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No. 76543-4-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DIVISION ONE

JOSEPH PADGETT,

Petitioner/Appellant,

v.

DARLA PADGETT,

Respondent.

PETITION FOR REVIEW BY
THE WASHINGTON STATE SUPREME COURT

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A. INTRODUCTION

This is a case of first impression. Mr. Padgett has been subjected to eight years of domestic violence restraints including firearm restrictions although he has never been found to have committed any crime, violation, or act of domestic violence. While a court is authorized under RCW 26.50.060(1)(f) (Domestic Violence Prevention) to impose terms in an order of protection as it “deems necessary for the protection of the petitioner,” it has been generally assumed that no such order may be issued at all absent at least one act of domestic violence. *See* RCW 26.50.020(1): “Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent.” Yet no case or statute explicitly states that there must be a finding of at least one act of domestic violence in order for the court to have authority to impose protection under RCW 26.50.060(1)(f). Review should be granted to address this gap in the law.

The paucity of guidance spelling out grounds, factors, or standards authorizing modification or termination of a domestic violence order was noted by this Court in *Freeman v. Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010). This Court characterized *Freeman* as a case of first impression because it existed in a statutory “vacuum.” 169 Wn. 2d at 672. There, this

Court held among other things that the in the absence of a new act of domestic violence, the basis for the “victim’s”¹ fear of recurrence of domestic violence must be reasonable. *Id.* at 675.

This case exists in a similar vacuum because no case or statute requires that an act of domestic violence be committed as a prerequisite to imposing orders under RCW 26.50.060(1)(f). Resolving this issue is a matter of significant public interest given the volume of domestic violence orders issued in our state. This case is also in direct conflict with *Freeman* because in both *Freeman* and this case, the ex-wife’s fear was based solely on unexplained minor occurrences with no connection to the restrained person. This case is even more egregious than *Freeman* because the restrained person in *Freeman* had committed domestic violence, where here Mr. Padgett has not.

Further, this case raises an important Second Amendment issue that this Court must resolve. The orders restrict Mr. Padgett from possessing firearms and require that his ex-wife retain his firearms “until the criminal proceedings [against] him are terminated and he is allowed to possess firearms.” CP 6. The failure to terminate these orders upon request

¹ Mr. Padgett uses the word “victim” in quotes here because no court ever determined that Mrs. Padgett was a victim of any domestic violence by Mr. Padgett. No disrespect to actual victims is intended.

when Mr. Padgett was cleared of all criminal activity violates his Second Amendment right to bear arms. In the absence of any finding of domestic violence or other misconduct or criminal record, the required “extremely strong public-interest justification” for restraining him from bearing arms is completely absent. *District of Columbia v. Heller* holds that the core of the Second Amendment is “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”² *Ezell v. City of Chicago* holds that when the person is a law-abiding, responsible citizen, “a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government’s means and its end.”³ Such justification is lacking here.

This Court should accept review as it is a matter of substantial public interest to ensure that citizens are not restrained in the absence of a supporting factual finding. It is also in the public’s interest that this Court address the statutory gap in RCW 26.50.060(1)(f). Further, this Court should resolve the conflict between Division I’s opinion in this case and this Court’s decision in *Freeman*. Finally, this Court should resolve the

² *District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S.Ct. 2783 171 L.Ed.2d 637 (2008).

³ *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011).

constitutional issue of whether a finding of domestic violence is necessary to support restriction of Second Amendment rights when the restriction is requested based on claimed domestic violence.

B. PETITIONER'S IDENTITY

Petitioner Joseph Padgett is the Appellant at the Court of Appeals and was the Respondent in the underlying divorce action. He was the moving party in the unsuccessful CR 60(b) motion to terminate the domestic violence restraining orders that underlie this petition.

C. CITATION TO APPELLATE DECISION TO BE REVIEWED

Petitioner Joseph Padgett requests the Washington State Supreme Court exercise its discretion to review the Washington State Court of Appeals, Division I's October 15, 2018 decision in Court of Appeals Cause Number 76543-4-I affirming the superior court's denial of Mr. Padgett's motion to terminate the Chapter 26.50 RCW orders against him. A copy of this opinion is included as Appendix A to this Petition.

D. ISSUES PRESENTED FOR REVIEW

1. This matter involves an issue of substantial public interest.

Division I's opinion in this matter opens the door for issuance of long term restraining orders under Chapter 26.50 RCW in the absence of any supporting finding that domestic violence has occurred. Chapter 26.50

RCW, titled Domestic Violence Prevention, fails to require that a finding of an act of domestic violence be made before issuing a domestic violence restraint, thus there is a gap in the statutory scheme. This Court found that *Freeman* merited review as a case of first impression because of a “vacuum” in Chapter 26.50 RCW whereby the statute does not require that in the absence of a new act of domestic violence, a victim’s fear of renewed violence must be reasonable.

This case results from in another gap in Chapter 26.50 RCW and gives rise to an even more undesirable result, as Division I’s opinion holds that a person who has never committed any domestic violence can be subject to domestic violence restraints for an indefinite period of time. While Washington has a clear public policy of protecting domestic violence survivors, that policy has extended only to actual survivors of domestic violence and their abusers. See RCW 10.99.010 (“The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.”)(emphasis added); *see also Freeman*, 169 Wn.2d at 672, 675. Here, there is no victim of domestic violence needing protection

nor is there an abuser.⁴ Is it in the substantial public interest that this Court, reading Chapter 26.50 as a whole, require a finding of an act of domestic violence before restraints under Chapter 26.50 may be imposed?

2. The opinion in this case conflicts with this Court’s decision in Freeman. In *Freeman*, this Court emphasized that “[i]t is not enough that the facts may have justified the order in the past. Reasonable likelihood of imminent harm must be in the present.” 169 Wn.2d at 674. Contrary to Division I’s misunderstanding of the case, Mr. Padgett is not attempting to appeal or collaterally attack the already-entered restraining orders, he is simply asking that they now be terminated. Opinion at 7. His request relates only to the present need for the orders. Appellant’s Opening Brief at 1-7.

In *Freeman*, this Court looked to 11 “New Jersey factors”, now embedded in our statute, to determine whether a restraining order should remain permanent. 169 Wn.2d at 674-76. In light of those factors, this Court held that the ex-husband’s obedience to the orders for 10 years, the

⁴ This Court has held that the absence of a finding on a factual issue gives rise to a presumption that the party with the burden of proof failed to sustain their burden on this issue. See *State v. Armenta*, 134 Wn.2d 1, 948 P.2d 1280 (1997), *Smith v. King*, 106 Wn.2d 443, 451, 722 P.2d 796 (1986). In this case, the absence of a finding of domestic violence means that no domestic violence has occurred.

lack of a minor child to fight over, lack of drug or alcohol abuse by the restrained person, lack of a criminal record for the restrained person, lack of any other protection orders against the restrained person, and the unreasonableness of the victim's claim of imminent fear (based upon innocuous unexplained minor events at her home) compelled termination of the order. 169 Wn.2d at 674-76.

