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NO. 336492
COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

ESMERALDA RODRIGUEZ

Appellant

v.

LUIS ALBERTO ZAVALA MEDINA

aka **LUIS DANIEL ZAVALA**
Respondent

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

	Pages Cited
I. INTRODUCTION -----	1
II. ASSIGNMENTS OF ERROR-----	2
III. STATEMENT OF THE CASE -----	3
IV. ARGUMENT -----	6
A. THE COURT WAS REQUIRED TO INCLUDE L.Z. AS A PROTECTED PARTY ON THE DVPO WHERE HE WAS EXPOSED TO DOMESTIC VIOLENCE AGAINST HIS MOTHER, AND EVIDENCE ESTABLISHED MS. RODRIGUEZ WAS IN FEAR OF IMMINENT PHYSICAL HARM AGAINST L.Z.-----	8
1. The Court Erred in Failing to Include L.Z. on the Protection Order Because Exposure to Domestic Violence is Harmful to a Child's Physical and Mental Development and Therefore Constitutes Domestic Violence Against the Child -----	9
2. The Court Erred When it Failed to Include L.Z. on the Protection Order Because There Was Evidence That Ms. Rodriguez Was in Fear of Imminent Physical Harm Against L.Z. -----	15
B. THE DVPA REQUIRES THE COURT TO ENTER RESIDENTIAL PROVISIONS FOR L.Z. AND RESTRICT MR. ZAVALA'S RESIDENTIAL TIME WITH L.Z. -----	17

1.	The Entry of Residential Provisions for Children in Common is Mandatory and Consistent with the Legislative Intent of the DVPA -----	17
2.	The DVPA Requires the Court to Enter Restricted Residential Provisions for Mr. Zavala -----	21
V.	CONCLUSION -----	23

TABLE OF AUTHORITIES

**Pages
Cited**

WASHINGTON CASES

Barber v. Barber,
136 Wn. App. 512, 516, 150 P.3d 124 (2007) ----- 8, 16

Danny v. Laidlaw Transit Serv., Inc.,
165 Wn.2d 200, 209, 193 P.3d 125 (2008),
citing Laws of 1991, Ch. 301, § 1 ----- 7, 15, 18

Hecker v. Cortinas,
110 Wn. App. 865, 870, 43 P.3d 50 (2002)----- 16

In re the Marriage of Stewart,
133 Wn. App. 545, 137 P.3d 25,
rev. denied 160 Wn.2d 1011 (2006) ----- 8, 9, 13

Muma v. Muma,
115 Wn. App. 1, 6-7, 60 P.3d 592 (2002) ----- 8, 16

Scannell v. City of Seattle,
97 Wn.2d 701, 704, 648 P.2d 435 (1982)----- 18

Spence v. Kaminski,
103 Wn. App. 325, 334, 12 P.3d 1030 (2000) ----- 8, 16

State v. Dejarlais,
136 Wn.2d 939, 944, 969 P.2d 90 (1998)
quoting Laws of 1992, Ch. 111, § 1 ----- 7, 12, 13, 15

STATUTES AND REGULATIONS

RCW 9.41.800-----6

RCW 26.09-----17, 18, 21

RCW 26.09.060(1) ----- 18

RCW 26.09.060(1)(d)-----	18
RCW 26.09.187(3) -----	21
RCW 26.09.187(3)(a)-----	21
RCW 26.09.191(2)(a)(ii), (iii) -----	21
RCW 26.09.191(3)(e)-----	21
RCW 26.50-----	6
RCW 26.50.020(1)(a)-----	15
RCW 26.50.021(2) -----	17
RCW 26.50.030(1) -----	15, 16
RCW 26.50.060(1) -----	17
RCW 26.50.060(1)(d)-----	17, 18, 21
RCW 26.50.900-----	16

