

FILED
SUPREME COURT
STATE OF WASHINGTON
12/18/2023 1:25 PM
BY ERIN L. LENNON
CLERK

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 102560-2

COA No. 84310-9

AMINA J. CONDEL,
Respondent,
v.

FRANK G. CONDEL,
Appellant,

ANSWER TO PETITION FOR REVIEW

KING COUNTY BAR
ASSOCIATION
Kathleen Francis, WSBA No.
44143
Kimberly Todaro, WSBA No.
30641
1200 5th Avenue, Suite 700
Seattle, Washington 98101
Tel: 206.267.7100
E-mail: katef@kcba.org
E-mail: kimt@kcba.org

Attorneys for Respondent
Amina Condel

TABLE OF CONTENTS

I. INTRODUCTION 1

II. GARRETT’S ISSUES FOR REVIEW..... 2

III. RESTATEMENT OF THE CASE 3

IV. THIS COURT SHOULD DENY REVIEW 11

A. The Court of Appeals Did Not Create a False Record..... 12

B. There Are No Significant Constitutional Questions Under RAP 13.4(b)(3) 16

1. Garrett’s Constitutional Challenges Defy Long-Standing Precedent Affirming the DVPA is Constitutional 16

2. The Court’s Order that Garrett Engage in Domestic Violence Perpetrator Treatment and DV Dads Classes is Consistent with the Constitution..... 21

3. The Court Left Garrett’s Visitation to the Discretion of the Family Law Court..... 23

C. There Is No Substantial Public Interest Under RAP 13.4(b)(4). 25

D. There Is No Conflict With Decisions of the Supreme Court or Court of Appeals Under RAP 13.4(b)(1) and 13.4(b)(2)..... 26

	E. Other Issues Raised by Garrett Unrelated to RAP	
	13.4(b) Factors	27
	1. Motions to Refer	27
V.	ATTORNEY’S FEES	29
	A. The Court of Appeals Did not Abuse its Discretion	
	in Awarding Amina Fees	29
	B. Amina Should be Awarded Fees for having to	
	Respond to this Petition for Review	29
VI.	CONCLUSION.....	30

TABLE OF AUTHORITIES

WASHINGTON CASES

<i>Aiken v Aiken</i> , 187 Wn.2d 491, 387 P.3d 680 (2017).....	27
<i>Gourley v. Gourley</i> , 158 Wn.2d 460, 145 P.3d 1185 (2006)...	27
<i>Hart v. Dep’t of Soc. & Health Servs.</i> , 111 Wn.2d 445, 759 P.2d 1206 (1988).....	25
<i>In re Custody of Smith</i> , 136 Wn.2d 1, 969 P.2d 21 (1998).....	17
<i>In re Flippo</i> , 185 Wn.2d 1032, 380 P.3d 413 (2016).....	25
<i>In re Marriage of C.M.C.</i> , 87 Wn. App. 84, 940 P. 2d 669 (1997)	18, 19
<i>In re Marriage of Moody</i> , 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999)	12
<i>In re Marriage of Stewart</i> , 133 Wn. App. 545, 137 P.3d 25 (2006)	17, 24, 27
<i>In re Matter of Knight</i> , 178 Wn. App. 929, 317 P.3d 1068 (2014)	14
<i>In re T.W.J.</i> , 193 Wn. App. 1, 638 P.2d 1276 (1982).....	13
<i>Katare v. Katare</i> , 175 Wn.2d 23, 35, 283 P.3d 546 (2021).....	13
<i>Maldonado v. Maldonado</i> , 197 Wn. App. 779, 391 P.3d 546 (2017)	12
<i>Marriage of Williams</i> , 156 Wn. App. 22, 232 P.3d 537 (2010)	13

<i>Matter of Marriage of Booth</i> , 114 Wn.2d 772, 791 P.2d 519 (1990)	14
<i>Merriman v. Cokeley</i> , 168 Wn.2d 627, 230 P.3d 162 (2010)..	14
<i>Rodriguez v. Zavala</i> , 188 Wn.2d 586, 398 P.3d 1071 (2017).	20, 27
<i>Spence v. Kaminski</i> , 103 Wn. App. 325, 12 P.3d 1030 (2000)	13
<i>State v. Hunley</i> , 175 Wn.2d 901, 287 P.3d 584 (2012).....	26

