92631-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

73129-7

DAVID W. AIKEN,

Appellant,

vs.

CYNTHIA L. AIKEN

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

David Aiken petitions this Court to accept review of the Court of Appeals' decision terminating review designated in Part B of this Petition.

B. COURT OF APPEALS DECISION

David Aiken seeks review of the Court of Appeals' decision filed on November 9, 2015, a copy of which is attached in the Appendix.

C. ISSUES FOR REVIEW

1. Did the Court of Appeals fail to properly consider and interpret this Court's ruling in *Gourley v. Gourley*, 158 Wn.2d 460, 145 P.3d 1185 (2006)?
2. Did the Court of Appeals err in upholding the trial court's denial of Mr. Aiken's request for a full testimonial hearing on the merits including the opportunity to cross-examine the witnesses?
3. Did the Court of Appeals err in upholding the trial court's denial of Mr. Aiken's request for the opportunity to subpoena and depose R.A.?

4. Did the Court of Appeals err in upholding the trial court's decision on reconsideration that far exceeded the relief requested in the motion for reconsideration?

5. Did the Court of Appeals err in awarding attorney fees under RCW 26.50.060(1)(g)?

D. STATEMENT OF THE CASE

Cynthia Aiken filed an action to dissolve the parties' marriage in the fall of 2013. Despite the parties' many disagreements, ultimately the parties entered into a full settlement agreement on October 31, 2014 after a full day of mediation. (CP 70-71)

For nearly a year prior to the settlement, the parties had been actively participating in the dissolution matter and a guardian ad litem (GAL), Jeanette Heard, had been appointed for the parties' three minor children. (CP 138-139) Under the parenting plan the parties had agreed to pursuant to CR2A, Mr. Aiken was scheduled to have his first Thanksgiving with his children since the parties separated in 2013. The GAL had investigated the parties' allegations and had recommended the children have residential time with Mr. Aiken on alternating weekends,

holidays, summer and Christmas vacation as well as a mid-week visit every week. (CP 211; 221)

On November 19, 2014, Ms. Aiken's sister in law, Shelby Morrill, notified Mr. Aiken that R.A. would not be available for his regularly scheduled time as she had been taken to the hospital because she was not feeling well at school. (CP 212) He was later advised that R.A. had a stomachache. (CP 116-119)

On November 21, 2014, Mr. Aiken was scheduled to pick up all three children for his weekend residential time. Ms. Aiken advised that R.A. had made a disclosure to her counselor at school. Mr. Aiken's attorney advised Ms. Aiken's attorney that he would agree not to take R.A. for his scheduled time but that the other two children should, again, participate as they had earlier that week. The GAL, Jeanette Heard, agreed and advised Ms. Aiken's attorney that the younger children would benefit from having time with their father. (CP 75; 213.) However, Ms. Aiken communicated through her attorney that since she had already advised all three girls that they would not be going with their father that she would not be changing her mind. (CP 228.)

The next Monday, both Mr. Aiken's attorney and the GAL attempted to contact Ms. Aiken's attorney in order to make certain that

Ms. Aiken would not be withholding the children during Mr. Aiken's Thanksgiving vacation. (CP 228) Neither Mr. Aiken's attorney nor the GAL received any response suggesting that the residential time would be denied.

On Tuesday, November 25, 2015, Mr. Aiken's attorney contacted Ms. Aiken's attorney again seeking to address the upcoming Thanksgiving holiday; the GAL had advised that the issue need to be immediately addressed. (CP 225) At that time, Ms. Aiken's attorney advised that her client had gone into court on her own and filed a new Petition for Order for Protection under a new cause number. (CP 225) Accordingly, Mr. Aiken was unable to have his Thanksgiving holiday time or any other residential time with any of the children until a further court hearing.

Ms. Aiken's November 24, 2015 Petition alleged that a "member of my family or household is the victim of domestic violence committed by the respondent." (CP 246 paragraph 1.) Ms. Aiken did not allege in paragraph one of her Petition that she was a victim of domestic violence. (CP 246 paragraph 1.) In her Petition, Ms. Aiken identified that another case was pending, Snohomish County Cause Number 13-3-02944-0 that involved her, the minors and the Mr. Aiken. (CP 247 paragraph 6.) At the time she filed this action, the parties' had circulated and negotiated final

documents in the dissolution action, including a final parenting plan. Ms. Aiken's basis for the protection order was specifically related to information conveyed by R.A. and what Ms. Aiken felt were new "findings" after the October 31, 2014 settlement agreement. (CP 72-76)