Here, it has been eight years since entry of the first Chapter 26.50 order and Mr. Padgett has never violated it or any of its reissued versions. He has never committed domestic violence against anyone at any time. He has no criminal record. He has had no contact with Ms. Padgett for many years. He has no drug or alcohol problems. No orders exist against him in any other jurisdictions. Mr. Padgett has not engaged in domestic violence abuse counseling since he is not a domestic violence abuser. Ms. Padgett's claimed fear was based on her belief that Mr. Padgett violated the restraining order by (a) filing the CR 60(b) motion through his attorney, (b) placing numerous forks in her yard, and (c) placing a partially filled milk jug on her porch surrounded by rocks. CP 196-97. There is no evidence that Mr. Padgett had anything to do with the forks or the milk jug. None of Ms. Padgett's claims have gone anywhere; Mr. Padgett has never been charged with violating the restraining and protection orders.

Accordingly, Ms. Padgett's fear is objectively unreasonable, as was the claimed fear in *Freeman*.

Mr. Padgett briefed *Freeman* in the Court of Appeals and Division I cited it but failed to analyze this case under *Freeman*. As a result, the two decisions contradict one another. Should review be granted to resolve the conflict?

3. This case raises a significant question of law under the U.S. Constitution. The right to bear arms is a fundamental right guaranteed by the Second Amendment of the U.S. Constitution; it applies to this state. *State v. Ibrahim*, 164 Wn.App. 503, 514, 269 P.3d 292 (2011)(holding that a legal alien in Washington State with no criminal convictions may bear arms). Mr. Padgett has no criminal convictions and no court has found that he has ever committed misconduct of any kind. Mrs. Padgett engineered criminal charges against him as part of her divorce strategy, but they were dropped and all related orders were terminated. CP 160, 190.

When this occurred, Mr. Padgett brought a CR 60(b)(6) motion based on change of circumstances to try to get his firearms back, as the firearms portion of the orders states that Mr. Padgett may not possess firearms and requires that his ex-wife retain his firearms "until the criminal proceedings [against] him are terminated and he is allowed to possess firearms." CP 6. The failure to terminate these orders upon request

when Mr. Padgett was cleared of all criminal activity violates his Second Amendment right to bear arms. In the absence of any finding of domestic violence or other misconduct or criminal record, there is no public interest justification to balance against Mr. Padgett’s fundamental constitutional right. He qualifies as the “law-abiding, responsible citizen” the United States Supreme Court envisions in *District of Columbia v. Heller*; one who has the right to “use arms in defense of hearth and home.” As *Ezell v. City of Chicago* recognizes, when the person is a law-abiding, responsible citizen, “a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government’s means and its end.”

E. STATEMENT OF THE CASE

Ms. Padgett accused Mr. Padgett of domestic violence early in their divorce, yet the court found in 2010 that he had not committed domestic violence. *See* Appendix B. Ms. Padgett provided items to the King County Sheriff in an effort to have Mr. Padgett convicted of child sex crimes, but after investigation all the charges against him were dropped. CP 20. Commissioner Jeske then granted further temporary orders including mutual restraints and extra restraints on Mr. Padgett, including firearm restraints upon him. CP 29-31. No finding was made against Mr. Padgett.

In one form or another, the restraining and protection orders against Mr. Padgett were reissued in 2011, 2012, and 2014. CP 1-8, 36-42. Commissioner Jeske's 2011 order provided that both parties are restrained and enjoined from disturbing the peace of the other party or of any child and restrained both parties from molesting, assaulting, harassing, or stalking one another. CP 29-30. It further provided that Mr. Padgett is restrained from going onto the grounds or entering the home, work place or school of the other party or the day care or school of his son Colton Padgett. CP 30. Additionally, it restrained Mr. Padgett from knowingly coming within or knowingly remaining within (distance) 1000 feet of the home and work place of Colton Padgett or Darla Padgett. CP 30. Finally, it ordered pursuant to 18 U.S.C. § 922(g)(8), that Mr. Padgett may not possess a firearm or ammunition. Id. The 2011 order did not find that Mr. Padgett had committed domestic violence, nor did it reference any such finding. After Mr. Padgett was found not to have committed domestic violence in 2010, no further finding was ever made regarding domestic violence.

The 2012 Decree ordered in Paragraph 1.1 “[t]he restraining order entered by Commissioner Jeske on Sept. 26, 2011 remains in effect pending trial on the remaining matters before the court.” CP 36. The 2012 order did not find that Mr. Padgett had committed domestic violence, nor

did it reference any such finding. Resolution of all other matters was reserved for a later trial. CP 38, 40.

The 2014 Decree places additional restraints on Mr. Padgett and authorizes Ms. Padgett to store his firearms until criminal charges were terminated. CP 1-5; 6-8 (FOF/COL; Decree). It provides in Paragraph 1.1 that

Respondent is restrained from knowingly remaining within 1000 feet of the home, work place of Darla Padgett or Colton Padgett as long as he is a minor. Respondent is restrained from going onto the grounds or entering the home, workplace, or school of Darla Padgett or Colton Padgett. Joseph Padgett is restrained and enjoined from molesting, assaulting, harassing, or stalking Darla Padgett and Colton Padgett. Darla Padgett may continue to store Joseph Padgett's firearms until such time as all criminal proceedings and him [sic] are terminated and he is allowed to possess firearms.

CP 6.

Paragraph 3.9 of the 2014 Decree stated

Joseph Padgett should not contact Darla Padgett in any way. Joseph Padgett should not contact Colton Padgett in any way as long as he is a minor. Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested and prosecuted even if any person protected by this order invites or allows you to violate this order's prohibitions. You have the sole responsibility to avoid violating this order's provisions. Only the court can change this order. This order is valid and entitled to enforcement in this and all other jurisdictions.

CP 7-8. The 2014 Findings of Fact and Conclusions of Law, entered concurrently with the Decree, state in Paragraph 3.5 that “Mr. Padgett appeared in court and signed the restraining order entered by Commissioner Jeske on September 26, 2011. This order and decree continues those exact same restraints on Mr. Padgett.” CP 4. Neither the Decree nor the Findings and Conclusions contain the legend on the front page required by RCW 26.09.050(2). CP 1, 6.

In 2015, all criminal charges against Mr. Padgett were dropped and all related restraints and orders were terminated. CP 160, 190. Late in 2015, he moved under CR 60(b)(6) to have the restraining and protection orders vacated and for restoration of his firearms. CP 9-14. Relying on Ms. Padgett’s continued protestations of fear related to random minor occurrences at her home and upon the court’s unspecified recollections of evidence presented by Ms. Padgett at trial, the superior court found that while CR 60(b)(6) was a proper way to seek relief, there were not grounds to terminate the orders. RP 14. Mr. Padgett timely appealed to the Court of Appeals, Division I, which affirmed the superior court. Appendix A.

