertis (hereafter "Motion to Terminate") was filed in Skagit County Superior Court. Mr. Kertis cited RCW

26.50.130, presented evidence of the efforts he made over the past three years of "substantial change in circumstances" and argued that he would not commit future acts of domestic violence because he had never committed domestic violence with regard to Dorothy in the first place. His motion was denied by the Skagit County Court. The Court of Appeals Division One affirmed by opinion dated August 25, 2014 and denied the motion for reconsideration on October 15, 2014.

Issues Presented for Review

Terry asks this Court to accept review of this case on three grounds. First, the decision by the Court of Appeals conflicts with City of Seattle v. May, 171 Wn.2d 847, 256 P.3d 1161 (2011). Second the trial court should not have exercised jurisdiction because the guardian did not comply with the statutory prerequisites for the DVPO. Third, the procedure followed by the State violates Mr. Kertis's rights to due process of law and equal protection under the law under the United States Constitution. Four, the petition involves issues of substantial public interest that should be determined by the Supreme Court.

Statement of the case

On July 30, 2009, three weeks after the death of Terry's sister Sandi Ross, who had been managing Dorothy's affairs, Sandi's daughter, Dianna Parrish, filed a guardianship petition in Skagit County Superior Court, requesting appointment as guardian for Dorothy. Cp. 33-34. Terry contested the guardianship. Cp 138.

On May 27, 2010, counsel for the guardian appeared ex parte and presented a Motion/Declaration for ExParte Restraining Order and Order to Show Cause. Cp 121-123. This Motion requested that Terry be restrained from disturbing the peace of Dorothy and Gary Ross (guardian's father), and from entering on the grounds of Fidalgo.[1]

The motion was accompanied by three submissions, **none of which disclose any acts of "domestic violence" between Terry and Dorothy**.[2] One was a declaration in the form of a letter by Laura Willingham, RSC of Fidalgo. It was not based on Ms.

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[1] Throughout the course of this case, the guardian has violated 26.50.035 (1) by not using the standard petition and order for protection forms.

[2] "Domestic violence" means:
(a) **Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members**; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. RCW 26.50.010(1).

Williingham's personal knowledge and alleges the following: (1) after Terry's visits, Dorothy demonstrated increased agitation and behavior; (2) Terry drew mustaches on Ross family pictures in Dorothy's room; (3) Terry handed out cigarettes to other residents; (4) Terry cut up an apple and handed a piece to a resident who had swallowing issues; (5) Terry dropped off a pair of scissors and utility knife that he felt his mother needed (6) Terry tried to visit his mother after hours; and (7) Terry disagreed with Fidalgo's requiring him to visit his mother in a public area. Cp. 133-135.

The second submission is a Declaration by the guardian's brother Richard Ross, which repeats Ms. Willingham's comments. He also relates undated second or third hearsay comments from staff at two care facilities: Fidalgo and Mountainview Adult Family Home. Cp 136-141.[3] Mr. Ross alleges (1) unsubstantiated accusation of theft by Terry of his mother's rings: (2) Terry's attempts to get medical information about Dorothy; (3) Terry asking to take his mother to the beach; and (3) Terry's claim that a boat and vehicles and other property belong to him. Cp 138-139.

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[3] Terry had been concerned about the care Dorothy was receiving at Mountainview and contacted DSHS with his concerns. Mountainview Adult Family Home was closed as a result of his information and the DSHS investigation and Dorothy was moved to Fidalgo. Cp 65.

The third submission is the guardian's declaration that repeats the same comments made by Laura Willingham. She also claims that Terry has made "inappropriate comments" to his mother and has generally acted "inappropriately." Cp 129-30.

Nevertheless, the Honorable John Meyer, sitting on the Ex Parte Calendar, signed the Ex Parte DVPO on May 27, 2010. Cp 124-27. The order stated that violation is a criminal offense under RCW 26.50 and will subject the violator to arrest citing RCW 26.09.060.

The guardian's counsel personally served the Ex Parte Restraining Order on Terry at 4:45 pm on May 27, 2010. Cp 154. Later that evening, Terry walked to Fidalgo and tried to visit his mother. He was arrested by the Anacortes Police Department and charged by the City of Anacortes with violating the temporary restraining order. Cp. 154.

At the hearing on the show cause return date June 11, 2010, counsel for the guardian informed the court that Terry had been arrested on May 27, 2010. Rp(6-11-2010) p3. The Court signed the modified DVPO proposed by the guardian with the finding that Terry "has engaged in conduct that places his mother at risk of psychological and physical harm". It restrained Terry from

disturbing the peace of Dorothy and from coming on the Fidalgo grounds. Cp 143. These restraints were accompanied by language that violation is a criminal offense under RCW 26.50 and will subject the violator to arrest citing RCW 26.09.060. Cp 143. The order was to expire on June 11, 2011. Cp. 147.

On June 23, 2010 Terry went to Fidalgo to ask about the class that he had taken there and to visit other patients he knew besides his mother. Cp. 155. He was arrested for violating the DVPO. Cp. 155.

After the DVPO was entered in Skagit County, the guardian and her brother Richard Ross obtained DVPOs in King County, which terminate in 2035. Cp. 34. Terry was not present when either of these orders was entered. He lives on acreage 3 1/2 miles or so from Anacortes; and, because he has no car, transportation is very difficult for him. Cp. 34-35.

In late 2010 and early 2011, warrants were issued for violations of the King County and Skagit County DVPO's mostly because Terry used poor judgment and continued to make telephone calls to Ms. Parris and Mr. Ross. Cp. 35. He was arrested in early January 2011 on a warrant for telephone harassment and spent 1 month in jail. After learning about other warrants, Terry turned himself in to

authorities in Skagit and King counties because of his transportation difficulties and confusion about the various legal proceedings. Cp 35. After spending more than 100 days in jail awaiting disposition, he was finally released from the Regional Justice Center in King County on April 25, 2011 because of a plea agreement, which he has fulfilled. Cp 35.