The order obtained by Ms. Aiken before a pro tem commissioner and without notice restrained Mr. Aiken from having contact with any of the three children and prohibited him from spending his Thanksgiving Holiday with the children.[1]

On December 8, 2014, at the first return hearing, the court modified the protection order eliminating the younger two children from the order and requiring the CR2A parenting plan to be followed. (CP 233-234) Mr. Aiken's attorney orally requested the court set the matter for a full testimonial hearing with cross-examination pursuant to *Gourley v. Gourley* and the sitting commissioner suggested that such a request be made in writing. (CP 322) Accordingly, Mr. Aiken's counsel filed a motion for both an extended hearing and a full testimonial hearing with cross-examination. (CP 191-194) Ms. Aiken's attorney objected to the request for a full hearing suggesting that such a request was, itself, further

[1] Note, had this action been commenced by an attorney, notice to opposing counsel would almost certainly have been given prior to entry of an order immediately terminating a parent's holiday visitation under a parenting plan.

evidence of abuse. (CP 144) A different pro tem commissioner denied the request for a full testimonial hearing and further prohibited Mr. Aiken's attorney from deposing or subpoenaing R.A. for the hearing. (CP 16; 141.)

The hearing on Ms. Aiken's Petition was based only upon the pleadings and materials filed with the court and no testimony was taken. The trial court found that Ms. Aiken had established a fear of harm as to R.A. and entered a one-year order protecting R.A. and the two other children from physical harm or harassment. (CP 63 paragraphs 1 and 2.) The court did not find that Ms. Aiken had met any burden related to her allegations about herself and did not enter any restraints as to Ms. Aiken. (CP 282; 62-66).[2]

Ten days later, Ms. Aiken motioned the court to reconsider it's decision and to modify the protection order as to sections (3) and (6) "as it relates to the minor child" R.A. (CP 272; 271.) Ms. Aiken relied upon the decision of *Hecker v. Cortinas*, 110 Wn. App. 865 (2002), as the authority for her motion as well as new allegations subsequent to entry of the February 3, 2015 order. (CP 273; 275.) Mr. Aiken filed a detailed

[2] The order that entered has two check boxes on page one that are inconsistent with the minute entry as well as the balance of the order in paragraphs 1 and 2. It is not unusual for these check boxes to be filled in by a petitioner or court facilitator prior to the hearing.

response requesting the court deny the motion to reconsider and modify. (CP 29; 34-35.) The court, without any contested hearing or argument, entered a modified order substantially changing the prior order and granting relief beyond that requested. (CP 266.) The modified order was not limited to the three children, included restraints related to Ms. Aiken and also included restraints as to R.A. in section (4), none of which were requested in the motion before the court. (CP 4-6) The court based this decision not on any conduct of Mr. Aiken, but upon the mother's reported acts of R.A., after R.A. had learned from her family that the court had not granted her mother's request for a no contact order.

The Court of Appeals reviewed the trial court's decisions and upheld them all suggesting that this court's decision in *Gourley v. Gourley*, 158 Wn.2d 460, 145 P.3d 1185 (2006), did not support Mr. Aiken's request for a testimonial hearing, cross examination nor the ability to depose the minor child, R.A. and that due process was provided in this case. The Court of Appeals further awarded attorney fees under RCW 26.50.060(1)(g) despite the fact this statute does not allow for attorney fees on appeal and Ms. Aiken never requested attorney fees in her underlying petition.

E. ARGUMENT

This court should hear this matter because (1) the decision of the Court of Appeals misconstrued and failed to properly apply this Court's decision in Gourley v. Gourley, 158 Wn.2d 460, 145 P.3d 1185 (2006), and (2) it involves an issue of substantial public interest that should be resolved by the Supreme Court. RAP 13.4(b).

The Petition for an Order of Protection is a significant action, which carries with it the ability to curtail substantial rights. *See* RCW 26.50 *et. seq.*, Such relief may often be necessary and reasonable. These sorts of actions, however, also carry with them the ready ability for abuse of the court system and often lead to stigmatize people.

Due process requires a full testimonial hearing on the merits. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545,552 (1965)).