On appeal, Mr. Padgett brought the same arguments that he now petitions, plus a vagueness argument which he is not petitioning. The Court of Appeals held that CR 60(b)(6) was an improper method to seek relief and that further, it would not be possible for him to meet the

requirements for termination under RCW 26.50.130 even if he had filed such a motion. Opinion at 7, 10.

The Court of Appeals further held that Mr. Padgett’s appeal of the denial of his CR 60(b)(6) order was actually an improper challenge to the underlying orders themselves. Opinion at 7. The Court of Appeals then incorrectly stated that Mr. Padgett’s argument for relief rested solely on the dismissal of the criminal case. Opinion at 9. Characterizing Ms. Padgett’s unsubstantiated claims about forks and milk jugs as Mr. Padgett’s “ongoing attempts to harass her”, the Court of Appeals held that Ms. Padgett had “demonstrated her continuing fear. This finding resulted in the denial of the motion to vacate and maintenance of the restraining order.”

Concerning the Second Amendment issue, the Court of Appeals merely noted that a valid restraining order does not violate the Second Amendment. Opinion at 10. Mr. Padgett now petitions for review by this Court.

F. ARGUMENT

1. Standards of Review. This Court reviews issues regarding statutory construction *de novo*. *State v. J.M.*, 144 Wn.2d 472, 480, 29 P.3d 720 (2001). Constitutional challenges are questions of law and are also reviewed *de novo*. *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958

P.2d 273 (1998). An appellate court will not overturn a trial court's decision on a motion to vacate a judgment under CR 60(b)(6) absent an abuse of discretion. *Gustafson v. Gustafson*, 54 Wn. App. 66, 69-70, 772 P.2d 1031 (1989).

2. A finding of domestic violence is a necessary prerequisite to imposition of restraints under Chapter 26.50 RCW. Throughout RCW § 26.50.060, the section on relief the court may provide when a domestic violence request is made, the statute refers to “the victim.” For instance, in subsection (h) the court may “[R]estrain the respondent from having any contact with **the victim** of domestic violence or **the victim’s** children or members of **the victim’s** household.” [Emphasis added.] Subsection (i) allows the court to “[r]estrain 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.” [Emphasis added.] There is no victim unless a court makes a finding that there is a victim, and for there to be a victim there must be a finding of some form of domestic violence.

Further, RCW 26.50.130(e) provides that “[r]egardless of whether there is a substantial change in circumstances, the court may decline to

terminate a protection order if it finds that **the acts of domestic violence that resulted in the issuance of the protection order** were of such severity that the order should not be terminated.” [Emphasis added.] From these portions of the statute it is clear that, reading Ch. 26.50 as a whole, a finding of a specific act of domestic violence and a finding that a person is a victim of domestic violence are contemplated as prerequisites to imposition of orders under Ch. 26.50.

Other states that have considered this issue have arrived at the same common-sense conclusion. Iowa has clarified in *Wilker v. Wilker*, 630 N.W.2d 590, 596 (Iowa 2001) that to impose domestic violence orders, domestic violence must be shown by a preponderance of the evidence. South Dakota has explicitly stated that “[d]omestic abuse is a prerequisite for the issuance of a protection order under SDCL 25-10-5.” *Trumm v. Cleaver*, 841 N.W.2d 22, 24 (S.D. 2013). In Kansas, KRS 403.750 clearly requires a finding that domestic violence and abuse have occurred as a prerequisite to entry of a DVO.

Since a superior court and Court of Appeals of this state have approved the imposition of domestic violence restraints in the absence of a finding of domestic violence and the presence of a failure to prove that domestic violence occurred, this Court should accept review to clarify that

a finding of domestic violence is a necessary prerequisite to imposition of restraints under Chapter 26.50 RCW.

3. This case undercuts this Court’s holding in *Freeman* and this Court should accept review to confirm and clarify *Freeman*, as the lower courts are not conforming to its authority. In *Freeman*, the ex-husband moved to modify or terminate the permanent protection order against him eight years after it was issued. 169 Wn.2d at 669. Like Mr. Padgett, he had never violated the order. *Id.* Yet the ex-wife claimed that she remained in constant fear of him because of “ongoing disturbances at her home of unknown cause,” such as repositioning of the driver’s seat in her car, missing tools, a hole in her bedroom wall, reappearance of a flower vase on her dresser, and receiving her ex-husband’s mail at her house. *Id.*

While a commissioner found the ex-wife’s fears to be “reasonable” based on findings of domestic eight years ago, the Court of Appeals reversed. *Id.* at 670. This Court agreed, analyzing the case under factors which are now embodied in RCW 26.50.130(3)(c)(i)-(ix). As our Supreme Court emphasized, the bottom line is that the respondent’s fear must be based on “a reasonable threat of imminent harm ... [i]t is not enough that the facts may have justified the order in the past. Reasonable likelihood of imminent harm must be in the present.” *Id.* at 676. Because the *Freeman*

respondent's fear was not reasonably based in the present, the commissioner's denial of the ex-husband's motion to modify or terminate the permanent protection order rested on untenable grounds. *Id.* This Court affirmed the Court of Appeals' reversal of the commissioner's order.

Mr. Padgett's case is analogous to *Freeman*, yet it is an even more egregious abuse of discretion. As in *Freeman*, the order was put in place more than five years previously at the time of the motion, the respondent had never violated the order, and the wife's claim of current fear was based upon unexplained, innocuous happenings at her home. Our Supreme Court also considered it important that in *Freeman*, the children had become adults and there were no longer any parenting issues over which the parties might battle. *Id.* at 668, 675. Here, as in *Freeman*, the children are now adults and they do not, in the words of the Supreme Court "present[] ongoing opportunities for conflict." *Id.* at 675.

Yet Mr. Padgett's case is a more egregious abuse of discretion than was *Freeman* because in *Freeman*, the respondent had been found eight years previously to have committed domestic violence. *Id.* at 668. Here, Mr. Padgett has never been found to have committed domestic violence and has never, since 2010 when the first restraints were entered against him, been found to have violated any of the restraining or protection orders. Because the only finding on domestic violence that has been

entered is a failure to find domestic violence, this case presents an even more serious abuse of discretion than did *Freeman*. It must be reversed.

4. Failure to terminate the firearms restrictions violates Mr. Padgett's fundamental Second Amendment right to bear arms. He qualifies as the “law-abiding, responsible citizen” the United States Supreme Court envisions in *District of Columbia v. Heller*; one who has the right to “use arms in defense of hearth and home.” A former police officer, he is *Ezell*'s “law-abiding, responsible citizen” and there is no justification for infringing on his fundamental constitutional right to bear arms. The complete ban on bearing arms is “a severe burden on the core Second Amendment right of armed self-defense” and there is no justification for such a severe burden. *Ezell* at 708. This Court should accept review and uphold Mr. Padgett's fundamental Second Amendment right.