On June 11, 2011 the Honorable Susan Cook signed the modified DVPO finding "Terry Lee Kertis continues to engage in conduct that places his mother Dorothy May Kertis at risk of psychological and physical harm". Cp 19-22. The order extended the term of the DVPO to June 20, 2016. Cp 22.

From February 2011 through October 2011, Terry participated in and completed an alcohol relapse program in Anacortes. Cp35,69. He also received a mental health assessment on July 28, 2011 that concluded that mental health treatment was not warranted. Cp 68. It also confirmed that Terry was dealing with grief over losing his sister and his right to see his mother. Cp 68.

Terry applied for legal assistance from the Skagit Volunteer Lawyer Program in May 2012. Cp162. Although he met the requirements for indigency, it took a year for the program director to

find him a volunteer lawyer. Cp. 162. Finally, in May 2013, his counsel filed a Motion to Terminate the Restraining Order. It was supported by Terry's declaration admitting that he did not use his best judgment in handling his frustration by continuing to make threatening telephone calls to the guardian and her brother. CP 33

Before the hearing on that motion, on June 4, 2013 Terry and the guardian reached agreement to modify the DVPO so that he could visit his mother with supervision once a week on Tuesday from 3 to 4 pm. Cp. 38-41.

As the eighth visit neared, Terry renoted his Motion to Terminate for August 2, 2013. Cp.25. He documented the dramatic change in his conduct at Fidalgo as noted by Fidalgo's Director. Cp 119. At all times, Terry was gentle and loving toward his mother. Cp.119. Terry's wife Tina had been visiting Dorothy at Fidalgo every week. Cp 74. Tina noticed during visits without Terry, Dorothy would scowl and make angry sounds. When Terry visits, she smiles, her eyes light up, she sings and grabs his hand when he has to leave. Cp 64,74-75. The guardian submitted a letter from Fidalgo, admitting that Terry has been prompt and congenial for all of his visits. Cp. 62.

On August 15, 2013 Judge Meyer denied the motion and made the following findings:

1. "Respondent (Terry) has not established by a preponderance of the evidence that termination of the order is warranted". Cp. 94.
2. "Court cannot look behind the original restraining order issued herein as it was not appealed and becomes a verity." CP 95
3. There is insufficient evidence to find a substantial change in circumstances.

He also noted, "Nonetheless, the Court sympathizes with Mr. Kertis' situation and encourages the guardian to endeavor to expand visitation as justified." Cp. 95.

Judge Meyer also denied Terry's Motion to Reconsider Order on Motion to Terminate Restraining Order, with the following findings:

1. "The Court had jurisdiction to enter the original restraining order and to subsequently renew the restraining order based upon Mr. Kertis 'inflicting fear of imminent physical harm or bodily injury' on his mother, as voiced by his mother's guardian, who stands in his mother's shoes." Cp. 108.
2. "Mr. Kertis engaged in conduct that placed his mother at risk of emotional and psychological harm as well as physical harm, which in itself would have warranted the guardian seeking restrictions on Mr. Kertis' contact with his mother, even if it were not by means of a restraining order." Cp 108.
3. "This motion for Reconsideration, furthermore, is a collateral attack on the original orders herein and, also, is untimely." Cp 109.

On September 12, 2013 Terry filed the Notice of Appeal from the Order on Motion to Terminate Restraining Order. Cp. 111-113.

On September 20, 2013, he filed an amended Notice to include the Order on Motion for Reconsideration entered on September 11, 2013. Cp. 114-115.

The Court of Appeals granted Terry's motion for expedited review because of Dorothy's age and medical condition. Opinion at page 9 footnote 9 Appendix A

By opinion dated August 25, 2014, the Court of Appeals denied Terry's appeal and agreed with Judge Meyer that "The 2010 DVPO and 2011 DVPO are not subject to collateral attack on the grounds that the orders failed to comply with statutory requirements." Opinion at p.10, Appendix A. The Court agreed that Terry had not met his burden under RCW 26.50.130 of proving a substantial change in circumstances. At the end of the Opinion, Ironically, the Court of Appeals opined "[c]learly, nothing precludes Terry from filing another motion in the future under RCW 26.50.130. On October 15, 2014 the Court of Appeals denied Terry's motion for reconsideration. Appendix B

ARGUMENT

1. **The decision by the Court of Appeals is in conflict with City of Seattle v. May, 171 Wn.2d 847, 256 P.3d 1161 (2011).**

Both the trial court and the Court of Appeals rely on the theory of collateral estoppel to bar any argument that the DVPO was entered and modified without statutorily required proof and findings of Domestic Violence. These judges are just flat out wrong. More surprisingly, in support of its holding on collateral estoppel, the Court of Appeals cites City of Seattle v. May, 171 Wn.2d, 256 P.3d 1161 (2011).

City of Seattle v. May, 171 Wn.2d 847, 256 P.3d 1161 (2011) was a prosecution of May for violating a DVPO and he tried to attack the validity of the DVPO. The Supreme Court held that he could not do so because the prosecution was an action collateral to the DVPO cause. In two places the Supreme Court announced that May's remedy was a motion to modify under RCW 26.50.130:

> In the present case, the court issuing the permanent domestic violence protection order against May had jurisdiction to issue such orders, and its subject matter and personal jurisdiction are unchallenged. As such, the order was not void. The collateral bar rule therefore prohibits May's challenge to the validity of the underlying protection order. If May believes the domestic violence protection order against him is invalid, RCW 26.50.130(1) permits him to seek modification of that order by the issuing court.[4] Seattle v. May, at 855.