STATUTES

RCW 2.24.050	12
RCW 7.105	26
RCW 7.105.010.....	7
RCW 26.09	19, 24
RCW 26.12.170	27
RCW 26.50	<i>passim</i>
RCW 26.50.060	24, 29

COURT RULES

RAP 13.4	<i>passim</i>
RAP 18.1(J).....	29

REGULATIONS

WAC 388-60B.....	22
------------------	----

OTHER AUTHORITIES

1987 PROPOSED PARENTING ACT: REPLACING THE CONCEPT OF CHILD CUSTODY: COMMENTARY AND TEXT 29 (undated)).....	19
---	----

Gender & Just. Comm’n, Wash. State. Sup. Ct., Domestic Violence Manual for Judges app. B (2016) (Appendix B), http://www.court.wa.gov/content/manuals/domViol/appendixB. pdf	22
--	----

Miller, Et. Al.. Wash. State Inst. For Pub. Pol’y (WSIPP), <i>What Works to Reduce Recidivism by Domestic Violence Offenders?</i> (2013), http://www.wsipp.wa.gov/ReportFile/1119/Wsipp_What- Works-to-Reduce-Recidivism-by-Domestic-Violence- Offenders_Full-Report.pdf	21
---	----

I. INTRODUCTION

Washington's domestic violence laws were drafted to protect domestic violence survivors, and commissioners and lower courts are granted broad discretion to carry out that legislative purpose.

In this case, Frank G. Condel ("Garrett") committed repeated acts of domestic violence against his wife, Amina J. Condel ("Amina") and their children.¹ After suffering years of abuse and coercive control, Amina escaped the marriage and petitioned for a Domestic Violence Order for Protection (DVPO) on behalf of herself and the children. After a contested hearing, a commissioner granted Amina's petition for protection for herself and the parties' children and entered a DVPO and Order to Surrender Weapons against Garrett. A Superior Court Judge affirmed the commissioner's decision on Garrett's Motion for Revision. Garrett timely appealed.

¹ For ease of consideration, the parties will be referred to by their first names (in Mr. Condel's case, his middle name). No disrespect is intended.

The Court of Appeals affirmed the Superior Court's decision. Garrett now seeks review by the Supreme Court.

This case does not warrant Supreme Court review for three reasons. First, it does not involve a significant question of law under our state and federal Constitutions because the Court of Appeals decision is consistent with well-established case law.

Second, this case does not involve a substantial public interest because the case is limited to its facts, does not involve any constitutional questions, does not invite unnecessary litigation, and does not create confusion. In fact, Garrett's appeal is based on a statute that has since been repealed and replaced, chapter 26.50 RCW.²

Third, the decision of the Court of Appeals is not in conflict with any Supreme Court or published Court of Appeals decisions.

II. GARRETT'S ISSUES FOR REVIEW

² On July 1, 2022, the Legislature repealed and recodified the Domestic Violence Prevention Act (DVPA), previously codified at Chapter 26.50 of the Revised Code of Washington.

Garrett presents five issues for review: (1) a court abuses its discretion when it ignores motions; (2) Division I created a false record based on rejected accusations and fabrications; (3) the Courts below abused their discretion by failing/refusing to apply the strict scrutiny test; (4) the Courts below failed/refused to consider the best interests of the children; (5) Division I carved out special exceptions for awarding attorney fees to domestic violence attorneys.

III. RESTATEMENT OF THE CASE

Amina and Garrett met in 1996. CP 10. They dated for two and a half years before they were married on January 24, 1999. CP 10. They have four children together, BC, GC, JC, and LC. CP 2; CP 10. Three of the children are minors and L.C. is an adult with autism, dependent on Amina for care. CP 10.

During their relationship, Garrett engaged in physical violence, threats of physical violence, and coercive control towards Amina. CP 10-31. Garrett's abuse began during the first year of their marriage and has only increased over time

with Garrett becoming more violent and aggressive over the last several years. CP 637-638. Garrett's violence caused Amina to "live in extreme fear for [her] life and [her] children's lives." CP 638. Amina describes in detail numerous incidents of Garrett's violence towards her, which includes Garrett wrapping his arms around her and holding her against her will (CP 13), swatting at her and pushing her (CP 16), slapping her hand so hard that his³ finger jabbed into her eye and her head slammed against the wall (CP 14), charging at her, grabbing her arms, and pushing her backwards with such force that she lost balance (CP 17), slamming a door on her arm and side (CP 19), slamming a chair on her foot (CP 19), grabbing her wrist hard (CP 20), and grabbing the garage door out of her hands and closing it loudly in front of her (CP 12).