G. CONCLUSION

Mr. Padgett's case presents an excellent opportunity to clarify a significant gap in Ch. 26.50 RCW and provide needed guidance on the requirement of an act of domestic violence as a prerequisite for issuing restraints under RCW 26.50. Division I has undermined this Court's holding in *Freeman* and review should be accepted to revitalize

Freeman's holding. And this Court should accept review to elucidate the unconstitutionality of infringing the constitutional right to bear arms in the absence of any evidence of wrongdoing or misconduct.

For all these reasons, Mr. Padgett respectfully requests this court accept review and reverse the decision of the Court of Appeals, Division I in this matter.

DATED this 14th day of November, 2018.

Respectfully submitted:

Sharon J. Blackford, WSBA # 25331
Attorney for Petitioner/Appellant
Joseph Padgett

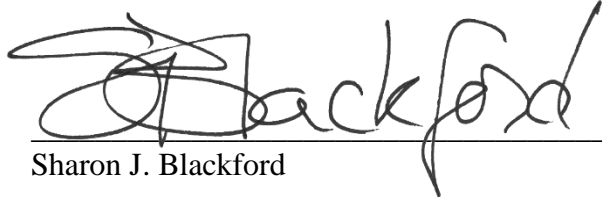
CERTIFICATION OF SERVICE

I, Sharon J. Blackford, certify that on the 14th day of November 2018, I caused a true and correct copy of Petition For Review to be served on:

Darla Padgett
1819 211th Way NE
Sammamish, WA 98074

VIA FIRST CLASS MAIL, POSTAGE PREPAID and email.

SIGNED in Seattle, Washington, this 14th day of November, 2018.


Sharon J. Blackford

APPENDIX 1
Court of Appeals Opinion

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DARLA K. PADGETT,

Respondent,

v.

JOSEPH PADGETT,

Appellant.

No. 76543-4-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: October 15, 2018

CHUN, J. — During the acrimonious marriage dissolution between Darla and Joseph Padgett, the court entered mutual restraining orders, including a prohibition against the possession of weapons. After the State charged Joseph¹ with possession of depictions of minors engaged in sexually explicit conduct, the court imposed additional restraints on him. The dissolution decree, entered in August 2014, lifted the restraints as to Darla, but continued the restraints against Joseph. The court allowed Darla to keep Joseph’s weapons until the conclusion of the criminal proceedings. The State dismissed the criminal charges on procedural grounds in December 2015.

In December 2016, Joseph filed a CR 60(b)(6) motion to vacate the restraining order and protection order provisions in the decree. He argued that the prospective application of the order was inequitable. The trial court denied

¹ For convenience, this opinion refers to the parties by their first names. We mean no disrespect.

the motion to vacate and Joseph appeals. Because the CR 60(b)(6) motion to vacate was an improper attempt to circumvent the statutory process to terminate the protection and restraining orders, we affirm.

I.

BACKGROUND

Darla and Joseph married on February 6, 1998, in California. The parties separated on November 8, 2010. A superior court commissioner granted Darla's request for an ex parte temporary restraining order against Joseph. The order restrained Joseph from contact with Darla and their minor son.

On November 29, 2010, another commissioner denied entry of a full domestic violence protection order, finding "[a] preponderance of the evidence has not established that there is domestic violence." The court entered mutual restraining orders. The orders stated the parties should not have direct or indirect contact, except through counsel. A later modification of the mutual restraining order allowed for Joseph to have limited e-mail contact with Darla.

In January 2011, the State charged Joseph with one count of possession of depictions of minors engaged in sexually explicit conduct. The court entered an order in the criminal case prohibiting Joseph from contact with Darla and all minor children. On February 22, 2011, the court released Joseph on his own personal recognizance on the condition he not possess weapons and have no contact with Darla or any minors.

On September 26, 2011, a superior court commissioner entered a new temporary restraining order imposing mutual restraints on Joseph and Darla.

The commissioner noted a “substantial change in circumstances” since the temporary restraining order entered in November 2010: “Respondent is now charged with a crime that requires consideration of RCW 26.09.191 as to contact with a child and is in fact subject to a no contact order that prohibits contact with any child at this time.” The new order restrained Joseph from coming within one thousand feet of Darla and their minor son. The order also prohibited both Darla and Joseph from disturbing the other party and possessing firearms or ammunition.

On October 10, 2011, the trial court entered a dissolution decree, but reserved resolution of the property distribution and parenting plan pending trial. The decree specified the September 26, 2011 restraining order remained in effect pending trial.

The trial on the property distribution and the parenting plan occurred on August 25, 2014. Despite proper notification, Joseph did not appear. Darla explained she wanted the restraining order maintained until resolution of the criminal case because she and their child were considered witnesses. Darla addressed the family court restraining order, which stated she was in potential danger and increased the physical scope of the restraining order against Joseph to one thousand feet. She also testified about the role Joseph played in the destruction of her business.

The findings of fact and conclusions of law and final dissolution decree entered after trial maintain many of the provisions of the September 26, 2011

restraining order. The conclusions of law state: "Mr. Padgett appeared in court and signed the restraining order entered . . . on September 26, 2011. This order and decree continues those exact same restraints on Mr. Padgett. It ends the restraints on Ms. Padgett." In the final dissolution decree, the trial court imposed additional restraints on Joseph in section 1.1 entitled "Restraining Order Summary." This section included several restrictions:

Respondent is restrained from knowingly remaining within 1000 feet of the home, work place of Darla Padgett or [their minor son] as long as he is a minor.

Respondent is restrained from going onto the grounds or entering the home, workplace, or school of Darla or [their minor son].

Joseph Padgett is restrained and enjoined from molesting, assaulting, harassing, or stalking Darla Padgett and [their minor son].

Darla may continue to store Joseph Padgett's firearms until such time as all criminal proceedings and [sic] him are terminated and he is allowed to possess firearms.

In section 3.9, entitled, "Protection Order," the trial court provided, "Joseph Padgett should not contact Darla Padgett in any way. Joseph Padgett should not contact [their minor son] in any way as long as he is a minor."

The State dismissed the criminal charges against Joseph after the court granted a motion to suppress.

In December 2016, Joseph moved under CR 60(b)(6) to vacate the restraining and protection order sections of the August 2014 dissolution decree. He argued the ambiguity and unknown duration of the terms of the restraining

order and protection order in the decree and the dismissal of the criminal charges against him made the prospective application of the orders inequitable.

At the hearing on the motion to vacate, Darla argued Joseph used the court system to abuse her by intentionally filing frivolous actions, thereby forcing her to expend time and money. Darla also raised concerns about Joseph's mental instability and his willingness to place her in danger. She told the court she was "scared to death of this man." Darla told the court:

That restraining order is the only tool that I have to protect myself. That is the only thing that's given us any peace of mind for the last years. Now my son has turned 18 . . . He's going off to college. And now this will escalate because Mr. Padgett won't be able to use him to harass me; he'll find some other way.