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[4] After Seattle v. May,supra, was decided RCW 26.50.130 was revised and RCW 26.50.130(3) now applies to termination of DVPO's.

May made a choice to violate the plain and unambiguous terms of the domestic violence protection order that prohibited him from contacting his ex-wife. May might earnestly believe that the order is invalid, but his remedy is to seek modification of the order by the court that issued it; he is not free to violate the order with impunity. The collateral bar rule precludes May's challenge to the validity of the domestic violence protection order.
Seattle v. May, at 857.

Terry has already been prosecuted for two violations of the DVPO. His Motion to Terminate is a direct attack on the DVPO, which is allowed by the "Domestic Violence Prevention Act" itself. RCW 26.50.130. The DVPO has run from May 27, 2010 to today and has already been modified four times. It is concerning that the trial and appellate judges do not recognize that, like an injunction, a DVPO is different from a judgment that finally determines an amount owed. See also RCW 7.40.180 (injunctions may be modified or dissolved at any time.). Cr 60(b)(6) allows relief from a judgment "if it is no longer equitable that the judgment should have prospective application."

2. **The trial court should not have exercised jurisdiction and issued the DVPO because the guardian failed to allege and prove that Terry committed domestic violence with regard to Dorothy.**

In his reply brief, Terry cites Marriage of Buecking, 179 Wn.2d 438, P.3d (2013), wherein this Court reasoned that the legislature cannot restrict the court's jurisdiction where the

constitution has specifically granted jurisdiction but it can prescribe prerequisites to a court's exercise of its jurisdiction. Buecking, at 448.

On this point, the Buecking court cites Gross v. City of Lynnwood, 90 Wn.2d 395, 583 P.2d 1197 (1978). There a 35 year old plaintiff brought an age discrimination claim against Lynnwood for not hiring him. The City It argued a state statute governing absolutely prohibited the employment of persons ineligible for participation in LEOFFRS. The trial court agreed and after a trial, dismissed the lawsuit. On appeal the City of Lynnwood argued that the discrimination law does not create a cause of action for the plaintiff because he is only 35 years old. Gross responded that the City had waived that defense because it had not raised it to the trial court. The Washington Supreme Court disagreed.

> In our opinion, this particular statutory limitation on the class of persons entitled to a civil cause of action for age discrimination operates to define the specific facts upon which relief may be predicated. A party may raise failure to establish facts upon which relief can be granted for the first time in the appellate court. RAP 2.5(a)(2). Respondent is thus not precluded from raising appellant's failure to establish he is within the protected class. Inasmuch as appellant failed to establish the facts upon which relief can be granted, dismissal of his complaint for age discrimination under RCW 49.60 was not error. Gross v. City of Lynnwood, supra, at 400.

The prerequisites for jurisdiction under the Domestic

Violence Prevention acts are set out in RCW 26.50.020(1)

(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

Clearly a petition alleging that Dorothy has been the victim of Domestic Violence committed by Terry is a prerequisite to the court's exercise of subject matter jurisdiction under RCW 25.50. Instead the guardian sought the DVPO because Terry has engaged (or continues to engage) in conduct that places his mother at risk of psychological and physical harm. While the trial court could have entered an injunction under RCW 7.40 that is enforced through contempt (RCW 7.40.150), it should not have entered the DVPO. The guardian's failure to allege and prove domestic violence can be raised at any time. CR 60(b)(6). As the Court of Appeals pointed out in Pacific Security Companies v. Tanglewood, 57 Wn.App. 817, 820-21, 790 P.2d 643 (1990):

"CR 60(b)(6) permits the court to "relieve a party or his legal representative from a final judgment, order, or proceeding [if] ... it is no longer equitable that the judgment should have prospective application"... The rule applies primarily to injunctions and judgments other than those for money damages. United States v. American Nat'l Bank & Trust Co.,101 F.R.D. 770 (N.D.Ill.1984). The court has the inherent right in equity to modify an injunction when changed circumstances render the injunction an instrument of wrong. Lubben v. Selective Serv. Sys. Local Bd. 27, 453 F.2d 645,

651, 14 ALR Fed 298 (1st Cir 1972)."

3. The procedures in this case violated Terry's rights to due process and equal protection under the law.

In his brief, Terry cites Spense v. Kaminski, 103 Wn.App. 325, 12 P.3D 1030 (2000) as authority for his argument that the DVPO violates his constitutional rights to due process and equal protection. Kaminski argued the DVPO violated due process and equal protection because it was not based on a recent act of domestic violence. There the Court of Appeals balanced Kaminski's liberty interest with the risk of erroneous deprivation of that interest and government's interest in maintaining the procedures:

"The hearing investigating the history of domestic violence and the credibility of Spence's fear of future violence created a minimal risk that Spense'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 a protection order would undermine that intent." Spense v. Kaminski, at 335-36

In this case, there is no history of domestic violence between Terry and Dorothy and thus no credible fear of future acts of domestic violence to Dorothy to satisfy due process and equal protection concerns as outlined in Spense v. Kaminiski, supra.

Terry has a clear liberty interest in being able to visit his

mother as any other visitor would be able to do and to not be arrested and prosecuted. The DVPO contains a threat of criminal sanction for visiting his mother that is sufficient "state action" to trigger the due process analysis. State v. Lee, 82 Wn.App. 298, 312, 917 P.2d 159 (1996) aff'd 135 Wn.2d 369, 957 P.2d 741 (1998). And he was arrested and prosecuted for violating the DVPO by coming to Fidalgo. The state court signed the DVPO and has continued it in effect for more than 4 years in the absence of allegations and proof of domestic violence between Terry and Dorothy. Certainly the state has little interest in maintaining the procedures that have been followed in this case. In the Domestic Violence Prevention Act, the legislature established prerequisites to jurisdiction, requirements for the use of certain forms, and the procedure. But no one associated with this case abided by the Act.