OTHER AUTHORITIES

WASHINGTON STATE GENDER AND JUSTICE COMMISSION, DOMESTIC VIOLENCE MANUAL FOR JUDGES, §§ 2-32 (2006) -----	19
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Bair-Merrit, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., <i>Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence</i> , 369 N. Engl. J. Med. 1673, 1673-1674 (2013)-----	8, 9, 10, 11, 12, 13
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Meiers, Allie, *Civil Orders of Protection*, 19 *Journal of the Am. Acad. of Matrimonial Lawyers*, 373, 384 (2005) -----9

Edleson, Jeffrey L., *Children's Witnessing of Adult Domestic Violence*, 14 *Journal of Interpersonal Violence*, 839, 839-870 (1999) ----- 9, 10

Edleson, Jeffery L., Shin, Narae, Johnson Armendariz, *Measuring Children's Exposure to Domestic Violence: The Development and Testing of the Child Exposure to Domestic Violence Scale*, 30 *Children & Youth Serv. Review* 502, 503 (2007) -----9, 10

Youcha, Victoria, *Research Summary: Children Exposed to Violence*, National Center for Infants, Toddlers, and Families, located at www.zerotothree.org ----- 11

I. INTRODUCTION

This case is about protecting the most vulnerable people in our society, children. It is also about taking affirmative measures to prevent violence from continuing to the next generation through children who grow up in homes with domestic violence. This appeal asks whether the Domestic Violence Prevention Act (DVPA) protects children exposed to domestic violence. We respectfully submit that the DVPA protects these children.

Esmeralda Rodriguez appeals a Benton County Superior Court Domestic Violence Protection Order (DVPO) that failed to include her child in common, L.Z., with the Respondent, Luis Zavala. Ms. Rodriguez argues the trial court erred in failing to include L.Z. as a protected party where L.Z. was in physical danger and was developmentally and physically harmed by Mr. Zavala's continued violence against his mother. In addition, Ms. Rodriguez argues that the trial court erred when it failed to enter restrictive residential provisions for L.Z. where she was entitled to such a remedy under the DVPA, and evidence established a basis to restrict Mr. Zavala's time with L.Z.

II. ASSIGNMENTS OF ERROR

- A. The court erred when it failed to include L.Z. as a protected party on the DVPO where evidence established that he was exposed to domestic violence against his mother, and where his mother was in imminent fear of physical harm to him.
 - 1. The court erred in failing to include L.Z. on the protection order because exposure to domestic violence is harmful to him.
 - 2. The court erred when it failed to include L.Z. on the protection order because there was evidence Ms. Rodriguez was in fear of imminent physical harm to L.Z.

- B. The court erred when it failed to enter residential provisions for L.Z. and restrict Mr. Zavala's residential time with L.Z.
 - 1. The entry of residential provisions for children in common is mandatory and consistent with the legislative intent of the DVPA.
 - 2. The DVPA requires the court enter restricted residential provisions for Mr. Zavala.

III. STATEMENT OF THE CASE

Esmeralda Rodriguez has four minor children, L.Z. (age 2), E.M. (age 11), M.M. (age 15) and Y.M. (age 17). CP 2. Luis Zavala is only the biological father of L.Z. RP 6. Ms. Rodriguez and Mr. Zavala have a significant history of domestic violence. CP 1-7.

In the early morning hours on June 14, 2015, Ms. Rodriguez awoke to Mr. Zavala pounding on her bedroom window. CP 5. Mr. Zavala, in violation of a current protection order, screamed at Ms. Rodriguez and demanded that she open the door or he would break the window and come inside. CP 5. In an effort to prevent her children from being frightened, Ms. Rodriguez went to the back door and cracked it open to tell Mr. Zavala to leave. CP 5; RP 7. Instead of leaving, Mr. Zavala slammed the door open and forced his way inside. CP 5.

Ms. Rodriguez again told Mr. Zavala to leave or she would call the police. CP 5. Mr. Zavala cornered Ms. Rodriguez, wrapped his hand around her throat and began choking her. CP 5; RP 7-8. Mr. Zavala told Ms. Rodriguez he was going to finally end what he had started. CP 5. Ms. Rodriguez feared Mr. Zavala was going to kill her. CP 5; RP 6-7. She reached for a kitchen knife

and stabbed Mr. Zavala in the stomach while screaming for her daughter to call 911. CP 5. Mr. Zavala was arrested and charged. RP 3.

