

71045-1

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No. 71045-1

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

SHARON M. FOSSUM,

Respondent,

v.

DAVID W. HECKMAN,

Appellant.

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COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT  
FOR SNOHOMISH COUNTY  
THE HONORABLE BRUCE I. WEISS

BRIEF OF RESPONDENT

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## I. INTRODUCTION

Respondent was granted a permanent anti-harassment order against appellant on October 1, 2013. (CP 2, 58-59) The factual basis for the order was undisputed – after being told over a year earlier that appellant’s text messages and emails were unwelcome, the appellant followed respondent, a married woman, to the restroom at her place of worship and held up a large sign that said “Call me.” The following day, appellant instructed another person to confirm that the respondent’s husband was away and then anonymously phoned respondent and sent sexually suggestive text messages to her that implied that she was being watched. These messages “frightened” respondent, and the trial court found that she was “concerned for her safety.” (CP 2)

Respondent did not respond to appellant’s texts or phone call and sought an anti-harassment order. The trial court found that appellant committed unlawful harassment. (CP 2, 59) The trial court found that respondent’s “failure to follow through with his requests for contact were clear indicators that contact was not desired.” (CP 2) After finding that appellant was “likely to resume unlawful harassment of the petitioner when the order expires,” the trial court made the anti-harassment order permanent. (CP 59)

The trial court's ruling granting an anti-harassment order was well within its discretion and its findings are supported by substantial evidence. This court should affirm.

## II. RESTATEMENT OF FACTS

### A. **David previously worked for Sharon and her husband but was terminated for sexually harassing a female employee by sending her inappropriate texts and emails.**

Respondent Sharon Fossum, age 40, and appellant David Heckman, age 49, have known each other since Sharon was 16 years old, when the parties briefly "dated." (CP 148, 184) Both Sharon and David are part of the same congregation. (See CP 149) Because of Sharon's age and her religious upbringing, David and Sharon never dated outside the supervision of her parents, and their relationship was never physical. (CP 148, 184) Sharon and David maintained contact over the years, and Sharon had considered David a "family friend." (CP 182, 184)

In March 2009, Sharon and her husband of nearly 20 years, Ron Fossum, hired David to work in their financial services business. (CP 171, 184) The parties' friendship became strained when a female employee accused David of sexually harassing her. (CP 171, 184) After an investigation, it was determined that David,

who was married, had pursued this employee, who was also married, by sending her inappropriate texts and emails. (CP 171, 184, 187) After the employee complained, David made an anonymous threatening phone call to her husband. (CP 171-72, 184, 187) As a result, the Fossums fired David. (CP 172)

**B. Shortly after being fired, David started to send excessive emails and texts to Sharon. Sharon and her husband both separately told David to no longer contact Sharon.**

When David's employment was terminated in February 2011, Ron Fossum told David that he would seek a restraining order if David contacted any clients, employees, or partners of the business. (CP 105) Despite this direction, David began sending Sharon many texts and emails. (CP 172, 184) These communications made Sharon uncomfortable, and Ron told David to stop contacting Sharon. (CP 172, 184) Because of their long acquaintance, Sharon also followed up with David. (CP 172, 189) Sharon sent an email to David in August 2011 explaining her discomfort at the number of emails and text messages and the reason she stopped responding:

As you have noticed, I have stopped responding to your emails and text messages. I started to feel uncomfortable with the volume/amount of texts and emails that were going between us. I have many other male friends in the congregation, and they text or email me rarely if at all. As a married sister in the

congregation, I do not feel it is appropriate to be sending messages to a married brother who is not my husband.