Furthermore, the procedure in this case undermined the intent of the Domestic Violence Prevention Act. It gave Terry no notice of what specific acts justified the DVPO so that he could make efforts to change his conduct. It accomplished undesirable objectives like (1) taking away Terry's freedom to visit his mother, walk near Fidalgo, to send flowers or cards to his mother, to call his mother; and (2) violating Dorothy's liberty interests in seeing and

communicating with her son for more than 3 years for no good reason.

The Equal Protection analysis is pretty straightforward. The Domestic Violence Prevention Act is intended to apply to people who commit domestic violence. People who do not commit domestic violence should not have their freedom restricted or be arrested or prosecuted. That is exactly the problem: Terry continues to have his liberty restricted as if he committed acts of domestic violence against Dorothy.

4. This petition involves issues of substantial public interest that should be determined by the Supreme Court.

Clearly, two Superior Court judges and three Court of Appeals judges do not know how to enforce the Domestic Violence Protection Act. Terry did not commit domestic violence against Dorothy but he was punished nonetheless. No one represented him at the hearings in 2010 and 2011. Hundreds if not thousands of DVPO's are issued per year in this state and most petitioners and respondents are pro se. This Court should accept review of this case to give remind and give guidance to judges on their duty to verify that the requirements of the Domestic Violence Prevention Act are met.

A DVPO is not written in stone. It can be modified and terminated. RCW 26.50,130(3). No doubt, few respondents have the resources to appeal a DVPO that is issued without the jurisdictional prerequisites. This Court should accept review to clarify the process for terminating a DVPO that is entered without allegations and proof of "domestic violence".

This case gives this Court an opportunity to give guidance to trial courts about weighing factors set out in RCW 26.50.130 and about the burdens of proof that are required. The Court of Appeals purported to review this issue for abuse of discretion without identifying what acts of Terry's underlie the DVPO. Certainly it was hampered by the trial court, which never identified any act or acts either. Who knows why the trial judge entered the DVPO? If it was his general conduct, Terry presented unrefuted evidence of a substantial change in his circumstances and behavior. His spending time in jail motivated him to change his ways. He engaged in 8 months of alcohol relapse treatment. And he got over the grief of his sister's death which was noted in the July 28, 2011 mental health assessment, He hasn't violated the terms of any DVPO since August, 2010. Cp 12-16. The weekly visits have gone well, and the change in his conduct has been clearly noted.

Yet in the face of this unrefuted proof of substantial change and the lack of history of domestic violence between Terry and Dorothy, the Court of Appeals cited only the guardian's and Fidalgo's opinions that it was too soon to change the DVPO. Opinion at p.12 Fidalgo claimed to have witnessed years of poor "decision making" which continuously put "our elders and staff at risk". CP 62 In fact, Dorothy had been moved to Fidalgo in the Fall of 2009 less than one year before the DVPO was entered. The guardian talked about past relapses. There is no proof of domestic violence by Terry with regard to Dorothy during or not during so called relapses. In view of the fact that Terry did not commit acts of domestic violence against Dorothy, what do past relapses have to do with a "substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against Dorothy"? RCW 26.50.130(3)(a).

The last reason why this Court should accept review relates to RCW 11.88.005 and the duty of the guardian and court to restrict Dorothy's liberty and autonomy only to the "minimum extent necessary to adequately provide for her health and safety or to adequately manage her financial affairs." RCW 11.88.005. There are no judicial opinions and few materials (the King County Family

and Volunteer Guardian's Handbook) on this duty as it applies to volunteer guardians. The guardian and the trial court terminated all communication between Dorothy and her only living child without consideration of her rights. No one spoke for her. There were other options besides the DVPO such as an injunction under RCW 7.40 requiring Mr. Kertis to comply with Fidalgo's rules. As the population ages, the need for guidance becomes essential to prevent intrafamily discord and damage to the incapacitated person.

It is shocking that trial and appellate judges would allow restraints on a person's liberty to continue more for more than a year when the illegality of those restraints is brought to their attention. Terry humbly requests this court terminate the DVPO and allow him the liberty to see Dorothy in the last stage of her life as often as he wishes.

Respectfully submitted this 28th day of October, 2014.

Nancy Pregl WSBA 7009

CERTIFICATE OF MAILING

I certify and declare under penalty of perjury under the laws of the State of Washington I mailed a copy of the Petition for Review of Appellant Terry L. Kertis to Appellee's attorney of record, Dewey Weddle, 909 7th Street, Anacortes, WA. 98221 postage prepaid on ~~December 10, 2013~~ October 28, 2014.

Signed _____

Nancy W. Preg WSBA 7009

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Guardianship of DOROTHY MAY KERTIS,	)	No. 70909-7-I
	)	DIVISION ONE
An incapacitated person,	)	
DIANNA PARISH, Guardian,	)	
Respondent,	)	UNPUBLISHED OPINION
v.	)	
TERRY L. KERTIS,	)	
Appellant.	)	FILED: August 25, 2014

SCHINDLER, J. — The superior court entered a five-year domestic violence protection order (DVPO) restraining Terry L. Kertis from having contact with his incapacitated mother Dorothy May Kertis. The court found that Terry[1] "continues to engage in conduct that places his mother . . . at risk of psychological and physical harm." Terry appeals the order denying his motion to terminate the DVPO and the motion for reconsideration. We affirm.

FACTS

Dorothy May Kertis is the mother of Terry L. Kertis and Sandi Ross. Beginning in 2005, Dorothy lived with her daughter Sandi. After Dorothy's dementia became more

[1] We use first names for purposes of clarity and mean no disrespect by doing so.

advanced a couple of years later, Sandi made arrangements for Dorothy to live at the Mountain View Adult Family Home.