On June 16, 2015, Ms. Rodriguez filed a petition for a DVPO. CP 1-7. She asked the court to protect her and her children from Mr. Zavala. CP 1-7. In the petition, Ms. Rodriguez described the assault on June 14, 2015, as well as numerous past acts of violence and threats by Mr. Zavala. CP 4-7. Specifically, Ms. Rodriguez alleged Mr. Zavala pushed her to the floor when she was pregnant with L.Z., tried to smother her with a pillow, threatened to do something so horrific to Ms. Rodriguez's daughter that it would make Ms. Rodriguez want to kill herself, pulled a knife on her and threatened to cut her into tiny pieces, threatened to kidnap L.Z. so Ms. Rodriguez would never see him again, and threatened to kill Ms. Rodriguez, all of her children and then himself. CP 5-6. Mr. Zavala also belittled Ms. Rodriguez, controlled with whom she could talk (including family members), and would come to where she was if she did not return his multiple phone calls. CP 5-6. Based on this petition, the trial court issued a temporary order of protection protecting Ms. Rodriguez and all four children. CP 10-13.

At the protection order hearing on June 26, 2015, Ms. Rodriguez recounted the events of June 14, 2015, and testified, upon questioning of the trial court, that L.Z. was asleep in the home that morning. RP 6. Ms. Rodriguez told the court Mr. Zavala wanted to take L.Z. with him, but she did not want Mr. Zavala to take L.Z. because he appeared to be either intoxicated or had not slept all night. RP 7.

The sheriff's office transported Mr. Zavala from jail for the hearing. RP 3. Mr. Zavala admitted to breaking a no-contact order on the morning of June 14, 2015, because he wanted to see his son. RP 3-4. He denied Ms. Rodriguez's allegations of abuse, and said Ms. Rodriguez stabbed him because she was jealous of the kiss marks on his neck. RP 10.

The trial court found Ms. Rodriguez credible, and entered a DVPO for her and her three daughters. RP 10. The trial court denied Ms. Rodriguez's request to include L.Z. as a protected party stating that L.Z. was not "present" during the assault on June 14, 2015, and was not threatened in any manner. RP 10-11. When Ms. Rodriguez again asked the court to include L.Z. on the order because Mr. Zavala was sending threatening text messages, the court stated "I'm not going to include your son in this order because

he wasn't involved in any of this." RP 12. The court also failed to grant Ms. Rodriguez custody of L.Z. or enter residential provisions.¹ CP 25-29. In making this ruling, the court recognized that Mr. Zavala would have difficulty seeing L.Z. under these conditions. Specifically, the court stated, "[n]ow, if you want to have visitation – you've got a problem, and that problem is you cannot contact her at all. So, you cannot contact her to arrange visitation, but I'm not preventing you from visiting the child." RP 11.

Ms. Rodriguez timely filed her notice of appeal on July 24, 2015.

IV. ARGUMENT

In 1991, the Legislature enacted the Domestic Violence Prevention Act (DVPA). RCW 26.50, *et. seq.* In doing so, the legislature recognized that:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: [c]hild abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more.

¹ The court also removed the mandatory RCW 9.41.800 firearms provisions, although that is not part of this appeal.

State v. Dejarlais, 136 Wn. 2d 939, 944, 969 P.2d 90 (1998) (quoting Laws of 1992, c 111, § 1).

The legislature also noted that “children ‘are deeply affected by the violence’ in their homes ‘and could be the next generation of batterers and victims.’” *Danny v. Laidlaw Transit Serv., Inc.*, 165 Wn.2d 200, 209, 193 P.3d 125 (2008), *citing* LAWS OF 1991, Ch. 301, §1.