(CP 160) As a result of Sharon and her husband's requests, David agreed to stop contacting Sharon and to remove all of the Fossums' contact information from his phone. (CP 184)

**C. Less than two years after promising to not contact Sharon, David began anonymously sending her sexually suggestive texts after having a friend confirm that her husband was away.**

After the Fossums directed David to no longer contact Sharon, the parties had little contact. (See CP 184) On May 5, 2013, however, less than two years after both Sharon and her husband told David to no longer contact Sharon, David called Sharon to tell her that he was leaving some items belonging to her husband's parents on her front porch. (CP 184) Sharon thought it was odd for David to contact her after he was told not to, particularly because David knew other family members whom he could have called to drop off the items. (CP 188) In fact, several of those relatives lived closer to David, and he had to drive by their homes to go to Sharon's home. (CP 188)

Over the following weeks, Sharon's brother, who also worked with Sharon and her husband, noticed David driving by the

business one or two times a week. (CP 173) Her brother found this unusual, because the business was not on a route where a person would regularly commute. (CP 173)

On June 9, 2013, Sharon attended a congregation at her place of worship, where David also attends. (CP 184) As Sharon was leaving the restroom, she noticed David standing in a corner with a large handwritten sign that said "Call Me." (CP 184) Sharon ignored this message and did not call David. (CP 184)

The following day, June 10, 2013, an unknown woman called the Fossums' business and asked to speak to Sharon's husband, Ron. (CP 176-77) When the receptionist told her that Ron was "unavailable," the caller, who said her name was "Lola" became aggressive. (CP 176-77) The receptionist described the caller as insistent on finding out whether Ron was in the office, and was "pumping" her for information. (CP 177) The receptionist knew that Ron was out of the country for a business trip, but declined to give that information to the caller since she was not known to the receptionist. (CP 176) Eventually, the caller hung up without leaving her phone number. (CP 177)

Several minutes after this phone call, Sharon received a text message on her cell phone: "Sharon, do you want a call from your

secret admirer? I can take u places you have never been and where you need to go badly. Please say yes.” (CP 184, 192) The text was from the same phone number as that of the person who had just called the office trying to locate Sharon’s husband. (See CP 176, 184, 192) Sharon did not respond to this text. (See CP 192)

The following day, June 11, 2013, Sharon received a phone call from the same phone number. (CP 184) Sharon did not answer the call. (CP 184) Shortly thereafter, she received another text message: “IF YOU ARE SLIGHTLY INTERESTED WEAR BLACK STOCKINGS NEXT TIME U GET DRESSED UP.” (CP 184, 192, *emphasis in original*)

As Sharon now believed she was being watched, she contacted the police. (CP 184) Because of the earlier phone call to the office asking for her husband, Sharon believed that whoever was sending her the texts also knew she was alone. (See CP 191) Because of her concern, Sharon had a friend and her friend’s husband, who was a former marine, stay with her for a few days until her husband could return home. (CP 191)

**D. At the suggestion of a police officer, Sharon sought an anti-harassment order against David.**

The police officer who met with Sharon described her as “visibly shaken and appeared to be very upset.” (CP 201) The officer determined that the phone from which the phone calls and texts were made was an “untraceable pre-paid phone” or what is otherwise known as a “burn phone.” (CP 201) When asked, Sharon told the officer that she “had a feeling” that David sent her the text messages. (CP 201) The officer called the phone number from which the texts and calls were made and a woman answered. (CP 201) When the woman was advised that her phone was being used to harass someone, the woman admitted that her friend “Dave” had paid her to use her phone. (CP 201)

David’s actions towards Sharon were consistent with his actions towards the female employee that caused him to be fired for sexual harassment. (CP 171-72) Sharon was concerned because David had escalated that situation, which had already been bad, by making a anonymous threatening phone call to the employee’s husband. (CP 33, 171, 187, 188) Sharon and her husband were concerned with the similarity of David’s actions towards Sharon: “trying to do anonymous calls, hiding his identity while conducting

inappropriate behavior and pursuing a married woman in both cases while he himself was currently married.” (CP 171) Particularly because both Sharon and her husband had already told David to not contact Sharon, Sharon believed that David’s actions reflected a “pattern and escalation of his inappropriate behavior.” (CP 171, 184, 187)

On June 13, 2013, at the recommendation of the police officer who had taken her report, Sharon sought an anti-harassment order against David. (CP 171, 182, 201) The officer noted in his report that if David continued to try to contact Sharon it might turn into a stalking case. (CP 201-02)

**E. David did not deny that he sent unsolicited anonymous sexually suggestive texts to Sharon after previously being told to not contact her. Instead, he “twisted” her comments and actions from several years earlier and her cordial waves to him at church as an invitation.**