The court denied Joseph's motion to vacate. It maintained the prospective application of the judgment, stating, "Ms. Padgett provided evidence at the time of trial as to why it was appropriate to have such an order and that she was fearful of Mr. Padgett. She remains fearful of Mr. Padgett today, and it is equitable . . . for the order to remain in place."

Joseph appeals.

II.

ANALYSIS

A. CR 60(b)(6) Motion to Vacate

Joseph contends the trial court abused its discretion by declining to vacate the protection and restraining orders. He argues the trial court erred by failing to find the prospective application of the protection and restraining orders to be inequitable. He claims the dissolution decree's language is ambiguous language

and points to the court's dismissal of all criminal charges, the early finding he had not committed domestic violence, and the lack of findings to support the restraining and protection orders. We disagree with his argument.

CR 60(b)(6) allows relief from judgment when "[t]he judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." The rule "deal[s] with problems arising under a judgment that has continuing effect, where a change in circumstances after the judgment is rendered makes it inequitable to enforce the judgment." Metro. Park Dist. of Tacoma v. Griffith, 106 Wn.2d 425, 438, 723 P.2d 1093 (1986). A vacated judgment has no effect, leaving the parties as though the judgment had never been entered. In re Marriage of Leslie, 112 Wn.2d 612, 618, 772 P.2d 1013 (1989).

On review of an order denying a motion to vacate, "only 'the propriety of the denial *not* the impropriety of the underlying judgment' is before the reviewing court." State v. Gaut, 111 Wn. App. 875, 881, 46 P.3d 832 (quoting Bjurstrom v. Campbell, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980)). As a result, "an unappealed final judgment cannot be restored to an appellate track by means of moving to vacate and appealing the denial of the motion." Gaut, 111 Wn. App. at 881.

An appellate court will not overturn a trial court's decision on a motion to vacate a judgment under CR 60(b)(6) absent an abuse of discretion. Gustafson

v. Gustafson, 54 Wn. App. 66, 69-70, 772 P.2d 1031 (1989). “Discretion is abused when exercised on untenable grounds or for untenable reasons.”

Scanlon v. Witrak, 110 Wn. App. 682, 686, 42 P.3d 447 (2002).

Here, Joseph argues the trial court failed to make the requisite finding of domestic violence necessary for a protection order under RCW 26.50.060. His argument challenges the legal justification for the original order. A CR 60(b) motion does not allow a litigant to challenge the underlying judgment. “The exclusive procedure to attack an allegedly defective judgment is by appeal from the judgment, not by appeal from a denial of a CR 60(b) motion.” Bjurstrom, 27 Wn. App. at 451. Therefore, any defects in the legal justification for the original order should have been addressed on appeal of that order. Because Joseph did not appeal the order, he cannot now raise these untimely arguments.

Furthermore, the Domestic Violence Protection Act (DVPA) provides specific procedures for modification or termination of a permanent order of protection. RCW 26.50.130. Under the DVPA, the respondent must make a motion to modify or terminate in order to obtain relief from a protection order’s terms. RCW 26.50.130. The motion must include a declaration setting forth the facts supporting the request, which the court will deny unless the declaration establishes adequate cause for a hearing. RCW 26.50.130(2). By attempting to collaterally attack the protection order through a CR 60(b) motion to vacate, Joseph did not comply with the DVPA filing requirements for a motion to modify or terminate.

Joseph cannot meet the legal requirements for modification or termination of the protection order under the DVPA. The court may not modify a permanent protection order “unless the respondent proves by a preponderance of the evidence that the requested modification is warranted.” RCW 26.50.130(4). The court may not terminate a permanent order of protection “unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated.” RCW 26.50.130(3)(a).

For termination of the protection order, “[t]he relevant analysis” includes consideration of whether the Joseph can prove “an unlikelihood of committing future acts of domestic violence and whether the facts support a current reasonable fear of imminent harm.” In re Marriage of Freeman, 169 Wn.2d 664, 674, 239 P.3d 557 (2010) (emphasis omitted). The petitioner bears no burden of proving current reasonable fear of imminent harm by the respondent. RCW 26.50.130(3)(a). But the facts must support a finding that the petitioner’s fear of imminent harm is reasonable. Freeman, 169 Wn.2d at 674. “The facts supporting a protection order must reasonably relate to physical harm, bodily injury, assault, or the fear of imminent harm. It is not enough that the facts may have justified the order in the past. Reasonable likelihood of imminent harm must be in the present.” Freeman, 169 Wn.2d at 674 (emphasis omitted).

The record does not support Joseph's claim that Darla's fear stems from conduct related to the dismissed criminal charges. Darla testified about her fear of Joseph and his ongoing attempts to harass her. The trial court's oral ruling reflected its consideration of the standards for termination of a restraining order. The court found Darla had demonstrated her continuing fear. This finding resulted in the denial of the motion to vacate and maintenance of the restraining order. Given the evidence presented, the trial court did not abuse its discretion by retaining the provisions of the restraining order.

Because Joseph attempts to collaterally attack the legal basis for the original restraining and protection orders and to circumvent the termination requirements stipulated by the DVPA, the trial court did not abuse its discretion in denying the motion to vacate.

B. Second Amendment Right to Bear Arms

Joseph contends the trial court's failure to vacate the restraining order infringes on his Second Amendment Right to bear arms. Specifically, he asserts that, because there is no pending criminal charge or evidence of domestic violence, the public-interest justification for restraining him from bearing arms is absent. He argues the restraining order amounts to a permanent ban on his right to bear arms.

The Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." District of Columbia v. Heller, 554 U.S. 570, 635, 128 S. Ct. 2783, 171 L.Ed.2d

637 (2008). A valid restraining order does not violate the Second Amendment right to bear arms. Under 18 USC 922(g)(8), a person may not possess firearms or ammunition if subject to a court order that:

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

The September 2011 restraining order included a provision based on 18 USC 922(g)(8), “[e]ffective immediately and continuing as long as this restraining order is in effect, the restrained person may not possess a firearm or ammunition.”

The dissolution decree continued this restraint. As discussed, the protection and restraining orders remain in effect until properly challenged through a motion to modify or terminate under the DVPA. Joseph cannot regain his right to own weapons by evading this procedure through a motion to vacate. Because a valid restraining order exists against Joseph, his right to bear arms is not violated.

C. Due Process

Joseph also argues denial of the motion to vacate violates due process because the orders are too vague and inadequate to give notice of prohibited conduct. But Joseph signed the restraining order in September 2011, and he did not appeal it. He failed to appear at his dissolution proceedings and, again, he

did not appeal the terms of restraint and protection entered in the dissolution decree in 2014.

We affirm the denial of the CR 60(b) motion to vacate.

Chen, J.

WE CONCUR:

Schubert, J.