³ Amina described this as Garrett's finger jabbing into her eye in her materials. During the DVPO argument, Amina's attorney indicated that it was Amina's finger that jabbed her eye based on Garrett's violence. Either way, Garrett corroborates this incident of domestic violence. For simplicity, this answer will refer to "his finger" as jabbing her eye.

After the outbreak of the COVID-19⁴ pandemic in 2020, Amina was forced to remain at home and around Garrett for longer periods of time. CP 640. During this time, Garrett's controlling and abusive behavior became unbearable. CP 637-646.

The violence Amina endured is corroborated. Amina called the police on multiple occasions to report Garrett's violence. CP 519-531; 538-539. She has also had to seek medical care as a result of his violence towards her. CP 534-535; 542-547; 555-560; 563. Amina took photos of the injuries she suffered from Garrett's violence towards her. CP 551-552. Amina also sought support from and counsel for domestic violence survivors from Lifewire⁵ for several years because of Garrett's violence towards her. CP 13; 640.

⁴ COVID-19 is the World Health Organization's official name for "coronavirus disease 2019," a severe, highly contagious respiratory illness that quickly spread throughout the world after being discovered in December 2019.

⁵ Lifewire is a domestic violence support organization that assists survivors of domestic violence in safety planning, legal advocacy, support groups, and accessing resources.

In addition to Garrett's violence towards Amina, Garrett has also been aggressive and violent towards the parties' children. Amina describes numerous incidents of Garrett's slapping the children, grabbing them and holding them down, squeezing them tightly, pulling them off of their beds, and pinching them. CP 20-27. Amina specifically describes an incident when Garrett grabbed JC's neck on December 15, 2019. CP 25. Amina documented the children's injuries that were a result of Garrett's violence towards them which include photographs of scratch marks, red marks, and bruises. CP 580-581; 585-588, 592-593. The children were also present for most of the incidents of Garrett's violence towards Amina. CP 10-31.

Amina also noted that Garrett owns several guns, many of which were stored inside their house, and she was unsure if the guns were locked or loaded. CP 31.

Garrett also engaged in coercive controlling behaviors towards Amina throughout their relationship. Coercive control is defined as "a pattern of behavior that is used to cause another

to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty.” RCW 7.105.010(4)(a).⁶ Garrett's coercive control behavior included controlling Amina's access to their finances, failing to maintain a healthy and safe living environment, isolating her from her family and the children, and monitoring her location. CP 12-13; 27-30; 75-88. *See* RCW 7.105.010(4).

As a result of Garrett's ongoing violence towards her and the children and her increasing fear of Garrett, on March 10, 2022, Amina filed a Petition for Order for Protection to protect her and the children. CP 1-39.

A full-hearing was held on April 20, 2022, before the Honorable Commissioner Jessica Martin. CP 381.

⁶ On July 1, 2022, the Legislature repealed and recodified the Domestic Violence Prevention Act, previously codified at Chapter 26.50 of the Revised Code of Washington. In doing so, the Legislature added coercive control to the definition of domestic violence. Even though coercive control was added to the definition of domestic violence after this case was adjudicated, evidence of coercive control in the context of the relationship demonstrates a pattern of abuse and often corroborates physical violence.

Commissioner Martin heard argument from each parties' counsel. 4/20/2022 RP 20-56.⁷ Neither party testified at the hearing.

During argument, Garrett's attorney conceded that Garrett did in fact slap Amina's hand on July 17, 2019. 4/20/2022 RP at 40. He also admitted that he did knock a chair onto Amina's foot. 4/20/2022 RP at 41.

The court ran out of time on the calendar on April 20, 2022, to make a ruling, so the court continued the temporary protective orders (CP 378-380) and set the case over to May 4, 2022, for an oral ruling and entry of the order. 4/20/2022 RP at 56-58; CP 378-380.

At the hearing on May 4, 2022, Commissioner Martin found that a preponderance of the evidence supported entry of a DVPO on behalf of Amina and the children for one year. 5/4/2022 RP at 9; CP 382-388. In her oral ruling, which was

⁷ On page 3 and 4 of the 4/20/2022 Report of Proceedings, the hearing is listed as occurring on March 20, 2022; however, the hearing occurred on April 20, 2022.

incorporated into the written order, she described the basis for her decision in detail. 5/4/2022 RP at 7-24; CP 382.