Since its original passage of the DVPA, the legislature has furthered a strong public policy of stopping domestic violence by taking “concrete actions to encourage domestic violence victims to end abuse, leave their abusers, *protect their children*, and cooperate with law enforcement and prosecution efforts to hold the abuser accountable.” *Danny*, 165 Wn.2d at 213, *citing* Laws of 1991, Ch. 301, §1 (emphasis added). One of these tools, civil protection orders, are a “valuable tool to increase safety for victims and to hold batters accountable.” *Id.*

Ms. Rodriguez sought a protection order under the DVPA for herself and her four children. She argues the trial court erred in failing to include her son, L.Z., in the protection order.

A. THE COURT WAS REQUIRED TO INCLUDE L.Z. AS A PROTECTED PARTY ON THE DVPO WHERE HE WAS EXPOSED TO DOMESTIC VIOLENCE AGAINST HIS MOTHER, AND EVIDENCE ESTABLISHED MS. RODRIGUEZ WAS IN FEAR OF IMMINENT PHYSICAL HARM AGAINST L.Z.

The trial court erred when it refused to include L.Z. as a protected party on the protection order because: (1) exposure to domestic violence causes long lasting physical and mental health problems and is domestic violence against a child;^{2 3} and (2) Ms. Rodriguez was not required to show recent acts of domestic violence against L.Z. but only that she was in fear of imminent harm to L.Z. ^{4 5} *In re the Marriage of Stewart*, 133 Wn. App. 545,137 P.3d 25, *rev. denied* 160 Wn.2d 1011 (2006); *Spence v. Kaminski*, 103 Wn. App. 325, 334, 12 P.3d 1030 (2000); *Muma v. Muma*, 115 Wn. App. 1, 6-7, 60 P. 3d 592 (2002); *Barber v. Barber*, 136 Wn. App. 512, 516, 150 P.3d 124 (2007).

² Bair-Meritt, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 N. Engl. J. Med. 1673, 1673-1674 (2013)

³ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 Judge's Journal, 32, 34-35 (2014)

⁴ Bair-Meritt, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 N. Engl. J. Med. 1673, 1673-1674 (2013)

⁵ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 Judge's Journal, 32, 34-35 (2014)

1. The Court Erred in Failing to Include L.Z. on the Protection Order Because Exposure to Domestic Violence is Harmful to a Child's Physical and Mental Development and Therefore Constitutes Domestic Violence Against the Child.

Exposure to domestic violence constitutes psychological and physical harm to children and therefore constitutes domestic violence under the DVPA. *In re the Marriage of Stewart*, 133 Wn. App. 545, 137 P.3d 25, rev. denied 160 Wn.2d 1011 (2006). In the United States, more than fifteen million children live in homes with domestic violence.⁶ Approximately seven million of these children witness severe violence against a parent, including the use of a weapon.⁷ Nearly all of these children hear or witness the abuse enacted against their parent.⁸

Children are exposed to domestic violence in many ways.⁹ Exposure to domestic violence not only includes directly seeing the violence inflicted on their parent, but also hearing the violence and

⁶ Bair-Merrit, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 N. Engl. J. Med. 1673, 1673-1674 (2013)

⁷ *Id.*

⁸ Meiers, Allie, *Civil Orders of Protection*, 19 Journal of the Am. Acad. of Matrimonial Lawyers, 373, 384 (2005)

⁹ Edleson, Jeffrey L., *Children's Witnessing of Adult Domestic Violence*, 14 Journal of Interpersonal Violence, 839, 839-870 (1999)

observing the aftermath of abuse (bruises on their parent, police intervention, or movement to a domestic violence shelter).¹⁰

Many children are traumatized by the events they hear, but do not see.¹¹ Often children are made accomplices to the violence: being a hostage, a weapon, or a spy.¹² Exposure to domestic violence includes the stress and trauma a child feels when a parent is unavailable because of injuries, when the police arrest the abusing parent, or when the child lives in fear of the next episode.¹³