Lippelwick, CJ

APPENDIX 2

ORDERS

	GPROC
90	CUST
	CASH
	JUDG
	DISS
	GRIM
	ACCTG
	EXP

FILED

2014 AUG 26 AM 9:16

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Superior Court of Washington
County of

In re the Marriage of:

DARLA K. PADGETT

Petitioner,

and

JOSEPH PADGETT

Respondent.

No. 10-3-07978-9 SEA

Decree of Dissolution (DCD)

Clerk's action required

I. Judgment Summaries

1.1 Restraining Order Summary:

Respondent is restrained from knowingly remaining within 1000 feet of the home, work place of Darla Padgett or Colton Padgett as long as he is a minor.

Respondent is restrained from going onto the grounds or entering the home, workplace, or school of Darla Padgett or Colton Padgett.

Joseph Padgett is restrained and enjoined from molesting, assaulting, harassing, or stalking Darla Padgett and Colton Padgett.

Darla Padgett may continue to store Joseph Padgett's firearms until such time as all criminal proceedings and him are terminated and he is allowed to possess firearms.

1.2 Real Property Judgment Summary:

No real property left; was lost in foreclosure *bankruptcy. D.A.N.*

1.2 Money Judgment Summary:

None.

End of Summaries

II. Basis

Findings of Fact and Conclusions of Law have been entered in support of the dissolution decree.

III. Decree

It is decreed that:

3.1 Status of the Marriage

The marriage of the parties is dissolved.

3.2 Property to be Awarded to the Husband

Property already in his possession.

3.3 Property to be Awarded to the Wife

Property already in her possession.

3.4 Liabilities to be Paid by the Petitioner

Discharged in bankruptcy.

3.5 Liabilities to be Paid by the Respondent

Discharged in bankruptcy.

3.6 Hold Harmless Provision

None.

3.7 Maintenance

None.

3.8 Restraining Order

See paragraph 1.1 *supra*.

3.9 Protection Order

Joseph Padgett should not contact Darla Padgett in any way.

Joseph Padgett should not contact Colton Padgett in any way as long as he is a minor.

Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested and prosecuted even if any person protected by this order invites or allows you to violate this order's prohibitions. You have the sole responsibility to avoid

violating this order's provisions. Only the court can change this order. This order is valid and entitled to enforcement in this and all other jurisdictions.

3.10 Jurisdiction Over the Children

The court has jurisdiction over the children as set forth in the Findings of Fact and Conclusions of Law.

3.11 Parenting Plan

The parties shall comply with the Parenting Plan signed by the court dated August 25, 2014. The Parenting Plan signed by the court is approved and incorporated as part of this decree.

3.12 Child Support

Child support shall be paid in accordance with the Order of Child Support signed by the court dated August 25, 2014. This order is incorporated as part of this decree.

3.13 Attorney Fees, Other Professional Fees and Costs

None awarded.

3.14 Name Changes

Does not apply.

3.15 Other

None.

Dated:

August 25, 2014

Douglas A. North
Judge/Commissioner

Daria Padgett
Petitioner

FILED
KING COUNTY, WASHINGTON

OCT 10 2011

SUPERIOR COURT CLERK
KIRSTIN GRANT
DEPUTY

**Superior Court of Washington
County of King**

In re the Marriage of:

Darla K. Padgett,

Petitioner,

and

Joseph Padgett,

Respondent.

No. 10-3-07978-9 SEA

Decree of Dissolution (DCD)

Clerk's Action Required:

Trial Date: March 26, 2012

I. Judgment/Order Summaries

1.1 Restraining Order Summary:

The restraining order entered by Commissioner Jeske on Sept. 26, 2011 remains in effect pending trial on the remaining matters before the court.

1.2 Real Property Judgment Summary:

Reserved for later trial pursuant to In re Marriage of Vigil, 162 Wn.App. 242 (2011).

1.3 Money Judgment Summary:

Reserved for later trial.

End of Summaries

ORIGINAL

II. Basis

Fact and Conclusions of Law have been entered in support of the dissolution decree. Entry of supplemental findings is reserved for later trial pursuant to In re Marriage of Vigil.

III. Decree

It Is Decreed that:

3.1 Status of the Marriage

The marriage of the parties is dissolved.

3.2 Property to be Awarded to the Husband

Property distribution is reserved for later trial.

3.3 Property to be Awarded to the Wife

Property distribution is reserved to later trial.

3.4 Liabilities to be Paid by the Husband

Liability distribution is reserved to later trial.

3.5 Liabilities to be Paid by the Wife

Liability distribution is reserved to later trial.

3.6 Hold Harmless Provision

Reserved.

3.7 Maintenance

Reserved.

3.8 Continuing Restraining Order

See paragraph 1.1 supra.

3.9 Protection Order

Reserved.

3.10 Jurisdiction Over the Children

Reserved.

3.11 Parenting Plan

Reserved. In the interim, the restraining order entered Sept. 26th, 2011 controls.

3.12 Child Support

Reserved.

3.13 Attorney Fees, Other Professional Fees and Costs

Reserved.

3.14 Name Changes

Does not apply.

3.15 Other

Trial on remaining matters is continued to March 26th, 2012.

Dated October 10, 2011.



Judge JEFFREY M. RAMSDELL

COPY RECEIVED:

DARLA PADGETT / Petitioner

JOSEPH PADGETT / Respondent

^a
ISSUED

FAM 01

The filing party or attorney
didn't provide the Clerk with the
Law Enforcement Info Sheet.

FILED
KING COUNTY, WASHINGTON

SEP 26 2011

Superior Court of Washington
County of

SUPERIOR COURT CLERK
BY Linda Nguyen
DEPUTY

In re the Marriage of:
 In re the Domestic Partnership of:

DARLA PADGETT,

Petitioner,

and

JOSEPH PADGETT,

Respondent.

No. 10-3-07978-9 SEA

Temporary Order
(TMO/TMRO)

Clerk's Action Required
 Law Enforcement Notification, ¶ 3.1

I. Judgment/Order Summaries

1.1 Restraining Order Summary

Does not apply. Restraining Order Summary is set forth below:

Name of person(s) restrained: Joseph Padgett. Name of person(s)
protected: Colton P. Padgett (11) and Darla Padgett. See paragraph 3.1.

Violation of a Restraining Order in paragraph 3.1 with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to arrest. RCW 26.09.060.

1.2 Money Judgment Summary

Does not apply.
 Judgment Summary is set forth below.

A.	Judgment creditor	_____
B.	Judgment debtor	_____
C.	Principal judgment amount	\$ _____
D.	Interest to date of judgment	\$ _____
E.	Attorney fees	\$ _____
F.	Costs	\$ _____
G.	Other recovery amount	\$ _____

- H. Principal judgment shall bear interest at _____ % per annum
- I. Attorney fees, costs and other recovery amounts shall bear interest at _____ % per annum
- J. Attorney for judgment creditor _____
- K. Attorney for judgment debtor _____
- L. Other: _____

II. Basis

A motion for a temporary order was presented to this court and the court finds reasonable cause to issue the order.