Commissioner Martin stated, “this Court finds that the petitioner has met their burden that the respondent has perpetrated acts of domestic violence.” 5/4/2022 RP at 9. The court also found that “as to the children, they were present for many of the incidents alleged in the petition, including the one that occurred on July 17, 2019. The child’s exposure to domestic violence is domestic violence to the children and is sufficient to support a domestic violence protection order that protects the children as well.” 5/4/2022 RP at 10.

The court prohibited Garrett from having contact with the parties’ minor children except “as determined by the court when entering a parenting plan in divorce proceedings, Case No. 21-3-06441-8 SEA. Any visitation granted in the dissolution proceeding, including contact currently permitted under that proceeding, shall be permitted and shall not be a violation of the order.” CP 384. The court specifically ruled that

“Respondent will be awarded visitation as determined in the parenting plan in the divorce proceedings that are currently on going.” 5/4/2022 RP at 13.

The court ordered Garrett to participate in a state-certified domestic violence perpetrator treatment program and state certified DV Dads Program. 5/4/2022 RP at 12; CP 385.

Garrett moved to reconsider the commissioner’s decision. CP 402-469. Commissioner Martin denied Garrett’s reconsideration, finding that “the court’s previous findings and orders stand and remain in full force and effect.” CP 472.

Garrett then moved to revise the commissioner’s decision. CP 473-501. The Honorable Hillary Madsen denied the Motion for Revision noting that “the Petitioner has met her burden based on this record.” CP 508.

Garrett appealed the trial court’s ruling.

The Court of Appeals heard argument on June 14, 2023.⁸

On July 31, 2023, the Court of Appeals affirmed the trial court's entry of the DVPO and awarded Amina attorney fees. Slip Op. at 21-22.

On August 21, 2023, Garrett filed a Motion to Publish and a Motion for Reconsideration. The Court of Appeals denied both motions on September 5, 2023.

On September 8, 2023, Garrett filed a Motion to Modify the Commissioner's ruling on the amount of attorney fees granted to Amina. A panel of judges denied Garrett's motion on October 16, 2023, and upheld the commissioner's ruling on fees.

On November 14, 2023, Garrett filed a Petition for Review to this court.

IV. THIS COURT SHOULD DENY REVIEW

⁸ After argument, Garrett filed a Supplemental Memorandum Clarifying Responses to Questions Raised During Oral Argument and a related motion for leave to file that memorandum. The Court of Appeals declined to consider Garrett's supplemental briefing. Slip. Op. at 18.

This Court should deny review because (1) Garrett fails to present a significant constitutional question, (2) there is no substantial public interest implicated, and (3) the Court of Appeals' decision is not in conflict with precedent.

A. The Court of Appeals Did Not Create a False Record⁹

Contrary to Garrett's assertion, the Court of Appeals did not "create a false record."

A court commissioner's decision is subject to revision by the superior court. RCW 2.24.050. On a motion to revise, the superior court reviews the commissioner's findings of fact and conclusions of law de novo based on the evidence and issues presented to the commissioner. *In re Marriage of Moody*, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999). The findings and orders of the court commissioner that are not successfully revised become the order and findings of the superior court. *Maldonado v. Maldonado*, 197 Wn. App. 779, 789, 391 P.3d

⁹ Respondent will address this issue first as clarity of the record is critical and this claim is simply not accurate or supported by the record in this case.

546 (2017). A superior court judge’s denial of a motion for revision constitutes an adoption of the commissioner’s decision and does not require the entry of separate findings and conclusions. *Id.* A commissioner’s oral findings that are adopted by the revision court are sufficient for review. *In re Marriage of Williams*, 156 Wn. App. 22, 28, 232 P.3d 537 (2010).