Cross-examination is the key safeguard to defend oneself when the only evidence to be considered is hearsay or testimonial records or statements of witnesses. "Cross-examination is the principle means by which the believability of a witness and the truth of his testimony are tested." Davis v. Alaska, 415 U.S. 308, 316, 94 S. Ct. 1105 (1974). Moreover, "live testimony and cross-examination" may be appropriate when addressing RCW 26.50 cases involving allegations by a minor against a parent. Gourley v. Gourley 158 Wn.2d 460, 464 and 470 (2006). "[W]here an outcome determinative credibility issue is before the court in a contempt proceeding, it may often be preferable for the superior court judge or commissioner to hear live testimony of the parties or other witnesses, particularly where the presentation of live testimony is requested. " Marriage of Rideout, 150 Wn.2d 337, 352 (2003). "[I]ssues of credibility are ordinarily better resolved in the 'crucible of the courtroom, where a party or witness' fact contentions are tested by cross-examination, and weighed by a court in light of its observations of demeanor and related factors.'" Id. at 352.

This is precisely the type of case that required a full testimonial hearing as contemplated by the authorities above. In the present case Mr. Aiken specifically raised this issue first at the original return hearing and

then by written motion. Despite this, the pro tem commissioner entered an order denying the request and further prohibiting Mr. Aiken from seeking to examine the witnesses against him at the hearing. Under the facts of this case, the court's refusal to conduct a full testimonial hearing violated Mr. Aiken's due process rights. Unfortunately, the Court of Appeals appears to have summarily dismissed Mr. Aiken's requests with little consideration of the underlying facts and his clear efforts to comply with the Gourley court's decision in order to obtain due process. Accordingly, the court should grant the Petition for Review to address these issues for the lower courts.

F. CONCLUSION

Mr. Aiken requests this court grant the Petition for Review and consider all of the issues raised in the Court of Appeals below. Mr. Aiken requests this Court make clear that due process, particularly in this case, required the trial court to allow Mr. Aiken the opportunity for a full testimonial hearing with cross examination. Mr. Aiken also requests the Court consider whether Protection Orders that restrain a parent from their child should be based upon a preponderance of the evidence standard or a clear, cogent, and convincing standard given the fundamental liberty

interests at stake. Mr. Aiken further requests this court hold that attorney fees were not appropriately awarded when the underlying Petition failed to request them and given the clear differences in language between RCW 26.09.140 and RCW 26.50.060(1)(g).

December 8, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 9th day of December, 2015, I caused to be filed the foregoing document with the Court of Appeal as follows:

Via Legal Messenger

Richard D. Johnson
Court Administrator
The Court of Appeals of the State of Washington
Division I
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I also caused a true and correct copy of the foregoing document to be hand delivered to the following:

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Dated this 8th day of December, 2015 at Everett, Washington.

Aaron L. Shields, WSBA 26285

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CYNTHIA L. AIKEN,	)	No. 73129-7-I
Respondent,	)	DIVISION ONE
v.	)	
DAVID W. AIKEN,	)	UNPUBLISHED
Appellant.	)	FILED: November 9, 2015

Cox, J. – David Aiken appeals an order for protection in favor of Cynthia Aiken, his former spouse, and their three minor daughters. The court commissioner properly entered a temporary restraining order, pending a full hearing based on the verified petition of Cynthia Aiken. He has failed in his burden to establish that he was deprived of due process in the entry of any orders in this case. And the court did not abuse its discretion when it modified the one-year protection order on reconsideration. We affirm.

Mr. and Ms. Aiken began dissolution proceedings.[1] Shortly before a final decree was entered following their CR 2A agreement, Ms. Aiken sought a protection order. This request was based on her verified petition, certified under penalty of perjury.[2] She sought the order on behalf of herself and all three of Mr. and Ms. Aiken's minor daughters.[3]

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[1] We adopt the naming conventions of the parties.

[2] Clerk's Papers at 246-58.

[3] Id.

The verified petition stated that R.A., one of the minor daughters, had "taken a number of pills at school intentionally trying to hurt herself" and then disclosed to a social worker that Mr. Aiken was "verbally and physically abusive to her and her sisters."[4] R.A. stated that she took the pills to avoid her visitation with Mr. Aiken.[5] The petition also stated that Mr. Aiken had committed domestic violence against Ms. Aiken.[6]

Ms. Aiken sought an ex parte emergency temporary protection order.[7] The court granted the temporary protection order until a full hearing could be held, shortly thereafter.