Sandi died in July 2009. Sandi's daughter Dianna Parish filed a petition to establish a guardianship for Dorothy and her estate. Terry opposed the guardianship. The court entered an order establishing the guardianship. The court appointed Diana as the guardian (Guardian) and Dianna's brother Richard Ross as the standby guardian (Standby Guardian). In October 2009, the Guardian made arrangements to move Dorothy to the memory care unit at the Fidalgo Care Center and Rosario Assisted Living facility (Fidalgo).

2010 Domestic Violence Protection Order

On May 20, 2010, Fidalgo Resident Care Director Laura Willingham contacted the Guardian to express concerns about Terry's visits with Dorothy.

On May 27, 2010, the Guardian filed a motion for show cause hearing and ex parte domestic violence protection order (DVPO) to restrain Terry from contacting Dorothy or the Guardian's father, Gary Ross. In support, the Guardian attached her declaration, a declaration of the Standby Guardian, and the letter from Fidalgo.

The Guardian alleged that Dorothy "is incapacitated and is a vulnerable adult," that Terry "continues to place his mother at risk of personal harm," and that he "cannot control his impulses." The Guardian asserts Terry "refuses to abide by the terms and conditions placed upon his visits with his mother," and the staff at Fidalgo noticed "a pattern of increased agitation from Dorothy after Terry's visits." The Guardian alleged Terry's conduct "is impacting [staff's] ability to provide care for Dorothy and the other residents." The Guardian also alleged Terry "has stolen my grandmother's property

from her house" and he "has a long and well-documented history of alcohol and drug abuse and it clearly is not in remission." In addition, the Guardian alleged Terry harassed and threatened Gary.

In the letter from Fidalgo, Willingham explains that Dorothy requires 24-hour supervision because she "has poor safety awareness and is at risk for [running away]" due to advanced dementia. Willingham states Dorothy is "a vulnerable adult who is subject to, and from our accounts, influenced by negative and potentially unsafe interactions with her Son [Terry]."

Willingham describes a history of Terry "visiting his mother spontaneously." Willingham states that "[r]ecently, his visits have appeared to cause emotional distress for [Dorothy] and . . . caused our facility staff great concern for her safety." Willingham cites one incident in particular where Terry attempted to visit Dorothy very early in the morning and left a pair of scissors and an open box-cutting knife.[2] On another occasion, Fidalgo staff discovered Terry trying to get into his mother's room at 1:00 a.m. and that "he may have been intoxicated as he was very aggressive verbally and presented to [staff] as 'threatening.' " Willingham describes how Fidalgo tried to work with Terry to schedule visits at times when staff could be present, but Terry "was not cooperative with this arrangement" and tried to visit Dorothy at night or on weekends when staff were unavailable to supervise.

The Standby Guardian states that when Dorothy was living at Mountainview Adult Family Home in 2009, caregivers observed Terry "coercing signature from his mother on documents." According to the Standby Guardian, he later learned Terry used

[2] Willingham also describes incidents where Terry put other residents at risk, including handing out cigarettes to residents in the memory care unit and giving apple slices to residents who were unable to swallow "regular texture food."

Dorothy's signatures "to gain access to her private medical information and to transfer co-ownership of one of her bank accounts into his name," had repeatedly attempted to gain access to his mother's bank accounts, and had "repeatedly [been] observed prowling" Dorothy's home.

On May 27, the court set a show cause hearing for June 11 and entered a temporary DVPO restraining Terry from contacting Dorothy or Gary. On May 28, Terry was arrested for violating the temporary DVPO by trying to visit Dorothy and contact Gary.

Terry attended the show cause hearing on June 11. Terry did not dispute any of the allegations. The court entered a one-year DVPO. The order states, in pertinent part:

> Based upon the remarks of those present and a review of the files and records herein, the court finds that TERRY LEE KERTIS has engaged in conduct that places his mother at risk of psychological and physical harm. . . .
>
> . . . .
>
> **Violation of a Restraining Order . . . with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to arrest. RCW 26.09.060.**[3]

The court also found that Terry "has engaged in conduct that constitutes harassment of GARY ROSS, including threatening phone calls."[4]

On June 24, 2010, Terry was charged with violating the DVPO by attempting to visit Dorothy at Fidalgo. On August 8, Terry was charged with violating the DVPO by attempting to contact Gary.

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[3] Emphasis in original.

[4] Emphasis in original.

In January 2011, Terry was charged with telephone harassment for leaving voicemails threatening to harm Gary when the DVPO expired and threatening to kill the Guardian and the Standby Guardian if they attempted to move Dorothy to Seattle.

Terry pleaded guilty to violation of the DVPO and telephone harassment.[5] The court ordered Terry to obtain a drug and alcohol evaluation, obtain a mental health evaluation, and comply with all treatment recommendations. Terry served approximately 100 days in jail and enrolled in an alcohol relapse prevention program. Following his release from jail on April 25, 2011, Terry continued to participate in the relapse prevention program.

2011 DVPO

On June 2, 2011, the Guardian filed a petition to renew and modify the 2010 DVPO. The Guardian asked the court to renew the DVPO for five years and include a specific provision to prevent Terry from "molesting, harassing, threatening, or stalking" by "telephonic, audiovisual, or other electronic means." In addition to violating the terms of the 2010 DVPO, the Guardian alleged that in 2010, Terry told the staff at Fidalgo that he was going to remove Dorothy from the facility, and in November, he went to Fidalgo demanding to see his mother. The Guardian also reported that the Veterans Administration told her Terry had attempted to gain access to Dorothy's information.