Findings of fact made by the superior court are treated as verities on appeal as long as they are supported by substantial evidence. *Katare v. Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2021). A trial court’s findings regarding credibility are not reviewable by the appellate court. *Spence v. Kaminski*, 103 Wn. App. 325, 333, 12 P.3d 1030 (2000); *see also, In re T.W.J.*, 193 Wn. App. 1,8, 638 P.2d 1276 (1982) (“[I]t is the trial court’s role to weigh the persuasiveness of the evidence, and we typically will not disturb factual determinations on appeal.” (citation omitted)). The appellate court may “defer to the trier of fact on the persuasiveness of the evidence, witness

credibility, and conflicting testimony.” *In re Matter of Knight*, 178 Wn. App. 929, 936, 317 P.3d 1068 (2014). The appellate court will not disturb a superior court’s finding of fact if substantial, though conflicting, evidence supports the finding.” *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010).

In the absence of a written finding on a particular issue, an appellate court may look to the trial court’s oral opinion to determine the basis for the trial court’s resolution of the issue. *Matter of Marriage of Booth*, 114 Wn.2d 772, 791 P.2d 519 (1990).

Here, Garrett argues that the lower court only found two incidents of domestic violence. Petition for Review at 11. However, this misrepresents the record below. In fact, after considering all of the evidence submitted by both parties and argument of counsel, the trial court found that Amina had met her burden by a preponderance of the evidence that Garrett had committed domestic violence. 5/4/2022 RP at 9. In its oral

ruling the court highlighted two incidents but specifically did not indicate that these were the only incidents of domestic violence committed by Garrett. The court actually clarified this when Garrett’s counsel tried to limit the court’s ruling:

MR. BERRY: And again, if I may, Your Honor, just so I’m clear on the incident of domestic violence, the one on July 17th...that’s the assault that the court is relying upon?

THE COURT: That is the—that’s the explicit one the Court discussed during its ruling, yes.”

5/4/2022 RP at 19.

The court went on to find Amina’s statements regarding Garrett’s domestic violence were credible. *Id.*

In further support of this point, is the fact that the Court also found that Garrett had exposed the children to multiple acts of his violence. 5/4/2022 RP at 10.

The Court of Appeals agreed that the lower court had not limited its findings to only two incidents, finding that “Garrett grossly misinterprets the record. The court merely highlighted these two incidents as examples of bases for the DVPO—it did

not indicate that these were the only incidents of domestic violence.” Slip Op. at 11.

The Court of Appeals did not “fabricate” the record below nor did it deny Garrett’s fundamental due process rights by relying on the totality of the evidence below as well as the court’s findings of credibility. There is no merit to this argument, and this is not a basis for this court to accept review.

B. There Are No Significant Constitutional Questions Under RAP 13.4(b)(3).

Garrett challenges the provisions of the DVPO that protect the parties’ children. However, Garrett does not establish that a significant constitutional question is involved.

1. Garrett’s Constitutional Challenges Defy Long-Standing Precedent Affirming the DVPA is Constitutional

Washington courts have already determined that the Domestic Violence Prevention Act (DVPA) chapter 26.50 RCW and the protection orders authorized by it do not interfere with the constitutional right to parent one’s children.

Garrett argues that the court's entry of the DVPO that limited his contact with his minor children violated his constitutional right to parent. Garrett's contentions regarding his constitutional right to parent are inconsistent with long established case law.

In *In re Custody of Smith*, the court held that "parents have a fundamental right to autonomy in child rearing decisions." 136 Wn.2d 1, 13, 969 P.2d 21 (1998). When a fundamental right is involved, the courts apply the "strict scrutiny" test. Under the "strict scrutiny" test, the State may only interfere with a fundamental liberty interest if the interference is narrowly tailored to meet that compelling interest. *Smith*, 137 Wn.2d at 15. Washington courts have held that this test is satisfied when the State interferes in a parental relationship in which a child has been harmed or there is a credible threat of harm to the child. *In re Marriage of Stewart*, 133 Wn. App. 545, 555, 137 P.3d 25 (2006), *Smith*, 137 Wn.2d at 16.

Here, the court found that Garrett represented “a credible threat to the physical safety” of Amina and their children (CP 382), that he exposed the children to his violence (5/4/2022 RP at 10), and that Garrett actually harmed at least one of the children (5/4/2022 RP at 10). Therefore, as the Court of Appeals concluded, “State interference in the form of a DVPO is justified to protect the children and does not violate Garrett’s fundamental right to parent his children.” Slip. Op. at 17.

Further, the court did not err by not explicitly addressing this right on the record. The lower court is not required to do so when there is settled case law on the issue.

Garrett goes onto argue that the incidents the court relied on in making its findings that Garrett represents a credible threat and that he caused harm to the children, do not provide substantial evidence that any of the children were harmed.