Moreover, recent studies show exposure to domestic violence has profound effects on a child's physical and mental development.^{14 15} Exposure to domestic violence causes children to "repeatedly mount the 'fight or flight' reaction" which "results in

¹⁰ Edleson, Jeffery L., Shin, Narae, Johnson Armendariz, *Measuring Children's Exposure to Domestic Violence: The Development and Testing of the Child Exposure to Domestic Violence Scale*, 30 *Children & Youth Serv. Review* 502, 503 (2007)

¹¹ Edleson, Jeffery L, *Children's Witnessing of Adult Domestic Violence*, 14 *J. Interpersonal Violence*, 839, 839-870 (1999)

¹² *Id.*

¹³ *Id.*

¹⁴ Bair-Merrit, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 *N. Engl. J. Med.* 1673, 1673-1674 (2013)

¹⁵ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 *Judge's Journal*, 32, 34-35 (2014)

pathologic changes in multiple systems over time” often referred to as the “biologic embedding of stress.”^{16 17} The biologic embedding of stress, in turn, results in increased instances of asthma, persistent hyperarousal, exaggerated startle response, anxiety, serious sleep disorders, hyperactivity, attention deficit disorder, attention deficit and hyperactivity disorder, and post-traumatic stress disorder.^{18 19}

Repeated exposure to violence affects young children even before they can talk, and impacts the development of their brain.^{20 21 22} Exposure to domestic violence on developing brains

¹⁶ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 *Judge's Journal*, 32, 34-35 (2014)

¹⁷ Bair-Meritt, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 *N. Engl. J. Med.* 1673, 1673-1674 (2013)

¹⁸ *Id.* at 1673

¹⁹ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 *Judge's Journal*, 32, 34 (2014)

²⁰ *Id.*

²¹ Bair-Meritt, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 *N. Engl. J. Med.* 1673, 1674 (2013)

²² Youcha, Victoria, *Research Summary: Children Exposed to Violence*, National Center for Infants, Toddlers, and Families, located at www.zerotothree.org

has serious neurobiological consequences including an “over representation of the fear-driven limbic system and underdevelopment of areas of interpretative functioning” which can lead to learning problems and emotional harm.^{23 24} Infants and young children who physically cannot mount the “fight or flight” reaction in order to protect themselves instead begin to dissociate or exhibit what is called the “defeat response.”²⁵ In addition, “[d]eveloping brains are acutely sensitive to stress and to the internal state of the caregiver upon whom the child depends.”²⁶

In enacting the DVPA, the legislature recognized the short and long-term impacts exposure to domestic violence has on children. *Dejarlais*, 136 Wn. 2d at 944.

Domestic violence has long been recognized as being at the core of other major social problems: [c]hild abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse Domestic violence costs millions of

²³ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 Judge's Journal, 32, 34 (2014)

²⁴ Bair-Meritt, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 N. Engl. J. Med. 1673, 1674 (2013)

²⁵ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 Judge's Journal, 32, 34 (2014)

²⁶ *Id.*

dollars each year in the state of Washington for health care, absence from work, services to children, and more.

Dejarlais, 136 Wn.2d at 944, *quoting*, Laws of 1992, c 111, §1. In recognizing “children ‘are deeply affected by the violence’ in their homes ‘and could be the next generation of batterers and victims’” the legislature recognized the long-term impact exposure to domestic violence has on children. *Danny*, 165 Wn.2d at 209, *quoting*, Laws of 1991, Ch. 301, §1. The courts also recognized the long-term impacts of exposure to domestic violence by finding that the psychological harm of witnessing violence constitutes domestic violence against children. *Stewart*, 133 Wn. App. at 551.

We now know exposure to, and not just directly witnessing, domestic violence leads to a “myriad of physical health problems,” mental health issues, and learning disabilities in children.^{27 28} The DVPA is meant to protect children from the profound psychological, developmental, and physical harm caused by exposure to domestic

²⁷ Hecht Schafran, Lynn, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, 53 *Judge's Journal*, 32, 32 (2014)

²⁸ Bair-Merrit, Megan M.D., Zuckerman, Barry, M.D., Augustyn, Marilyn M.D., Cronholm, Peter F. M.D., *Silent Victims – An Epidemic of Childhood Exposure to Domestic Violence*, 369 *N. Engl. J. Med.* 1673, 1674 (2013)

violence. Courts err when they do not use the remedies available to protect children.