In response to the motion to renew the DVPO, Terry admitted violating the 2010 DVPO but states that the "Ross family" has made "false accusations," including accusing him of stealing from Dorothy.

[5] Terry also pleaded guilty to malicious mischief for throwing a rock through the Guardian's car windshield.

The court granted the request to renew the DVPO for five years. The court ruled, "It's pretty clear to me that [Terry] poses a risk to both his mother and to [the Guardian] and [Gary]." The June 10, 2011 DVPO states, in pertinent part, "[T]he court finds that TERRY LEE KERTIS continues to engage in conduct that places his mother, DOROTHY MAY KERTIS, at risk of psychological and physical harm."[6] The DVPO restrains Terry from contacting Dorothy and expires on June 10, 2016. However, the order specifically states that the DVPO "[m]ay be lifted or modified by further Court order."

The DVPO also restrains Terry from having contact with Gary. The court found, "TERRY LEE KERTIS continues to engage in conduct that constitutes harassment of his brother-in-law, GARY WAYNE ROSS, including threats of bodily harm."[7]

Motion to Terminate the DVPO

On May 22, 2013, Terry filed a motion to terminate the June 10, 2011 DVPO, arguing there had been a substantial change in circumstances. Terry also challenged entry of the 2010 DVPO and the 2011 DVPO, claiming there was no evidence he committed domestic violence against his mother. In his declaration in support of the motion to terminate, Terry states that in the last two years, he had participated in an alcohol relapse prevention program and that he no longer has "the problems with alcohol that I did before the restraining orders were entered."

Before the hearing on the motion to terminate the DVPO, Terry and the Guardian entered into an "Agreed Order Modifying Restraining Order Entered on June 10, 2011" (Agreed Order). The Agreed Order allows Terry to have weekly supervised visits with

[6] Emphasis in original.

[7] Emphasis in original.

Dorothy. The Agreed Order also states that if there are "no problems" after eight visits, the order "may be further modified to increase the frequency of the visits, change the scheduled time of the visits, or increase the time allotted for each visit." The court entered the Agreed Order on June 4, 2013.

After approximately six supervised visits with Dorothy, Terry renoted his motion to terminate the DVPO. In support, he submitted another declaration, a copy of the mental health evaluation, and a copy of the discharge summary for the alcohol relapse prevention program. Terry also submitted a declaration from his spouse Tina, and a declaration from Tina's cousin Joyce Panzero.

Terry asserts he will "abide by the regular rules of the care center" and believes his visits "lift my mother's spirits and benefit her greatly." The July 2011 mental health evaluation states that Terry's prognosis is "[g]ood" and that mental health treatment is "not warranted at this time." The October 2011 alcohol relapse program discharge summary states that Terry "[c]ompleted [t]reatment" and his prognosis is "good."

Terry's spouse Tina states that she visits Dorothy on a weekly basis and since Terry started visiting again, Dorothy "smiles, her eyes light up, and she sings." Panzero accompanied Terry on five of the supervised visits. Panzero states that Terry was "very gentle towards his mother" and, in her opinion, did not require supervision. Panzero states that during one of the visits, the executive director of Fidalgo, Joe Sladich, remarked about "how much Terry had changed and was such a totally different person from three years ago."

The Guardian and Standby Guardian filed declarations in opposition to terminating the DVPO and submitted a letter from Fidalgo opposing "any proposed changes at this time."

Following the hearing on August 2, Terry submitted a supplemental brief arguing there was no evidence he committed domestic violence, the Guardian unreasonably restricted Dorothy's social life, and the Guardian failed to ensure Dorothy was able to communicate with her son.

The court denied the motion to terminate the DVPO. The order denying the motion to terminate the DVPO states, in pertinent part, "Based upon the evidence presented, the court finds that the respondent has not established by a preponderance of the evidence that termination of the order is warranted." While the court found "insufficient evidence to find a substantial change in circumstances," the order states the court "sympathizes with [Terry]'s situation and encourages the guardian to endeavor to expand visitation as justified." The order explicitly rejects Terry's attempt to collaterally attack entry of the 2010 DVPO and the 2011 DVPO, stating, "The court cannot look behind the original restraining order (DVPO) issued herein, as it was not [appealed] and becomes a verity."

Terry filed a motion for reconsideration. Terry argued he was entitled to relief under CR 60(b)(5)[8] because the 2010 DVPO and the 2011 DVPO were "void for lack of subject matter jurisdiction." Terry claimed the petitions in support of the 2010 DVPO and 2011 DVPO did not allege domestic violence.

[8] CR 60(b)(5) states that "the court may relieve a party or his legal representative from a final judgment [or] order" if "[t]he judgment is void."

The court denied the motion for reconsideration. The order states, in pertinent part:

> 1. The Court had jurisdiction to enter the original restraining order and to subsequently renew the restraining order based upon [Terry] "inflicting fear of imminent physical harm or bodily injury" on his mother, as voiced by his mother's guardian, who stands in his mother's shoes.
> 2. The court file contains voluminous evidence, including declarations made under oath, and a detailed letter from Fidalgo . . . , indicating that [Terry] engaged in conduct that placed his mother at risk of emotional and psychological harm as well as physical harm.

ANALYSIS

Terry appeals the order denying his motion to terminate the DVPO and the order denying reconsideration."[9]

First, Terry attempts to collaterally attack entry of the 2010 DVPO and the 2011 DVPO, arguing the court did not have subject matter jurisdiction. Terry asserts the court did not have subject matter jurisdiction to enter the 2010 DVPO or the 2011 DVPO because the petitions did not comply with the statutory requirements of the Domestic Violence Prevention Act, chapter 26.50 RCW.