Garrett relies on *In re Marriage of C.M.C.*, 87 Wn. App. 84, 88, 940 P. 2d 669 (1997). He argues that the incidents the court relied on are “de minimus” and that there is no compelling State

interest where there are only “isolated, de minimus incidents” which “could technically be defined as domestic violence.”
Petition for Review at 21.

However, in *C.M.C.*, the court, in dicta, noted that the commentary to the proposed Parenting Act of 1987 stated that the term “history of domestic violence” was intended to exclude “isolated, de minimus incidents which could technically be defined as domestic violence.” 87 Wn. App at 88 (quoting 1987 PROPOSED PARENTING ACT: REPLACING THE CONCEPT OF CHILD CUSTODY: COMMENTARY AND TEXT 29 (undated)). However, the statute that *C.M.C.* refers to (RCW 26.09) was later amended so as to make this commentary by the court moot. Additionally, RCW 26.09 is not the statute at issue in this case.

Further, the incidents of Garrett’s domestic violence towards Amina are far from “isolated, de minimus” incidents. Amina’s petition for DVPO and supporting declaration included specific, detailed accounts of Garrett engaging in more

than 20 incidents of physical violence and threats of physical violence towards herself and the children. CP 1-39. In addition, the children were present for many of the incidents that Amina described in her petition including the incident that occurred on July 17, 2019. CP 14-20. Amina attached photos to her petition documenting injuries from almost every incident, either of herself or the children. Sealed CP 36-37, 52-54, 65-66, 70-73, 77-78, 82, 86-87, 91-92. The photos show red marks, bruises, and scratches consistent with Amina's recounting of the incidents. *Id.*

As the Court of Appeals found, the incidents alleged by Amina are "certainly not de minimus or isolated." Slip Op. at 17. In fact, the court held that "the record demonstrates a history of domestic violence spanning several years" and "substantial evidence supports the court's finding that Garrett posed a credible threat to the children." Slip. Op. at 18. As this Court in *Rodriguez v. Zavala* held, "ample evidence supports the view that direct and indirect exposure to domestic violence

is harmful” and “exposure to domestic violence constitutes domestic violence under chapter 26.50 RCW.” 188 Wn.2d 586, 598, 398 P.3d 1071 (2017).

2. The Court’s Order that Garrett Engage in Domestic Violence Perpetrator Treatment and DV Dads Classes is Consistent with the Constitution

Garrett further argues state-certified domestic violence treatment programs “lack efficacy” and that ordering respondents in protection order cases to engage in such programs is unconstitutional. Petition for Review at 26.

To support this argument, Garrett continues to rely on a 2013 report from the Washington State Institute for Public Policy (WSIPP).¹⁰ Garrett’s argument is without merit. The Washington state Domestic Violence (DV) Manual for Judges found this report mischaracterized the Domestic Violence Perpetrator Treatment Programs and used generally flawed

¹⁰ M. Miller, Et. Al., Wash. State Inst. For Pub. Pol’y (WSIPP), *What Works to Reduce Recidivism by Domestic Violence Offenders?* (2013), http://www.wsipp.wa.gov/ReportFile/1119/Wsipp_What-Works-to-Reduce-Recidivism-by-Domestic-Violence-Offenders_Full-Report.pdf.

research methodology. *See*, Gender & Just. Comm’n, Wash. State. Sup. Ct., Domestic Violence Manual for Judges app. B (2016) (Appendix B), <http://www.court.wa.gov/content/manuals/domViol/appendixB.pdf>.¹¹

Further, the WAC chapter governing domestic violence treatment programs in Washington state was repealed and replaced by WAC 388-60B in 2018. This is five years after the study Garrett relies on was released. The updated WACs require an initial assessment to determine the “level of risk, needs, and responsivity for the participant” and the “level of treatment the program will require for the participant.” WAC 388-60B-0400(2)(a)-(b). The stated purpose of the assessment is to provide “[b]ehaviorally focused individualized treatment

¹¹ For example, the DV Manual notes that the studies underlying the 2013 WSIPP report have been “extensively critiqued in multiple peer journals.” APPENDIX B at 3 n. 10. The DV Manual also states that WSIPP’s conclusions “are not only inaccurate but simply cannot be supported either by the authors own meta-analysis or by a comprehensive review of the literature.” APPENDIX B at 3 n. 10.

goals or objectives for an initial treatment plan.” WAC 388-60B-0400(2)(c). After the assessment, the program is required to write a summary including its findings, recommendations, and rationale for the level of treatment prescribed. WAC 388-60B-0400(19). As part of this process, assessors are authorized to recommend no domestic violence intervention treatment where appropriate. WAC 388-60B-0400(10) and (19)(f).