In this case, there is no question that L.Z. was present in the home, and was the motivation for Mr. Zavala's violence on June 14, 2015. CP 5-6. Prior to this, Mr. Zavala assaulted Ms. Rodriguez while she was pregnant with L.Z. CP 5. Mr. Zavala also threatened to kill Ms. Rodriguez, all of Ms. Rodriguez's children, including L.Z., and then himself. CP 6.

The trial court's finding that L.Z. "was not present" or "not threatened in any manner" is patently untrue. RP 11. On the morning of June 14, 2015, in violation of a no-contact order, Mr. Zavala forcefully entered L.Z.'s home with the intent of taking him. RP 6-7, 9-10. He violently assaulted Ms. Rodriguez in his attempt to gain access to L.Z. CP 5; RP 6-7. L.Z. was in the home when Mr. Zavala told Ms. Rodriguez that he was "finally going to end" what he started. CP 5. L.Z. was in the home when his mother struggled with Mr. Zavala, was choked, and screamed for help from her children. CP 5; RP 6-7. L.Z. was in the home when his sister called 911 in order to get help, when Ms. Rodriguez stabbed Mr. Zavala in order to stop the assault, and when the police arrived and arrested Mr. Zavala. RP 6-7. L.Z. was in the home when he

witnessed his mother's terror after being assault by his father. RP 6-7.

The trial court's failure to include L.Z. on the protection order because he was "not involved" or "not threatened" fails to recognize the profound impact exposure to domestic violence has on children and fails to recognize the spirit and intent of the DVPA and its attempt to stop the short and long-term effects of domestic violence. *Dejarlais*, 136 Wn.2d at 944; *Danny*, 165 Wn.2d at 209. L.Z. should be included as a protected party on the DVPO because of his exposure to the domestic violence in his home, which caused him psychological, developmental and physical harm.

2. The Court Erred When it Failed to Include L.Z. on the Protection Order Because There Was Evidence That Ms. Rodriguez Was in Fear of Imminent Physical Harm Against L.Z.

To obtain a DVPO, the petitioner, who may petition on behalf of her minor children, must prove the existence of domestic violence. RCW 26.50.020(1)(a). Domestic violence is defined, in part, as, "physical harm, bodily injury, assault, or the *infliction of fear of imminent physical harm*, bodily injury or assault" RCW 26.50.030(1), (emphasis added). A finding of physical harm is not required. A finding of the infliction of present fear of imminent

physical harm is sufficient. RCW 26.50.030(1); *Hecker v. Cortinas*, 110 Wn. App. 865, 870, 43 P.3d 50 (2002); *Barber*, 136 Wn. App. at 516.

This is consistent with the title of the statute: Domestic Violence *Prevention* Act. RCW 26.50.900 (emphasis added). The intent of the statute is to prevent acts of domestic violence. *Spence*, 103 Wn. App. at 334; *Muma*, 115 Wn. App. at 7. Requiring a recent act of violence would contradict the purpose of the DVPA and force individuals to wait for an act of violence to occur before they could seek an order of protection.

In this case, Mr. Zavala not only physically assaulted Ms. Rodriguez, but also placed L.Z. at risk imminent physical harm because Mr. Zavala was intent on taking L.Z. by force. CP 5-6; RP 5-8. Unfortunately, Mr. Zavala's actions in the early morning hours of June 14, 2015, were not out of character. CP 5-7. On a prior occasion, Mr. Zavala made threats to kill Ms. Rodriguez, all the children and himself, and during the June 14, 2015, assault on Ms. Rodriguez, he stated he was going to finally end what he had started. CP 5-6.