- Further, the court finds that the nonrequesting party is absent and a) is on active duty as a National Guard member or Reservist residing in Washington, or b) is a dependent of a National Guard member or Reservist residing in Washington on active duty. Despite the service member's or dependent's absence, failure to enter the temporary orders below would result in manifest injustice to the other interested parties.

III. Order

It is Ordered:

3.1 Restraining Order

Previous Order

- The prior temporary restraining order dated _____ remains in full force and effect.
- The prior temporary restraining order dated 11/29/10 and 6/13/11 which incorporates Judge Doerty's order:
 - Is terminated.
 - Is terminated and replaced by the following:

This order shall be filed forthwith in the clerk's office and entered of record. The clerk of the court shall forward a copy of this order on or before the next judicial day to (name of appropriate law enforcement agency) _____ which shall forthwith enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants.

The protected party or the protected party's attorney must complete a law enforcement information sheet and provide it with this order before this order will be entered into the law enforcement computer system.

Violation of a Restraining Order in paragraph 3.1 with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to arrest. RCW 26.09.060.

- Does not apply.
- The petitioner respondent is restrained and enjoined from disturbing the peace of

the other party or of any child.

[] petitioner respondent is restrained and enjoined from going onto the grounds of or entering the home, work place or school of the other party, or the day care or school of the following named children: Colton Padgett _____

The [] petitioner respondent is restrained and enjoined from knowingly coming within or knowingly remaining within (distance) 1000 feet of the home, work place or Colton Padgett or *Darla Padgett* *

(Name) Joseph Padgett and Darla Padgett are restrained and enjoined from molesting, assaulting, harassing or stalking (name) Darla Padgett and Joseph Padgett. (The following firearm restrictions apply if this box is checked and the parties are intimate partners as defined under federal law: Effective immediately and continuing as long as this restraining order is in effect, the restrained person may not possess a firearm or ammunition. 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issue firearms. 18 U.S.C. § 925(a)(1).)

Clerk's Action/Law Enforcement Action

This order shall be filed forthwith in the clerk's office and entered of record. The clerk of the court shall forward a copy of this order on or before the next judicial day to (name of appropriate law enforcement agency) _____ which shall forthwith enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants.

The protected party or the protected party's attorney must complete a law enforcement information sheet and provide it with this order before this order will be entered into the law enforcement computer system.

Service

The restrained party or attorney appeared in court or signed this order; service of this order is not required.

The restrained party or attorney did not appear in court; service of this order is required. The requesting party must arrange for service of this order on the restrained party. File the original Return of Service with the clerk and provide a copy to the law enforcement agency listed above.

Expiration Date

This restraining order will expire in 12 months and shall be removed from any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants, unless a new order is issued, or unless the court sets forth another expiration date here: (month/day/year) Trial in the above matter currently scheduled for _____

Full Faith and Credit

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

credit to the order.

3.2 Temporary Relief

The petitioner respondent shall pay the other party \$ _____ per month maintenance.

Starting Date: _____

Day(s) of the month payment is due: _____

Payments shall be made to:

- the Washington State Child Support Registry (if child support is ordered).
- directly to the other spouse or domestic partner.
- the clerk of this court as trustee for remittance to the other spouse or domestic partner (if there are no dependent children).
- Other: _____

Child support shall be paid in accordance with the order of child support, signed by the court or entered by DCS.

~~The parties shall comply with the Temporary Parenting Plan signed by the court.~~ *father shall have no contact with the child 10/10/11.*

The parties shall comply with the Temporary Residential Time Re Military Parents signed by the court.

The petitioner respondent is restrained and enjoined from transferring, removing, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life and requiring each party to notify the other of any extraordinary expenditures made after the order is issued.

The petitioner respondent is restrained and enjoined from removing any of the children from the state of Washington.

The petitioner respondent is restrained and enjoined from assigning, transferring, borrowing, lapsing, surrendering or changing entitlement of any insurance policies of either or both parties whether medical, health, life or auto insurance, *except as provided below herein.*

The petitioner respondent shall surrender any deadly weapon in his or her immediate possession or control or subject to his or her immediate possession or control to:
(name or agency) _____

Each party shall be immediately responsible for their own future debts whether incurred by credit card or loan, security interest or mortgage.

Responsibility for the debts of the parties is divided as follows:

The family home shall be occupied by the petitioner respondent.

Use of property shall be as follows:



3.2 Temporary Relief

The prior temporary orders are not modified or terminated in terms of any property relief, restraints against dissipation/preservation except as specifically authorized herein.

[x] The [x] petitioner [x] respondent is restrained and enjoined from transferring, removing, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life and requiring each party to notify the other of any extraordinary expenditures made after the order is issued. The court authorizes the Petitioner herein to videotape all of the parties personally and to itemize with a specific list any items she wishes to sell to meet basic needs. She may sell up to \$ 7,500. of these items pending trial to meet her own and her son's basic needs while Respondent is not paying child support. She must maintain an itemized list and copies of any receipts for sale along with the name/address and amount received for any sold item and a copy shall be provided to the other party within 30 days. *she may*

[X] The [X] petitioner [X] respondent is restrained and enjoined from removing any of the children from the state of Washington. *See previous judgments.*

[] The [] petitioner [] respondent is restrained and enjoined from assigning, transferring, borrowing, lapsing, surrendering or changing entitlement of any insurance policies of either or both parties whether medical, health, life or auto insurance.

[] The [] petitioner [] respondent shall surrender any deadly weapon in his or her immediate possession or control or subject to his or her immediate possession or control to: (name or agency) _____

[X] Each party continues to be immediately responsible for their own future debts whether incurred by credit card or loan, security interest or mortgage.

[] Responsibility for the debts of the parties is divided as follows:

[] The family home shall be occupied by the [] petitioner [] respondent.

[X] Use of property shall be as follows: *see above*

[] The [] petitioner [] respondent shall vacate the family home. You have a right to keep your residential address confidential. [] (name) _____ waives confidentiality of the address which is: _____

[] The [] petitioner [] respondent shall pay temporary attorney fees, other professional fees and costs in the amount of \$ _____ to:

x proceeds / sale items above this amount and he is unable to take / store the items, she may (B) if she is forced to vacate proceeds sold remaining items but must keep some the same information / log. Mr. Podgatz will communicate via email promptly if there are ~~of~~ See pgs



These requests if any he would like to keep or is able to store.

- [X] Other: The trial court may reallocate any equitable division of value owed to Respondent for the sale of the property prior to trial, if any, as there is currently no Order of Child Support in place at this time.

Email contact continues to remain permissible for purposes of contact between the parties provided it is respectful and regarding the issues in their dissolution case only as per Judge Doerty's prior order herein.

3.3 Bond or Security

- [X] Does not apply.
[] The filing of a bond or the posting of security is waived.
[] Other:

3.4 Other

The parties are authorized a civil standby if Mr. Padgett can obtain someone else to pick up items.