The procedures in WAC 388-60B minimize the risk that respondents, like Garrett, would receive treatment that is unnecessary or unhelpful. Therefore, ordering respondents in protection order cases to engage in domestic violence intervention treatment is consistent with the constitution.

3. The Court Left Garrett’s Visitation to the Discretion of the Family Law Court

Garrett also argues that limiting respondents’ visitation with their children to professionally supervised visitation is a violation of their constitutional right to parent their children.

Under RCW 26.50.060(1)(d), “on the same basis as is provided in chapter 26.09 RCW, the court shall make residential provisions with regard to the minor children of the parties.” However, the court is not required to “incorporate the full panoply of procedures and decision factors from the Parenting Act into the protection order proceeding” because that proceeding is intended to be “a rapid and efficient process.” *Stewart*, 133 Wn. App. at 552. The court does not need to make formal findings or follow formal proceedings as it would when entering a parenting plan. *Id.* at 553. The court only needs to consider the same factors when making its orders in DVPOs, which are temporary in nature. *Id.* at 553.

Here, Garrett’s visitation was not limited to supervised visitation under the DVPO. Garrett is conflating the court’s order in the DVPO case with the parties’ dissolution case which is not at issue here. In this DVPO case Garrett’s visitation under the DVPO was not limited to professionally supervised visitation. Instead, the court specifically left the determination

of Garrett's contact with his children to the discretion of the family court. CP 384; 5/4/2022 RP at 12; 19.

Therefore, Garrett's constitutional challenge regarding professionally supervised visitation is not relevant and fails.

C. There Is No Substantial Public Interest Under RAP 13.4(b)(4).

Garrett also fails to show a substantial public interest is at issue. "A decision that has the potential to affect a number of proceedings in the lower court may warrant review as an issue of substantial public interest if review will avoid unnecessary litigation and confusion on a common issue." *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413 (2016). A substantial public interest is not present in cases, as in this case, that are limited to specific facts. *Hart v. Dep't of Soc. & Health Servs.*, 111 Wn.2d 445, 451, 759 P.2d 1206 (1988).¹² A substantial public interest in this case is lacking for several reasons.

¹² In the context of the mootness doctrine, an exception is made for cases involving issues of "continuing and substantial public interest." In assessing whether there is a continuing and substantial public interest, courts consider (1) the public or private nature of the question presented,

First, this appeal is brought under a now repealed statute, chapter 26.50 RCW.¹³ Second, the Court of Appeals decision is limited to the specific facts of this case. Third, as explained above, there is no constitutional issue presented here. The Court of Appeals decision makes clear that the lower court's decision was well within the bounds of the constitution. Fourth, the Court of Appeals decision does not invite unnecessary litigation, especially in light of the fact that the statute at issue is no longer in effect. Fifth, the Court of Appeals decision does not create confusion. The Court's thoughtful analysis addressed the fact specific issues presented in this case and reached a conclusion directly in line with long established precedent.

D. There Is No Conflict With Decisions of the Supreme Court or Court of Appeals Under RAP 13.4(b)(1) and 13.4(b)(2).

(2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question. *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012).
¹³ Chapter 26.50 RCW was repealed by 2021 ch. 215 § 170, effective July 1, 2022. Its provisions are now confided under Civil Protection Orders, ch. 7.105 RCW.

This case is not in conflict with prior precedent. To the contrary, Washington courts have consistently upheld chapter 26.50 RCW against constitutional challenges. *See e.g., Aiken v Aiken*, 187 Wn.2d 491, 502, 387 P.3d 680 (2017). This case is consistent with prior precedent including *Stewart*, 133 Wn. App. 545, *Gourley v. Gourley*, 158 Wn.2d 460, 145 P.3d 1185 (2006), *Aiken*, 187 Wn.2d 491, *Rodriguez*, 188 Wn.2d 586.

E. Other Issues Raised by Garrett Unrelated to RAP 13.4(b) Factors

1. Motions to Refer

Garrett argues that the court abused its discretion by refusing to rule on his motions to file a report with law enforcement or the Department of Social and Health Services (DSHS) or to refer the case to Family Court Services (FCS).