Mr. Aiken moved for a "testimonial hearing" including cross-examination.[8] The court denied the motion and ruled that Mr. Aiken could not depose or subpoena R.A.[9]

After a full hearing, the court granted an order for protection, restraining Mr. Aiken from either causing physical harm to or harassing all three minor children. The order did not include restrictions as to Ms. Aiken.[10]

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[4] Id. at 253.

[5] Id.

[6] Id. at 254-55.

[7] Id. at 249.

[8] Id. at 191-94.

[9] Id. at 140-41.

[10] Id. at 11.

Visitation was subject to future orders in the dissolution proceeding.[11] The court also left some of the restrictions as to contacting the children and visiting their school or residence subject to the dissolution proceeding.[12]

Ms. Aiken moved for reconsideration, supporting her request with evidence of a new self-harm attempt by R.A.[13] On reconsideration, the court modified the original one-year order. The order continued the restraints from either harming or harassing all three minor children.[14] But it also included the same restraints as to Ms. Aiken.[15] Moreover, it restrained Mr. Aiken from coming near or contacting R.A. or going to her school or residence.[16]

This appeal followed.

TEMPORARY RESTRAINING ORDER

Mr. Aiken argues that the court erred by entering the temporary restraining order. Because the statutory prerequisites were supported by substantial evidence and the court complied with the controlling statutes, we disagree.

Under RCW 26.50.070, the court may grant an ex parte temporary restraining order, pending a full hearing on a petition. To grant the order, the petition must "allege[] that irreparable injury could result from domestic violence if

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[11] Id. at 12.

[12] Id. at 11.

[13] Id. at 41-44.

[14] Id. at 6.

[15] Id.

[16] Id.

an order is not issued immediately."[17] Such orders are for fixed periods, not to exceed 14 or 24 days, depending on the method used to serve the respondent.[18]

Here, the verified petition of Ms. Aiken set forth proof that R.A. had twice attempted self-harm and that she had indicated the most recent attempt was to avoid visiting her father. Additionally, the petition provided proof that R.A.'s counselor recommended that she have no contact with Mr. Aiken until the issue could be investigated. This, together with other proof of domestic violence stated in the petition, provided substantial evidence for the court to determine that "irreparably injury could result from domestic violence if an order [was] not issued immediately without prior notice," as RCW 26.50.070 states.

Mr. Aiken argues that the petition failed to allege irreparable injury. But the statute clearly states that such injury may be established by a showing of recent "acts of domestic violence." This petition provides such proof. Thus, this argument is without merit.

DUE PROCESS

Mr. Aiken argues that he was entitled to a full testimonial hearing, including the right to cross-examination, before the court entered the original one year order. We hold that he fails in his burden to show that he was deprived of due process in any respect.

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[17] RCW 26.50.070(1).

[18] RCW 26.50.070(4).

Both the state and federal constitution provide for due process of law prior to restricting a person's liberty.[19] Our state's due process clause is co-extensive with its federal counterpart.[20]

"Parents have a fundamental liberty interest in the right to the care, custody, and management of their children."[21] Thus, the State must provide due process before interfering with this right.[22]

Due process is a flexible concept and depends on the facts of the case.[23] At its core, due process is the "opportunity to be heard 'at a meaningful time and in a meaningful manner.'"[24]

We analyze whether the procedures utilized provided due process under the test announced in Mathews v. Eldridge.[25] This test balances "(1) the private interest affected; (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural

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[19] CONST. AMEND. XIV; WASH. CONST. ART. I, § 3.

[20] In re Estate of Hambleton, 181 Wn.2d 802, 823, 335 P.3d 398 (2014).

[21] In re Welfare of A.W., 182 Wn.2d 689, 702, 344 P.3d 1186 (2015).

[22] Id.

[23] Mathews v. Eldridge, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

[24] Id. at 333 (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)).

[25] 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

safeguards; and (3) the governmental interest, including costs and administrative burdens of additional procedures."[26]

Gourley v. Gourley[27] provides helpful analysis on this issue. In that case, Kimberly Gourley sought a protection order against Clifford Gourley after one of their children accused him of sexual assault.[28] Clifford argued that the court violated his right to due process when it entered the order without allowing him to cross-examine the child who made the accusation.[29]

A majority of the supreme court held that due process did not entitle Clifford to cross-examination under the facts of that case.[30]

The court held that there were compelling interests for both Clifford and the government.[31] It noted that Clifford had "an important interest in the care, custody, and control of his children."[32] But it also noted that the government had "a compelling interest in preventing domestic violence or abuse."[33] Additionally,

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[26] In re Det. of Stout, 159 Wn.2d 357, 370, 150 P.3d 86 (2007).