Ms. Rodriguez was not required to wait until L.Z. was physically harmed before seeking a protection order. Mr. Zavala's

threat to kill Ms. Rodriguez as well as L.Z. and his sisters, combined with his willingness to take L.Z. by force, is sufficient to establish fear of imminent physical harm. As such, the court erred when it failed to include L.Z. as a protected party on the protection order.

B. THE DVPA REQUIRES THE COURT TO ENTER RESIDENTIAL PROVISIONS FOR L.Z. AND RESTRICT MR. ZAVALA'S RESIDENTIAL TIME WITH L.Z.

The trial court erred in failing to enter restricted residential provisions for L.Z. The DVPA requires residential provisions for children in common under the same basis as under RCW 26.09. RCW 26.50.060(1)(d).

1. The Entry of Residential Provisions for Children in Common is Mandatory and Consistent with the Legislative Intent of the DVPA.

Among the relief offered to victims of domestic violence under the DVPA is the entry of residential provisions for children in common. RCW 26.50.060(1)(d). The DVPA also states "relief cannot be denied or delayed because the same relief is available elsewhere." RCW 26.50.021(2).

While many of the remedies available under the DVPA are discretionary, entry of residential provisions for children in common are mandatory. RCW 26.50.060(1), RCW 26.50.060(1)(d).

Specifically, the remedies section of the DVPA states that “upon notice and after hearing, the court *may* provide relief as follows” RCW 26.09.060(1) (emphasis added). However, it further states that “[o]n 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. RCW 26.09.060(1)(d) (emphasis added).

“Where a provision contains both the words “shall” and “may,” it is presumed that the lawmaker intended to distinguish between them, “shall” being construed as mandatory and “may” as permissive.” *Scannell v. City of Seattle*, 97 Wn.2d 701, 704, 648 P.2d 435 (1982). As such, the legislature’s use of the word “shall” in RCW 26.50.060(1)(d) makes entry of residential provisions for minor children of the parties mandatory. *Id.*

The entry of residential provisions in a DVPO is also consistent with the legislative intent of the DVPA. *Danny*, 165 Wn.2d at 209. The DVPA was passed to “encourage domestic violence victims to end abuse, leave their abusers, [and] *protect their children.*” *Id.* at 210, 213 (emphasis added). Failing to include residential provisions in a DVPO leaves the child and adult victim vulnerable to the abuser.

There are a number of barriers to victims leaving their abusers. WASHINGTON STATE GENDER AND JUSTICE COMMISSION, DOMESTIC VIOLENCE MANUAL FOR JUDGES, §2-32 (2006). Prior to leaving, “perpetrators escalate their physical and sexual assaults against victim, children, or others as well as escalate their intimidation by stalking, attacks against property, threats to take children, and false reports” to government agencies. *Id.* at §§ 2-32. After separation, the abuser uses the children as a vehicle for continued contact and control over the victim. *Id.* at §§ 2-36. One abusive tactic employed by batterers is “holding children hostage or abducting children in efforts to punish the abused party or to gain the abused party’s compliance.” *Id.* at §§ 2-37. In the case at issue, Mr. Zavala came to the house, in violation of a criminal no-contact order, to take L.Z. from Ms. Rodriguez. Given Mr. Zavala’s numerous threats to kidnap L.Z. so Ms. Rodriguez would never see him again, as well as Mr. Zavala’s threats to kill all of her children, including L.Z., she was terrified.

Residential provisions in a DVPO ensure victims that if they leave their abuser, their children will be protected and cannot be used as tools for continued abuse. For both parties and children, a visitation schedule provides structure, consistency, and safety.

Residential provisions are essential in meeting the legislative intent of the DVPA: a DVPO prevents domestic violence by making it safer for victims to leave their abusers, protect children, and provide the abusive parent a safe and meaningful way to have ongoing contact with their children without necessitating further court action.