In response to Sharon’s request for an anti-harassment order, David did not deny that he sent the sexually charged texts to Sharon, that he did so in a way that would conceal his identity, and that he had directed a friend to confirm that Sharon’s husband was away and Sharon was alone before sending her those texts. (CP 148-59, 191) Instead, David accused Sharon of engaging in

“flirtatious behavior and [ ] initiat[ing] verbal and physical contact.” (CP 154) His only recent purported example was his claim that Sharon “has made a practice” of “mirroring” him when he would get up to go to the back of the congregation where they worshipped – a claim Sharon denied. (CP 149, 190-91) David also relied on the fact that Sharon occasionally smiled, waved, or nodded at him when she saw him at the congregation. (CP 149)

David’s other purported examples of Sharon’s alleged “flirtatious” behavior had occurred several years earlier - if they occurred at all. For instance, as evidence that Sharon somehow wanted David to pursue her now, David claimed that he and Sharon regularly communicated by phone 15 years earlier. (CP 151) David also described as “notable” an incident over 15 years ago when Sharon and Sharon’s sister-in-law (her husband’s sister) “hung out in a Jacuzzi hot tub” with him. (CP 155, 188) David alleged that after he obtained new employment in 2006 – seven years earlier – Sharon purportedly congratulated him with a “long big hug” and said he was a good friend. (CP 153) David also claimed that in 2007 – six years earlier – Sharon put her head on David’s shoulder while she was sitting between David and her husband. (CP 153)

Sharon was concerned by David's response. He did not deny that he had someone call the office to confirm that her husband was away from the office before sending her offensive, uninvited, and inappropriate texts that stated he was watching her. (CP 191) Sharon worried that David had "twisted" her common courtesies of greeting him with a cordial wave, smile or nod at their place of worship into some sort of sign she was interested in him, despite her clear statement in her email nearly two years earlier that she was not interested when she cut off contact with him. (CP 188) Sharon also believed that the level of "detail" that David seemed to recall of their interactions from several years earlier – if those interactions even happened, since Sharon had no recollection – was evidence that David might be "obsessed" with her. (CP 188)

Sharon was also concerned because David used his response to speak negatively about her husband, referring to him as "jealous and controlling." (CP 157, 188-89) Rather than acknowledging that Sharon did not want any contact from David as expressed in her earlier email and by the fact that she had not responded to his recent texts, David claimed that Sharon's desire for protection was to "silence" David from speaking of her husband's "unethical and illegal business practices." (See CP 157-58)

**F. On revision, a superior court judge granted Sharon a permanent anti-harassment order.**

On October 1, 2013, Snohomish County Superior Court Judge Bruce Weiss (the “trial court”) granted Sharon a permanent anti-harassment order against David. (CP 2, 58-59) The trial court found that “based upon the petition, testimony, and case record, the court finds that the respondent committed unlawful harassment as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority.” (CP 59) The order was made permanent after the trial court found that respondent is “likely to resume unlawful harassment of the petitioner when the order expires” (CP 59) – a finding supported by David’s earlier action in initially backing off contact when first told to stop and later resuming that contact in an escalated manner by making direct sexual overtures anonymously. (See CP 32-33)

David spends most of his appellate brief complaining about the commissioner’s ruling granting Sharon’s motion for reconsideration and initially entering the anti-harassment order. (App. Br. 5-7, 10-12) However, his appeal is from the trial court decision affirming the commissioner’s decision on revision. (See CP 1-2) *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004)

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(“Once the superior court makes a decision on revision, the appeal is from the superior court's decision, not the commissioner's.”).