Superior courts in Washington State have subject matter jurisdiction over all types of cases unless jurisdiction is vested exclusively in another court. WASH. CONST. art. IV, § 6. A final order is void if the court lacked subject matter jurisdiction. In re Marriage of Buecking, 179 Wn.2d 438, 446, 316 P.3d 999 (2013). The court had

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[9] We granted Terry's motion for accelerated review. The Guardian filed a motion on the merits to affirm and an "Amendment to Motion on the Merits." Terry filed a motion to strike the Amendment to Motion on the Merits. We grant the motion and do not consider the amendment to the motion on the merits. The Amendment to Motion on the Merits attaches documents and makes arguments related to events that occurred after the court entered its order denying Terry's motion to terminate the DVPO and the order denying reconsideration. RAP 10.3(a)(8); Dioxin/Organochlorine Ctr. v. Dep't of Ecology, 119 Wn.2d 761, 771, 837 P.2d 1007 (1992) (a reviewing court will only consider evidence admitted by the trial court). However, we note that argument in a brief, not a motion to strike, "is the appropriate vehicle for pointing out allegedly extraneous materials." Engstrom v. Goodman, 166 Wn. App. 905, 909 n.2, 271 P.3d 959, review denied, 175 Wn.2d 1004, 285 P.3d 884 (2012).

subject matter jurisdiction to enter the DVPO in 2010 and 2011. The 2010 DVPO and 2011 DVPO are not subject to collateral attack on the grounds that the orders failed to comply with statutory requirements. Bresolin v. Morris, 86 Wn.2d 241, 245, 543 P.2d 325 (1975); see also City of Seattle v. May, 171 Wn.2d 847, 852-53, 256 P.3d 1161 (2011).[10]

Next, Terry contends the court abused its discretion in denying his motion to terminate the 2011 DVPO because he showed by a preponderance of the evidence that there had been a substantial change in circumstances.

We review a decision to terminate a protection order for abuse of discretion. In re Marriage of Freeman, 169 Wn.2d 664, 671, 239 P.3d 557 (2010). We also review a trial court's denial of a motion for reconsideration for abuse of discretion. Rivers v. Wash. State Conference of Mason Contractors, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002).

A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. In re Marriage of Horner, 151 Wn.2d 884, 893, 93 P.3d 124 (2004). We uphold a trial court's findings if substantial evidence in the record supports them. In re Marriage of Stewart, 133 Wn. App. 545, 550, 137 P.3d 25 (2006).

Substantial evidence is a quantity of evidence sufficient to persuade a fair-minded, rational person of the finding's truth. In re Contested Election of Schoessler, 140 Wn.2d 368, 385, 998 P.2d 818 (2000). We defer to the trial court's determinations

[10] For the first time on appeal, Terry asserts that he is entitled to collaterally attack the 2010 DVPO and 2011 DVPO because the court has the inherent authority to address the restraining orders as injunctions. But as conceded at oral argument, Terry did not raise this argument below. We do not consider arguments raised for the first time on appeal. RAP 2.5(a); Lunsford v. Saberhagen Holdings, Inc., 139 Wn. App. 334, 338, 160 P.3d 1089 (2007).

on the persuasiveness of the evidence, witness credibility, and conflicting testimony. Snyder v. Haynes, 152 Wn. App. 774, 779, 217 P.3d 787 (2009).

Under RCW 26.50.130(3)(a), the court may not terminate a DVPO "issued for a fixed period exceeding two years . . . unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner." The petitioner "bears no burden of proving . . . a current reasonable fear of imminent harm by the respondent." RCW 26.50.130(3)(a).

RCW 26.50.130(3)(b) states that the court shall consider "only factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order."[11] The statutory factors a court may consider in determining whether there has been a substantial change in circumstances include:

> (i) Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;
> (ii) Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;
> (iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;
> (iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;
> (v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;
> (vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;
> (vii) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;

[11] Emphasis added.

> (viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;
> (ix) Other factors relating to a substantial change in circumstances.

RCW 26.50.130(3)(c).

The court denied the motion to terminate the 2011 DVPO because Terry had "not established by a preponderance of the evidence that termination of the order is warranted," and "[t]here is insufficient evidence to find a substantial change in circumstances." The record supports the court's decision.

Below, the Guardian argued Terry had a history of relapsing and it was too soon after agreeing to the resumption of weekly supervised visits to consider additional changes to the DVPO. Fidalgo also expressed concerns that the motion to terminate was premature, stating, "While the past few weeks have given us hope for [Terry]'s positive changes, such little time does not erase the significant concerns we have as a direct result of years of poor decision making which continuously put our elders and staff at risk."

Terry argued the evidence showed a "substantial change in circumstances" because he had not violated the DVPO since 2010, he completed a court-ordered alcohol relapse prevention program in October 2011, and the recent supervised visits with his mother went well. But in determining whether there has been a substantial change in circumstances, "the court may not base its determination solely on [t]he fact that time has passed without a violation of the order." RCW 26.50.130(3)(d)(i). There is also no dispute that Terry had been previously convicted of violating the 2010 DVPO. In addition, the record shows Terry had not taken responsibility for the conduct that resulted in entry of the 2011 DVPO. Two months before filing the motion to terminate,

Terry filed motions denying that he harmed or threatened to harm his mother, and accusing the Guardian and Standby Guardian of committing numerous "illegal acts" and of conspiring to "[take] my mother from me ILLEGALLY!"[12]

Terry also contends the order denying his motion to terminate the DVPO violates the statute that prohibits restricting the liberty interest of the incapacitated person only to the minimum extent necessary. We disagree.