[27] 158 Wn.2d 460, 145 P.3d 1185 (2006).

[28] Id. at 463.

[29] Id. at 463-64.

[30] Id. at 467 (plurality opinion); Id. at 472 (Quinn-Brintnall, J. concurring).

[31] Id. at 468.

[32] Id.

[33] Id.

the protection order deprived Clifford of his interest only temporarily, as it expired in one year and was subject to further orders.[34]

The court noted that chapter 26.50 RCW provided several procedural protections:

> (1) a petition to the court, accompanied by an affidavit setting forth facts under oath; (2) notice to the respondent within five days of the hearing; (3) a hearing before a judicial officer where the petitioner and respondent may testify; (4) a written order; (5) the opportunity to move for revision in superior court; (6) the opportunity to appeal; and (7) a one-year limitation on the protection order if it restrains the respondent from contacting minor children.[35]

Additionally, the trial court can exercise its discretion to permit additional discovery.[36] In Gourley, the court allowed Clifford to subpoena and depose Kimberly.[37]

The supreme court determined that this process was sufficient, noting that "nothing in the statutory scheme explicitly requires a trial judge to allow the respondent in a domestic violence protection order proceeding to cross-examine a minor who has accused him of sexual abuse."[38]

Here, as in Gourley, Mr. Aiken does not argue that chapter 26.50 RCW is facially unconstitutional.[39] Instead, he argues that under the facts of his case, the

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[34] Id.

[35] Id. at 468-69.

[36] Id. at 469.

[37] Id.

[38] Id. at 469-70.

[39] Id. at 467.

court deprived him of due process. We hold that Mr. Aiken fails in his burden to show that he was deprived of due process.

As in Gourley, compelling interests weigh on both sides of the Matthews analysis. Mr. Aiken has a fundamental liberty interest in the care and custody of R.A. But the protection order restricts this interest only temporarily, as it expires within one year. And the government has a compelling interest in preventing domestic violence.

Here, Mr. Aiken received the procedural protections of chapter 26.50 RCW, which we listed above. Additionally, the court allowed Mr. Aiken to depose Ms. Aiken and present that evidence to the court at the full hearing.

The court had ample evidence before it. Apart from the verified petition, the court had Ms. Aiken's deposition, the report of the guardian ad litem in the dissolution proceedings, and medical records, including the records of R.A.'s visits to the emergency room and her psychological records. These records corroborate that R.A. twice attempted suicide or self-harm due to fear of visitation with her father. Thus, under the facts of this case, Mr. Aiken received due process and cross-examination was not necessary.

Mr. Aiken also argues that the court should have applied a higher evidentiary burden of proof because the order impinges on his relationship with his child. Because Mr. Aiken received due process, as discussed earlier, we reject his argument that a higher burden of proof is necessary.

Similarly, Mr. Aiken argues that a higher burden of proof is necessary because this order creates a social stigma. But Mr. Aiken fails to cite convincing

authority that this protection order creates a social stigma impinging on his liberty interests.

Finally, Mr. Aiken argues that the protection order impinges his freedom of travel. But "freedom of movement cannot be used to impair the individual rights of others."[40] And the protection order only restricts movement "when such movement is harmful or illegal and interferes with the victim's right to be free of invasive, oppressive and harmful behavior."[41] Accordingly, this argument is unpersuasive.

MODIFICATION ON RECONSIDERATION

Mr. Aiken also argues that the court abused its discretion on reconsideration by granting more relief than the motion for reconsideration requested. We hold that the court did not abuse its discretion in entering the order on reconsideration.

We review for abuse of discretion a court's decision on a motion for reconsideration.[42]

Here, the court's February 3 order restrained Mr. Aiken from harming or harassing R.A and her siblings. But it did not restrain Mr. Aiken from contacting R.A. or from going to her school or residence, leaving these matters subject to

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[40] Spence v. Kaminski, 103 Wn. App. 325, 336, 12 P.3d 1030 (2000).

[41] Id.

[42] Rivers v. Wash. State Conf. of Mason Contractors, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002).

the pending dissolution proceedings. This order also did not restrain Mr. Aiken with respect to Ms. Aiken.

Ms. Aiken moved for reconsideration of this order, asking the court to restrain Mr. Aiken from contacting R.A. Ms. Aiken supported this motion with evidence of a new self-harm attempt by R.A.