The procedural history relevant to this order is set out below:

The commissioner had previously denied Sharon’s request for an anti-harassment on the grounds that Sharon had not made clear to David that she wanted “no contact” from him. (7/17 RP 15) The commissioner did find that it “wouldn’t take much for the court to be convinced that if this person is seen in their neighborhood, which clearly he seems to know the whereabouts of; if he transmits any kind of text message or other communication that is identifiably traced back to him; if he decides he’s got to drop off additional personal property items or anything of the sort, I’d be convinced that is unlawful harassment and I would grant an order.” (7/17 RP 15)

The commissioner subsequently reconsidered his decision on Sharon’s motion, and granted her a permanent anti-harassment order. (CP 58-59) In making his decision, the commissioner considered the transcript of the interviews conducted with David in the sexual harassment investigation, which Sharon provided with

her motion for reconsideration.<sup>1</sup> (CP 69-136) The transcripts confirmed that David was directly told to have no contact with employees and partners of the business, including Sharon. (CP 105) Although Sharon had previously relied on this interview in the underlying motion, (CP 171, 187), she had not had sufficient time to have the audio for the interviews transcribed before the date of the initial hearing. (CP 69-70)

At the hearing on Sharon's motion for reconsideration, the commissioner repeated his earlier concern about David's actions, finding that "this woman has a right to be left alone and, apparently, Mr. Heckman doesn't get it. The thing at the church really troubles me. Inappropriate and ill-timed place to be making those kinds of gestures and communications." (8/09 RP 12) The commissioner reconsidered his earlier decision that Sharon had not met her burden of proving that she had made clear to David that his

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<sup>1</sup> Sharon also told the court that she and her husband had recently received anonymous threatening calls at their place of business: "threatening to 'make both you pay .. both you (directed at Ron) and Sharon are going to pay,' 'you better f\*\*\*ing watch your back - I'm watching you and your wife.'" (CP 61) Sharon believed it was "too strong of a coincidence" that these anonymous threats started after she sought an anti-harassment order against David and she believed David was involved. (CP 61) The commissioner considered this evidence, but stated that these "troubling communications," which were a "remarkable coincidence," did not factor into his decision. (8/09 RP 12)

contact was unwanted. The commissioner found that “the burden of proof has been met” and “it was understood [by David]. No contact means no contact.” (8/09 RP 12)

David then moved for reconsideration of the commissioner’s order granting Sharon’s motion for reconsideration. On September 11, 2013, the commissioner denied David’s motion for reconsideration, stating that it “reviewed the court file, my notes from the previous hearings and materials received in the above referenced matter. Upon reflection and without the need for oral argument, I believe my decision of August 19, 2013, granting reconsideration of the July 7, 2013 order and entering an Unlawful Harassment protection Order was correct.” (CP 5)

On revision, the trial court affirmed the commissioner’s entry of the permanent anti-harassment order, finding that as a result of David’s actions, Sharon was “concerned for her safety.” (CP 2) Rather than relying on the interview transcripts as the commissioner had, the trial court found that Sharon’s “failure to follow through with his requests for contact were clear indicators that contact was not desired and further that any of petitioner’s contact at church (in terms of a wave, etc.) were the result of

formalities and her wanting to be civil and an expression of her moral beliefs.” (CP 2)

### III. ARGUMENT

#### A. Standard of review.

In deciding whether to grant an anti-harassment order, the trial court has “broad” discretion. *Trummel v. Mitchell*, 156 Wn.2d 653, 668, ¶ 30, 131 P.3d 305 (2006). “A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

An anti-harassment order will be upheld if substantial evidence supports the trial court’s findings of fact. *See State v. Noah*, 103 Wn. App. 29, 39, 9 P.3d 858 (2000), *rev. denied*, *Calof v. Casebeer*, 143 Wn.2d 1014 (2001). “Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. On appeal, [this court] view[s] the evidence in the light most favorable to the prevailing party.” *Pilcher v. State*, 112 Wn. App. 428, 435, 49 P.3d 947 (2002), *rev. denied*, 149 Wn.2d 1004 (2003) (*citations omitted*). Substantial evidence may support a finding of fact even if the reviewing court could interpret the evidence

differently. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). This court defers to the trial court's determinations on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *State v. Ainslie*, 103 Wn. App. 1, 6, 11 P.3d 318 (2000).

**B. Substantial evidence supports the trial court's finding that appellant committed unlawful harassment and that a permanent order was warranted as he is likely to resume unlawful harassment when the order expires.**

Anti-harassment orders are intended to prevent "serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim." RCW 10.14.010. Unlawful harassment is a "course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose." RCW 10.14.020 (1). "Course of conduct" means a "pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." RCW 10.14.020(2). If the trial court finds that unlawful harassment exists, it "shall issue" an order "prohibiting such unlawful harassment." RCW 10.14.080 (3).