However, the court effectively denied Garrett's motions by granting the DVPO. This was not an abuse of discretion.

Under RCW 26.12.170, the court "may" file a report with law enforcement or DSHS if it has reasonable cause to believe

that a child of the parties has suffered abuse or neglect. Also, the court “may” order or recommend Family Court Services (FCS). RCW 26.12.170. The statute grants the court discretion to make a referral but does not require the court to make such referrals under any circumstances.

Here, the court did not file a report with law enforcement or DSHS and did not refer the parties to FCS for an assessment.¹⁴ Instead, after finding that Garrett committed domestic violence against both Amina and the children, the court took the protective action of granting Amina’s petition for a DVPO. By granting Amina’s petition, the court denied Garrett’s requests for the referrals which was well within its discretion under RCW 26.12.170. The Court of Appeals

¹⁴ Garrett argues that “both parties moved the Court to do a risk assessment.” Petition for Review at 8. However, Amina argued that she had met her burden by a preponderance of the evidence but that, in the alternative, if the court found it needed more information to enter a DVPO, the court could refer the case to FCS to gather additional information. CP 644-45; 4/20/2022 RP at 33.

correctly held that this was not an abuse of the court's discretion. Slip Op. at 6.

V. ATTORNEY'S FEES

A. The Court of Appeals Did not Abuse its Discretion in Awarding Amina Fees.

The Court of Appeals awarded Amina attorney fees under RCW 26.50.060 and RAP 18.1. The Court of Appeals did not abuse its discretion in doing so as chapter 26.50 RCW governs this proceeding and RCW 26.50.060(1)(g) gives courts discretion to award attorney fees to petitioners in DVPO cases.

The commissioner award of \$25,000 to Amina was reviewed by a panel of judges and the judges affirmed the commissioner's award. This is not an abuse of discretion.

B. Amina Should be Awarded Fees for having to Respond to this Petition for Review

Further, Garrett should be ordered to pay attorney's fees to Amina pursuant to RAP 18.1(j) for this Answer to the Petition for Review. If attorney fees are awarded to the prevailing party in the Court of Appeals, attorney fees may be

awarded to the prevailing party if the Supreme Court denies the petition for review.

Here, Amina is the prevailing party in the Court of Appeals and was awarded attorney fees. Slip Op. at 21-22. The court should deny the request for review and award Amina attorney fees. Amina will comply with RAP 18.1(j).

VI. CONCLUSION

There is no basis to accept review in this case under 13.4(b). Amina respectfully requests this Court deny review and award her attorney's fees.

I certify that this opening brief contains 4979 words in compliance with RAP 18.17(c)(10).

Respectfully submitted this 18th day of December, 2023.

KING COUNTY BAR
ASSOCIATION

s/ Kathleen Francis

Kathleen Francis, WSBA No.
44143

s/ Kimberly Todaro

Kimberly Todaro, WSBA No.
30641

1200 5th Avenue, Suite 700

Seattle, Washington 98101

Tel: 206.267.7100

E-mail: katef@kcba.org

E-mail: kimt@kcba.org

Attorneys for Respondent

Amina Condel

CERTIFICATE OF SERVICE

I declare that on December 18, 2023, I caused a true and correct copy of the foregoing **Respondent’s Answer to Petition for Review** to be served on the following in the manner indicated:

C. Nelson Berry 1708 Bellevue Avenue Seattle, WA 98122	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via E-mail <input checked="" type="checkbox"/> Via the Court’s E-Service Device
--	---

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 18th day of December, 2023.

s/ Kristina Nielander

Kristina Nielander, Legal Case
Manager

KING COUNTY BAR ASSOCIATION

December 18, 2023 - 1:25 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,560-2
Appellate Court Case Title: Amina J. Condel v. Frank Garrett Condel

The following documents have been uploaded:

- 1025602_Answer_Reply_20231218132312SC478190_1790.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- cnberryiii@seanet.com
- kimt@kcba.org
- kristinan@kcba.org

Comments:

Sender Name: Kathleen Francis - Email: katef@kcba.org
Address:
1200 5TH AVE STE 700
SEATTLE, WA, 98101-1116
Phone: 206-267-7047

Note: The Filing Id is 20231218132312SC478190