The court granted the motion, restraining Mr. Aiken from contacting R.A., or going to her school or residence. The court also modified the order to restrain Mr. Aiken from harming or harassing Ms. Aiken.

Here, the modified order exceeded the relief requested in two ways. But the court did not abuse its discretion.

First, while the motion for reconsideration asked the court to restrain Mr. Aiken from going to R.A.'s school, it did not request that he also be prohibited from visiting her residence. But the court restrained Mr. Aiken from both her school and her residence. This was not an abuse of discretion. The reasons that supported restraining Mr. Aiken from R.A.'s school also supported restraining him from her residence. And Mr. Aiken fails to provide any persuasive reason why this decision was an abuse of discretion.

The court also exceeded the relief requested by restraining Mr. Aiken from harming or harassing Ms. Aiken. While this exceeded the relief requested in the motion for reconsideration, Ms. Aiken's verified petition sought these protections. And her verified petition provides proof that Mr. Aiken had committed domestic violence against her. Thus, it was not an abuse of discretion for the court to modify the order on reconsideration.

Mr. Aiken argues that the court abused its discretion because the new evidence related only to R.A., not to Ms. Aiken. But because the verified petition provided evidence of domestic violence against Ms. Aiken, it was not an abuse of discretion for the court to modify the order on reconsideration. And Mr. Aiken fails to make any argument why this decision was improper other than the fact that it exceeded the scope of the motion for reconsideration.

ATTORNEY FEES

Ms. Aiken seeks an award of attorney fees on appeal. We hold that she is entitled to such an award.

RCW 26.50.060(1)(g) allows a court to award the petitioner costs and reasonable attorney fees. Here, we exercise our discretion and award her reasonable appellate attorney fees, subject to her compliance with RAP 18.1. She is also entitled to an award of costs on appeal. We also award her costs, subject to her compliance with RAP 14.1-14.6.

We affirm the protection order, as modified on reconsideration. We also award Ms. Aiken reasonable attorney fees on appeal, subject to compliance with RAP 18.1 as well as costs, subject to compliance with RAP 14.1-14.6.

Cox, J.

WE CONCUR:

Trickey, J

Dwyer, J.

RCW 26.50.060

Relief—Duration—Realignment of designation of parties—Award of costs, service fees, and attorneys' fees.

(1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) On the same basis as is provided in chapter **26.09** RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter **26.09** RCW shall not be required under this chapter;

(e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW **26.50.150**;

(f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees;

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(i) Restrain the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW **9.61.260**, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW **9.73.260**;

(j) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(k) Consider the provisions of RCW **9.41.800**;

(l) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent and may prohibit the respondent from interfering with the petitioner's efforts to remove the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found; and

(m) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not

applicable to orders for protection issued under chapter **26.09**, 26.10, or **26.26** RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter **26.09** or **26.26** RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW **26.50.085**, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW **26.50.085** or by mail as provided in RCW **26.50.123**. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW **26.50.070**. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(g) of this section.

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

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW **26.50.050**.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

[2010 c 274 § 304; 2009 c 439 § 2; 2000 c 119 § 15; 1999 c 147 § 2; 1996 c 248 § 13; 1995 c 246 § 7; 1994 sp.s. c 7 § 457. Prior: 1992 c 143 § 2; 1992 c 111 § 4; 1992 c 86 § 4; 1989 c 411 § 1; 1987 c 460 § 55; 1985 c 303 § 5; 1984 c 263 § 7.]

NOTES:

Intent—2010 c 274: See note following RCW **10.31.100**.

Finding—Intent—2009 c 439: "The legislature finds that considerable research shows a strong correlation between animal abuse, child abuse, and domestic violence. The legislature intends that perpetrators of domestic violence not be allowed to further terrorize and manipulate their victims, or the children of their victims, by using the threat of violence toward pets." [2009 c 439 § 1.]

Application—2000 c 119: See note following RCW **26.50.021**.

Severability—1995 c 246: See note following RCW **26.50.010**.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW **43.70.540**.

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW **9.41.010**.

Findings—1992 c 111: See note following RCW **26.50.030**.

Short title—Section captions—Effective date—Severability—1987 c 460: See RCW **26.09.910** through **26.09.913**.

RCW 26.09.140

Payment of costs, attorneys' fees, etc.

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

[2011 c 336 § 690; 1973 1st ex.s. c 157 § 14.]