Here, substantial evidence supports the trial court's anti-harassment order. Contrary to the appellant's complaint on appeal, the trial court was not required to make any findings as to "how [appellant]'s alleged behavior fits within the elements of the statute" (App. Br. 9), because appellant admitted the behavior justifying the order. Appellant did not deny the factual basis for Sharon's request for an anti-harassment order, nor did he claim that sending anonymous sexually explicit text messages to her had a "legitimate or lawful purpose."

The bases for the anti-harassment order were not disputed allegations, but undisputed facts:

- After previously telling appellant in writing that she no longer wanted contact with him, the appellant appeared at Sharon's place of worship nearly two years later holding a large "Call me" sign. (CP 160, 172, 184)
- After she did not call him, appellant directed a friend to anonymously call Sharon's office to find out whether Sharon's husband was out of town. (CP 176-77, 184)
- After confirming that Sharon was alone, appellant texted a sexually suggestive message to Sharon asking her to say "yes" to his advances. (CP 184, 192)
- After she declined to answer that text, appellant called Sharon. (CP 184)

- After she declined to answer the phone call from appellant, appellant texted Sharon another sexually suggestive message, stating that he would watch her for a sign that she was receptive to his advances. (CP 184, 192)
- These text messages, which appellant sent anonymously, made Sharon “fearful,” she was concerned that appellant was “obsessed with her,” and she believed that she needed “protection.” (CP 188, 191)

This undisputed evidence wholly supports the trial court’s entry of an anti-harassment order. Substantial evidence also supports the trial court’s decision to make the order permanent, after it found that it was likely that appellant would resume the unlawful harassment if the order expires. (CP 59) In making that decision, the trial court considered evidence of the appellant’s “obsessive” recall of detail of his interactions with Sharon from the past 15 years, his failure to go even two years without violating Sharon’s written request to cease communications, and his continued pursuit of her despite her failure to respond to any of his recent advances.

Appellant is wrong when he claims that the trial court “failed to make findings” to support its anti-harassment order. (App. Br. 8-10, 12-13) The trial court found that “based upon the petition, testimony, and case record [appellant] committed unlawful

harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority.” (CP 59) In addition to these findings, the trial court found that Sharon was “concerned for her safety,” and that Sharon’s previous rejection of David’s requests for contact was a “clear indicator that contact was not desired.” (CP 2) In making the order permanent, the trial court found that appellant would “likely [ ] resume unlawful harassment of [Sharon] when the order expires.” (CP 59) Appellant has not assigned error to these findings, and they are verities on appeal. *Brewer v. Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999).

The trial court’s findings were more than adequate to support the trial court’s anti-harassment order. The court only needs to find that “by a preponderance of the evidence that unlawful harassment exists” in order to enter an order prohibiting unlawful harassment. RCW 10.14.080(3). That is exactly what the trial court did here.

That the trial court relied in part upon preprinted findings is irrelevant. The court rejected an appellant’s claim that “preprinted findings on a form are insufficient to indicate the factual basis for the court’s conclusions” for a permanent protection order in *Spence v. Kaminski*, 103 Wn. App. 325, 332, 12 P.3d 1030 (2000).

In rejecting the appellant's comparison of findings for protection orders with the requirement for specific findings in involuntary commitment cases, the *Spence* court held that a "protection order authorized by the chapter 26.50 RCW does not result in a massive curtailment of [appellant]'s liberty." 103 Wn. App. at 332. So long as the restrictions are reasonable "based on a demonstrated need to protect [the petitioner] from domestic violence," the preprinted form finding referencing the definition of domestic violence is sufficient. *Spence*, 103 Wn. App. at 332-33.

More extensive factual findings were not necessary because like the protection order in *Spence*, an anti-harassment order does not result in a "massive curtailment of appellant's liberty." *Spence*, 103 Wn. App. at 332. Any restrictions on the appellant's liberty were reasonably necessary to protect Sharon from unlawful harassment, including limiting appellant's ability to contact Sharon and restraining him from coming within 100 yards of her home and workplace. (CP 59) Because substantial evidence supports the trial court's findings of fact, and those findings of fact support entry of an anti-harassment order, this Court should affirm.