Under the guardianship statutes, the liberty and autonomy of an incapacitated person "should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs." RCW 11.88.005. While the guardian has the authority to " 'assert the incapacitated person's rights and best interests,' " it remains at all times the responsibility of the court to make the decision as to an incapacitated person's best interest. In re Guardianship of Lamb, 173 Wn.2d 173, 191 n.13, 265 P.3d 876 (2011) (quoting RCW 11.92.043(4)).

The record shows that in denying the motion to terminate the 2011 DVPO, the court took into consideration the paramount concern to act in the best interest of Dorothy and protect her health and safety. The court also clearly considered the desire to maintain a relationship with Terry. While the court found that Terry continued to engage in conduct that put his mother "at risk of psychological and physical harm," the court specifically states that the five-year DVPO "[m]ay be lifted or modified by further Court order." Although finding that Terry presented insufficient evidence to show a substantial change in circumstances, the court expressly states that it "sympathizes with [Terry's] situation and encourages the guardian to endeavor to expand visitation as

[12] Emphasis in original, internal quotation marks omitted.

justified." Clearly, nothing precludes Terry from filing another motion in the future under RCW 26.50.130.[13]

We affirm denial of the motion to terminate the June 10, 2011 DVPO and the order denying the motion for reconsideration.

WE CONCUR:

[13] For the first time on appeal, Terry argues that the 2010 DVPO and the 2011 DVPO violated his constitutional right to due process and equal protection. Because Terry fails to identify the basic components of a due process or equal protection claim, we decline to address this issue. Meyer v. Univ. of Wash., 105 Wn.2d 847, 855, 719 P.2d 98 (1986) (" 'naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion' ") (quoting United States v. Phillips, 433 F.2d 1364, 1366 (8th Cir. 1970)); Holland v. City of Tacoma, 90 Wn. App. 533, 537-38, 954 P.2d 290 (1998).

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

In the Matter of the Guardianship of DOROTHY MAY KERTIS, An incapacitated person, DIANNA PARISH, Guardian, Respondent, v. TERRY L. KERTIS, Appellant.	)	No. 70909-7-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant Terry L. Kertis filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Dated this 15th day of October, 2014.

FOR THE COURT:

Judge

RCW 26.50.130
Order for protection — Modification or termination — Service — Transmittal.

(1) Upon a motion with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection or may terminate an existing order for protection.

(2) A respondent's motion to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years must include a declaration setting forth facts supporting the requested order for termination or modification. The motion and declaration must be served according to subsection (7) of this section. The nonmoving parties to the proceeding may file opposing declarations. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(3)(a) The court may not terminate an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated. In a motion by the respondent for termination of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(b) For the purposes of this subsection, a court shall determine whether there has been a "substantial change in circumstances" by considering only factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order.

(c) In determining whether there has been a substantial change in circumstances the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(i) Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;

(ii) Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;

(iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the petitioner consents to terminating the protection order, provided that consent is given

voluntarily and knowingly;

(viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;

(ix) Other factors relating to a substantial change in circumstances.

(d) In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on: (i) The fact that time has passed without a violation of the order; or (ii) the fact that the respondent or petitioner has relocated to an area more distant from the other party.

(e) Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence that resulted in the issuance of the protection order were of such severity that the order should not be terminated.

(4) The court may not modify an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that the requested modification is warranted. If the requested modification would reduce the duration of the protection order or would eliminate provisions in the protection order restraining the respondent from harassing, stalking, threatening, or committing other acts of domestic violence against the petitioner or the petitioner's children or family or household members or other persons protected by the order, the court shall consider the factors in subsection (3)(c) of this section in determining whether the protection order should be modified. Upon a motion by the respondent for modification of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(5) Upon a motion by a petitioner, the court may modify or terminate an existing order for protection. The court shall hear the motion without an adequate cause hearing.

(6) A court may require the respondent to pay court costs and service fees, as established by the county or municipality incurring the expense and to pay the petitioner for costs incurred in responding to a motion to terminate or modify a protection order, including reasonable attorneys' fees.

(7) Except as provided in RCW 26.50.085 and 26.50.123, a motion to modify or terminate an order for protection must be personally served on the nonmoving party not less than five court days prior to the hearing.

(a) If a moving party seeks to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years, the sheriff of the county or the peace officers of the municipality in which the nonmoving party resides or a licensed process server shall serve the nonmoving party personally except when a petitioner is the moving party and elects to have the nonmoving party served by a private party.

(b) If the sheriff, municipal peace officer, or licensed process server cannot complete service upon the nonmoving party within ten days, the sheriff, municipal peace officer, or licensed process server shall notify the moving party. The moving party shall provide information sufficient to permit notification by the sheriff, municipal peace officer, or licensed process server.

(c) If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123.

(d) The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the moving party requests additional time to attempt personal

service.

(e) If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order permitting service by publication or by mail.

(8) Municipal police departments serving documents as required under this chapter may recover from a respondent ordered to pay fees under subsection (6) of this section the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(10) [(9)] In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

[2011 c 137 § 2; 2008 c 287 § 3; 1984 c 263 § 14.]

Notes:

Findings -- 2011 c 137: "The legislature finds that civil domestic violence protection orders are an essential tool for interrupting an abuser's ability to perpetrate domestic violence. The legislature has authorized courts to enter permanent or fixed term domestic violence protection orders if the court finds that the respondent is likely to resume acts of domestic violence when the order expires. However, the legislature has not established procedures or guidelines for terminating or modifying a protection order after it is entered.

The legislature finds that some of the factors articulated in the Washington supreme court's decision in *In re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic violence protection orders do not demonstrate that a restrained person is unlikely to resume acts of domestic violence when the order expires, and place an improper burden on the person protected by the order. By this act, the legislature establishes procedures and guidelines for determining whether a domestic violence protection order should be terminated or modified." [2011 c 137 § 1.]

Short title -- 2008 c 287: See note following RCW 26.50.050.