

64027-5

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THE COURT OF APPEALS DIVISION I  
OF THE STATE OF WASHINGTON

NO. 64027-5

COURT OF APPEALS  
DIVISION I  
2011 JUN 25 AM 10:55

SUSAN RIVER IONE,  
APPELLANT

v.

ELENOR DOERMANN,  
RESPONDENT

REPLY BRIEF OF APPELLANT

WILLIAM C. BUDIGAN WSB# 13443  
Attorney for Appellant  
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## I. Introduction

Respondent's brief is correct: this is not a case about the lawful ending of a dog's life or the silly long-time old allegations of denied touching between these parties. These are the things of matter in this she-said-she-said case. The point is that none of these things rose to the level of domestic violence as defined under the law in both the civil and criminal statutes and certainly did not rise to reasonable imminent threat of anything. This case is about the willy-nilly ways protection orders are granted daily in our courts with little or no statutory guidance. These orders are issued without any written findings and left to the whims of fact finders, impacting the lives of thousands every year. It involves a protection order entered against Appellant. She seeks to have it dismissed or at least have a new hearing set at the lower court with rulings and instructions from this court for

a proper adjudication and seeks attorney's fees and costs herein.

II. The court failed to make written findings

Respondents put great weight in the fact that the court never made any specific, factual findings whatsoever, but only relied upon a printed form statement that Appellant "committed domestic violence." (CP 118) The court never gave a basis for it. This is unreasonable and unconstitutional in violation of due process. The only thing the court dwelled on in its oral opinion was its totally baseless and improper admonition of Appellant that one must put a dog down through a veterinarian regardless of income. Even Respondent concedes that the commissioner was absolutely wrong factually and legally on this point and that his tirade was certainly an untenable reason to issue a protection order.

Abuse of discretion occurs where the trial courts action is "manifestly unreasonable, or

exercised on untenable grounds, or for untenable reasons." State Ex Rel Carroll v. Junker, 79 Wn. 2d 12, 26, 482 P. 2<sup>nd</sup> 775 (1971). Here, the court clearly abuses discretion by ruling as it did, focusing orally on the dog issue, which the court was clearly wrong about. Respondent did have a right to bury the dog and did properly live there for days afterward with Appellant without calling any authorities whatsoever or ever questioning the events surrounding this and only trumped this up as a threat to her when she wanted to use it as such to get a litigation advantage and ruin Appellant's employment, social, and future life.

The court never addressed the following at the hearing, but the Respondent dwells upon the following untenable grounds of alleged, disputed, and denied incidents:

1. December 2008--from seven months before the court hearing in July 2009-- that appellant threw dishes across a room and pushed respondent out of the room. This is absolutely denied as respondent was not even present when the dishes were broken and appellant wanted the exact opposite--wanted respondent to stay at the house and not leave because she was having a suicidal thought, but after being checked out she was not a threat to herself or anyone else. (CP 6) At no time was she ever a threat to respondent and never pushed or touched respondent or intentionally put respondent in fear.

2. January 2009 respondent Elly was extremely rude to appellant in a response she emptied her water glass on Elly. (CP 6)At no time was she ever a threat to respondent and never pushed or touched respondent or intentionally put respondent in fear.

3. May 2009 appellant playfully swatted respondent on the behind as they had a million times before to each other, as was the explained tradition and custom in respondent Elly's family and this was certainly not any unwanted or improper touching, as always initiated by respondent Elly. (CP 6)At no time was she ever a threat to respondent and never pushed or touched respondent or intentionally put respondent in fear.
4. Appellant denies the old 2008 date allegations of ripped sleeve, or throwing a bowel across the room.
5. Appellant admits one time slapping respondent Ellie across the face when respondent Ellie vary rudely stated that appellant's grandson, Eli, was defective and would windup in prison just like another relative of appellant. Eli suffers from ADHD

and respondent Ellie knew that this was extremely hurtful to say to appellant. This was done in the dark without even aiming.

(CP 60) There never was intent to physically harm respondent and this isolated non-injury touching certainly at no time was ever a threat to respondent and never put respondent in reasonable fear.

All the above incidents are minor and would never be grounds under any circumstances for a protection order because they are not even a pattern of physical abuse or reasonably determined incidents of assault and none of these could be reasonably interpreted by anyone as placing respondent Ellie in fear and certainly not ongoing fear. Police were never called by any parties at the house over the twenty year relationship, there was no complaints to outsiders, counselors, etc. The parties continued to live together and share their bed and life and there never was any expression of fear, let alone

imminent fear, or any concern raised ever regarding any injury or unwanted touching. This was all trumped up by respondent to get an order to prevent the unemployed and moneyless appellant (and therefore without any means to get an attorney for communication under the order) from communicating whatsoever regarding any concerns arising out of respondent's abandonment of everything having to do with their relationship, including leaving appellant debt-ridden and with an unpaid house, utilities, no food, etc. Respondent also did this vindictively to make sure that appellant would be unemployable and abandoned by all their friends as some lunatic who must be ordered by courts and on the lists of police agencies to be kept away from another. This tactic, of course, has worked to all the advantages of respondent.