**C. On appeal, this Court reviews the superior court's ruling, not the commissioner's ruling.**

Appellant complains about the commissioner's decision granting reconsideration and in considering the transcripts that were presented by Sharon on reconsideration. (App. Br. 10-12) However, the order on review in this Court is the trial court's decision denying appellant's motion for revision, not the commissioner's decision. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004) ("Once the superior court makes a decision on revision, the appeal is from the superior court's decision, not the commissioner's."). The trial court reviewed the commissioner's decision granting Sharon an anti-harassment order *de novo*, *Marriage of Dodd*, 120 Wn. App. 638, 643, 86 P.3d 801 (2004), and properly determined that the order was warranted based on its own independent review of the evidence. *See Waid v. Department of Licensing*, 43 Wn. App. 32, 36, 714 P.2d 681 ("In a *de novo* proceeding the superior court makes a "full and independent judicial, evidentiary, and factual review"), *rev. denied*, 105 Wn.2d 1015 (1986).

In any event, there was no "procedural bar" to Sharon's timely motion for reconsideration. (App. Br. 10) Civil Rule 59

creates a “valuable right” to file a motion for reconsideration within 10 days of a judgment. *King County v. Williamson*, 66 Wn. App. 10, 13, 830 P.2d 392 (1992). “Motions for reconsideration are addressed to the sound discretion of the trial court and a reviewing court will not reverse a trial court's ruling absent a showing of manifest abuse of discretion.” *Ducote v. State, Dep't of Soc. & Health Servs.*, 144 Wn. App. 531, 537, 186 P.3d 1081, 1084 (2008) *aff'd*, 167 Wn.2d 697, 222 P.3d 785 (2009). Although the commissioner did not state which CR 59 ground was the basis for his decision, apparently he believed that “substantial justice had not been done” by initially denying Sharon the protection of an anti-harassment order. (*See* CP 5)

Appellant complains that the commissioner should not have considered transcripts from the sexual harassment investigation as part of Sharon’s motion for reconsideration. (App. Br. 11-12) But a court’s “decision to consider new or additional evidence presented with a motion for reconsideration is squarely within the trial court's discretion. Generally, nothing in CR 59 prohibits the submission of new or additional materials on reconsideration.” *Martini v. Post*, 178 Wn. App. 153, 162, ¶ 19, 313 P.3d 473 (2013).

The commissioner apparently considered this evidence to support Sharon's claim that she had indeed made it "clear" that contact was not wanted. (See 8/09 RP 12) However, in denying revision, the trial court did not rely on this transcript as evidence that Sharon (through her husband) made it "clear" to appellant that further contact was not warranted. Instead, the trial court conducted its own independent review of the evidence and relied on the undisputed evidence of Sharon's "failure to follow through with his requests for contact" (CP 2), which include her email to him in August 2011, her refusal to call him after he held up a sign that said "Call me," her refusal to respond to his first text, as well as her refusal to answer his call, as her "clear" indication that contact was not desired. Thus, even if the commissioner erred in considering this transcript, the trial court did not rely on it and it was harmless error. "Error without prejudice [ ] is not grounds for reversal." *Welfare of Ferguson*, 41 Wn. App. 1, 5, 701 P.2d 513, *rev. denied*, 104 Wn.2d 1008 (1985).

**IV. CONCLUSION**

The trial court decision granting an anti-harassment order against appellant was well within its discretion and supported by substantial evidence. This Court should affirm.

Dated this 12th day of August, 2014.

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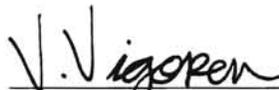
**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 12, 2014, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
Roberta L. Madow Madow Law Office, P.S. 2707 Colby Avenue, Ste. 901 Everett, WA 98201	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Jon T. Scott Jon Scott Law, PLLC 3206 Wetmore Avenue, Ste. 13 Everett, WA 98201	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 12th day of August, 2014.

  
\_\_\_\_\_  
Victoria K. Vigoren