Here, the trial court not only removed L.Z. from the protection order as a protected party, but also failed to enter residential provisions. As such, L.Z. is at risk of being removed from Ms. Rodriguez by Mr. Zavala without her consent and used as a tool to control and terrorize her. It also prevents L.Z. from having any further safe and meaningful contact with Mr. Zavala. The court recognized this problem when it stated “[n]ow if you want visitation – you’ve got a problem, and that problem is you cannot contact her at all. So, you cannot contact her to arrange visitation, but I’m not preventing you from visiting the child. That creates a problem for you.” RP 11. This type of incomplete and disjointed remedy is contrary to the plain language of the DVPA. The court’s ruling that Ms. Rodriguez suffered domestic violence by Mr. Zavala required it to enter residential provisions for L.Z.

2. The DVPA Requires the Court to Enter Restricted Residential Provisions for Mr. Zavala.

The DVPA requires residential provisions on same grounds as RCW 26.09. RCW 26.50.060(1)(d). Under RCW 26.09.187(3), residential provisions are entered in a manner “which encourage each parent to maintain a loving, stable and nurturing relationship with the child, consistent with the child’s developmental level and the family’s social and economic circumstances.” RCW 26.09.187(3)(a).

However, a parent’s residential time shall be restricted where the parent engaged in a history of domestic violence or physical or emotional abuse of a child. RCW 26.09.191(2)(a)(ii), (iii). Further, a parent’s residential time may be limited where the parent engaged in an abusive use of conflict “which creates the danger of serious damage to the child’s psychological development.” RCW 26.09.191(3)(e).

The record shows Mr. Zavala has an extensive history of domestic violence requiring restrictions on his residential time with L.Z. Ms. Rodriguez testified there had been two prior protection orders entered against Mr. Zavala, and Mr. Zavala stated he was currently in jail because he violated an order of protection. RP 4, 9.

In addition, not only did Mr. Zavala attack, choke, and threaten to kill L.Z.'s mother on June 14, 2015, but on prior occasions had pushed Ms. Rodriguez to the floor while she was pregnant with L.Z., attempted to smother her with a pillow and pulled a knife on her and threatened to cut her into tiny pieces. CP 5-6. Mr. Zavala also threatened to hurt Ms. Rodriguez's daughters so badly that it would make Ms. Rodriguez want to kill herself, and threatened to kidnap L.Z. so that Ms. Rodriguez would never see him again. CP 6. Finally, Mr. Zavala threatened to kill Ms. Rodriguez, all of her children, and then himself. CP 6.

Ms. Rodriguez also established evidence of emotional abuse of L.Z. and her daughters as well as an abusive use of conflict that is detrimental to L.Z. and his sisters. CP 5-6. It cannot be forgotten Mr. Zavala was at Ms. Rodriguez's home on the morning of June 14, 2015, for the sole purpose of taking L.Z. from her care. CP 5; RP 7. Mr. Zavala made good on his word by forcing himself into Ms. Rodriguez's home, attacking her, choking her, and threatening to kill her, all while the children were in the home. CP 5; RP 7-8. He was intent on forcefully taking L.Z. CP 5.

Further, it is difficult understand why Ms. Rodriguez's daughters were included in the DVPO, but not L.Z. Especially


when L.Z. was the child at issue during the assault on June 14, 2015, and was Mr. Zavala's stated reason for being at Ms. Rodriguez's home. There is no comprehensible explanation on why the court did not afford L.Z. the same protection as his sisters. If anything, L.Z. was the most vulnerable child at issue given his age and biological relationship to Mr. Zavala.


Given Mr. Zavala's history of domestic violence, emotional abuse of the children, and abusive use of conflict, the trial court erred in failing to enter restricted residential provisions protecting L.Z. from further harm.

V. CONCLUSION

Ms. Rodriguez respectfully asks this Court to find the trial court erred in failing to include L.Z. on the DVPO as a protected party. Exposure to domestic violence harms children and constitutes domestic violence under the DVPA. She also asks this Court to find the trial court erred by failing to enter restricted residential provisions for L.Z.

Respectfully submitted on November 6, 2015.


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