The court denies Darla Padgett's request for assignment of this case to a specific commissioner/judge without prejudice at this time. The matter is not of such complexity or difficulty and is not using court resources to a degree that merits such exclusivity or continuity of case management.

The court waives any obligation to file relocation notice of 60 days as the parties are losing their housing. Petitioner must provide an address (confidential or otherwise) within 30 days of her relocation so that service may be effected by the other party related to this matter and so that the Court may be able to contact her as this case progresses to investigation by FCS and/or trial. It need not be the physical address at which she resides. She is referred today to the advocates for information on the ACAP program.


Both parties are cautioned to complete the parenting class. The court grants the request to convert this matter to a dissolution and finds the statutory criteria are met.

The court finds a substantial change of circumstances exists since the prior temporary restraining order/visitation provisions were entered by Commissioner Curry in that Respondent is now charged with a crime that requires consideration of RCW26.09.191 as to contact with a child and is in fact subject to a no contact order that prohibits contact with any child at this time.

The court grants the request to terminate the beneficiary designation on the life insurance to remove the respondent Joseph Padgett as a beneficiary.

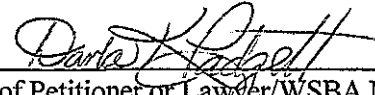
The court denies the request to authorize a standing fee waiver to the facilitator's, for free copying, forms or legal advice pending trial. Petitioner may use the same process used by every other litigant who asserts indigency in this court and is not entitled, based on the record before the court today, to merit a standing waiver of such expenses.

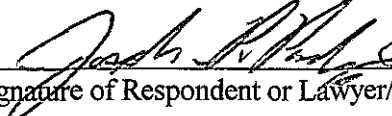
Dated: 9/26/11


Judge/Commissioner **Jacqueline Jeske**

Petitioner or petitioner's attorney:
A signature below is actual notice of this order.
 Presented by:
 Approved for Entry:
 Notice for presentation waived:

Respondent or respondent's attorney:
A signature below is actual notice of this order.
 Presented by:
 Approved for Entry:
 Notice for presentation waived:


Signature of Petitioner or Lawyer/WSBA No.


Signature of Respondent or Lawyer/WSBA No.

DARLA K PADGETT 9/26/2011
Print or Type Name Date

Joseph P. Padgett 9/26/2011
Print or Type Name Date

FILED
KING COUNTY, WASHINGTON

FAM01

NOV 29 2010

SUPERIOR COURT CLERK
BY Leah Fontanez
DEPUTY

Superior Court of Washington
For King County

No. 10-2-38394-8 SEA

Joseph Padgett 12/22/62
Petitioner (Protected Person)
vs.

- Denial Order
- Domestic Violence
 - Antiharassment
 - Vulnerable Adult
 - Sexual Assault
(Optional Use) (ORDYMT)
 - Clerk's Action Required

Darla Padgett 12/25/60
Respondent (Restrained Person)

Next Hearing Date: _____
Time: _____ Room: _____
At: _____

The **Moving Party** is Joseph Padgett

This Matter having come on for hearing upon the request of the moving party, for a

- Temporary Order Full Order Renewal Modification Termination Order
and the **Court Finding**:

- Petitioner does not meet the income requirements for a fee waiver.
- Petitioner Respondent did not appear.
- Petitioner requested dismissal of petition.
- No notice of this request has been made or attempted to the vulnerable adult opposing party.
- This order materially changes an existing order, necessitating a hearing on notice.
- The petitioner has failed to demonstrate that there is sufficient basis to enter a temporary order without notice to the vulnerable adult opposing party.
- The order submitted has not been completed or certified upon penalty of perjury.
- The domestic violence protection order petition does not list a specific incident and approximate date of domestic violence.
- The antiharassment protection order petition does not list specific incidents and approximate dates of harassment.
- The sexual assault protection order petition does not list a specific incident and approximate date of nonconsensual sexual contact or nonconsensual sexual penetration.
- The vulnerable adult protection order petition does not list specific incidents and approximate dates of abandonment, abuse, neglect or financial exploitation of an alleged vulnerable adult.

11/29/10

- The petitioner has not posted bond or other security as ordered by the court for the issuance of a temporary vulnerable adult protection order.
- The vulnerable adult protection order petition does not demonstrate that the petitioner is an "interested person" under the definition as stated in RCW 74.34.020(9).
- A preponderance of the evidence has not established that there is domestic violence.
- A preponderance of the evidence has not established that there has been harassment.
- A preponderance of the evidence has not established that there has been nonconsensual sexual contact or nonconsensual sexual penetration.
- A preponderance of the evidence has not established that there has been abandonment, abuse, neglect or financial exploitation of an alleged vulnerable adult.
- For a temporary sexual assault protection order, reasons for denial of the order are:

Other: _____

Having entered the above Findings, It is Ordered:

- The request to waive the filing fee is denied.
 - The request for a temporary order is denied and the case is dismissed.
 - The request for a temporary order is denied; it may be re-submitted when the above identified problems have been resolved.
 - The request for a full order is denied, and the petition is dismissed. Any previously entered temporary order expires at NOON m today. (12:00 pm. today).
 - The request to modify or terminate the order dated _____ is denied.
 - The request for a temporary order is denied and the clerk is directed to set a hearing on the petition.
 - The request before the court is denied, provided that it may be renewed after notice has been provided to the vulnerable adult opposing party, according to the Civil Rules.
 - This proceeding shall be consolidated with King County Superior Court Cause Number: _____
 - The parties are directed to appear for a hearing as shown on Page One.
- The moving party shall make arrangements for service of the petition/motion and this order on _____ (names)
via law enforcement professional process server an adult 18 or older who is not a party to the case. A Return of Service shall be filed with the clerk at or before the hearing.

Failure to Appear at the Hearing May Result in the Court Granting All of the Relief Requested in the Petition or Motion.

This order is dated and signed in open court.

Date: 11/29/10 Time: 12:00 pm

Copy Received:

Petitioner Date

[Signature]
Judge/Commissioner
Copy Received: **Judge Pro Tempore** John CURRY
[Signature] 11/29/2010
Respondent Date

SHARON BLACKFORD PLLC

November 14, 2018 - 9:38 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Darla Padgett, Respondent v. Joseph Padgett, Appellant (765434)

The following documents have been uploaded:

- PRV_Petition_for_Review_20181114093726SC581378_8408.pdf
This File Contains:
Petition for Review
The Original File Name was Petition For Review.pdf

A copy of the uploaded files will be sent to:

- Actiontkr@aol.com
- Actiontkr@gmail.com
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Comments:

Certificate of Service at end of Petition

Sender Name: Sharon Blackford - Email: sharon@washingtonappellatelaw.com

Address:
600 STEWART ST STE 400
SEATTLE, WA, 98101-1217
Phone: 206-459-0441

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