The court also allegedly improperly considered alleged violations of the temporary restraining order in effect while awaiting the final protection order hearing without an evidentiary hearing on them. Respondent knows full well that the so-called five contacts to Respondent's employer were nothing of the sort, but were instead contacts from Appellant to her own medical provider to make sure that her medical records would be kept private despite Respondent working there and it was the medical provider's own failure in responding timely to the first contact that required follow-ups before they finally understood or agreed. The other allegation of a phone call was only that at the time of the July 2009 hearing and was certainly not proven for use in court.

III The System Must Change If We Are to Remain Americans

Of course, we say we are a nation of laws and that we live and die by our constitutional rights. However, the courts scoff at those laws and rights when it comes to an allegation made to receive a protection order. There is no right to confront witnesses, have a jury, have more than 13 days preparation, no right to an attorney, no right to court findings, and yet the protection orders mark one as one under the penalty of a protection order and in this day of digital information one is marked for life in all one's relationships, employment, military service, any activity requiring security clearance[e.g. In re Freeman, No. 26148-4-III (9/11/2008 Division 3, published after original decision) One may be ineligible for military security clearances if there is a protection order in place], etc.

Protection orders are constitutionally significant in our lives. Blackmon v. Blackmon, 38421-3-II (Division II 4/27/10 new decision) A protection order terminating before an appeal is

decided is moot, but such "a case presents issues of continuing and substantial interests" and constitutional issues regarding domestic violence protection orders are "unquestionably an issue of broad public import that is likely to recur and on which an authoritative determination is desirable to provide guidance to public officers" and accordingly addressed to the court of appeals.

And yet, the crazy thing we do regarding protection orders is that we do not require the courts to make findings and we specifically put in place a system of laws where our reviewing courts cannot even re-way the evidence. Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). So what you have is a Respondent who says believe all of my allegations, ignore Appellant's, and reviewing courts who say they cannot reexamine the statements for credibility and laws that say

hearsay and other objectionable evidence is allowed in protection order hearings but in no other due process following hearings.

Appellant does not expect this court to really review the evidence and make the only logical conclusions rise to the level or requiring a protection order between these two parties when they had already separated long before and there had never been any true acts of domestic violence between them ever and certainly no events instilling reasonable fear. What Appellant wants is for this court to set down standards for lower courts in making these determinations which affect people far beyond even their lifetimes (the law allows permanent protection orders on just minutes hearings) and remand this case for a true, reasonable evidentiary hearing.

#### IV Request for Attorney Fees and Costs

Respondents request attorney's fees citing the extremely unfair statute giving petitioners for

protection orders fees and costs (consistent with all the other problems in the protection order statute, such as requiring written court findings when a petitioner is denied a protection order, but, of course, not requiring this when one is granted and put in all the public records perhaps permanently), but even if this appeal is denied this should not be granted due to the clear testimony and undenied allegation that Appellant is destitute, unemployed, and with an outstanding mortgage and huge debts and not in a position of financial circumstances to pay the same.

Under RAP 18.9(a), an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there is no reasonable possibility of reversal. This is certainly not the case here as these issues are constitutionally based, no specific findings were ever made, and the courts of appeal have entertained these protection order questions and

should grant Appellant a new hearing and attorney's fees and costs under the protection order statute.

VI. Conclusion

For the foregoing reasons, Appellant requests that this court vacate the subject protection order or, minimally, remand the case to the lower court for rehearing consistent with Appellant's argument and award Appellant attorneys fees and costs.

Dated this 24th day of June, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William C. Budigan", written over a horizontal line.

William C. Budigan

Attorney for Appellant

WSBA 13443

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SUSAN RIVER IONE	)	
APPELLANT	)	NO.64027-5
	)	APPELLANT'S
V.	)	DECLARATION OF
	)	SERVICE
ELEANOR DOERMANN,	)	
RESPONDENT	)	
_____	)	

I, William Budigan, declare that on 24th day of June, 2010, I deposited in the U.S. Mail, postage prepaid thereon, an envelope directed to Clerk and to:

Amanda Hoke DuBois  
Attorney for Respondent  
DuBois Law Firm PLLC  
927 N Northlake Way Ste 210  
Seattle, WA 98103-8871

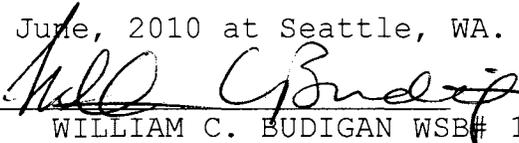
Catherine W. Smith  
Attorney for Respondent  
Edwards, Sieh, Smith & Goodfriend, P.S.  
1109 First Avenue, Suite 500  
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Said envelopes contained Appellant's Reply Brief and this Declaration of Service.

I certify that the foregoing is true and correct under

penalty of the perjury laws of the State of Washington.

DATED this 24th day of June, 2010 at Seattle, WA.

  
\_\_\_\_\_  
WILLIAM C. BUDIGAN WSB# 13443  
Attorney for Appellant