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DIVISION II

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STATE OF WASHINGTON
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No. 37098-1-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Marriage of:

ANTHONY P. MEREDITH, Appellant

and

JAZMIN E. MURIEL, Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Kitty-Ann van Doorninck, Judge

BRIEF OF RESPONDENT

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Original

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I. STATEMENT OF THE ISSUES

Mr. Meredith identifies two main issues on appeal, although he also argues numerous sub-issues. Distilled to their essence, however, all of Mr. Meredith's issues revolve around one central argument: that the trial court erred when it determined that he committed domestic violence against Ms. Muriel.

Mr. Meredith's central argument is meritless. The trial court's determination that Mr. Meredith committed domestic violence against Ms. Muriel was based upon substantial evidence presented at trial and was therefore well within its discretion.

Because the trial court correctly determined that Mr. Meredith had committed domestic violence against Ms. Muriel, the trial court also correctly entered a parenting plan limiting Mr. Meredith's visitation and decision making under RCW 26.09.191. It further correctly entered an order for protection on Ms. Muriel's behalf under RCW 26.50.060.

II. STATEMENT OF THE CASE

Ms. Muriel and Mr. Meredith were married in March 2005 in Virginia. RP 275. Ms. Muriel was 18 when they married. Mr. Meredith was 38. CP 2-3. Ms. Muriel was only 14 when Mr. Meredith first contacted her on the internet, seeking a foreign bride. RP 254. Ms.

Muriel is from Colombia and spoke no English. RP 259. Mr. Meredith was an attorney with the Virginia Attorney General's office. RP 266.

While pregnant, Ms. Muriel fled from Virginia to Washington to escape the petitioner's verbal, emotional, and physical abuse. RP 349. That abuse was one of the main subjects at trial.

The petitioner and Ms. Muriel have one child, Daliana. She was 5 months old when the divorce litigation began. CP 2. The procedural history of the divorce and custody litigation is as follows.

Mr. Meredith filed for divorce on July 18, 2006. CP 1. As part of that initial divorce filing, he obtained a *habeas corpus* writ seeking to place Daliana into his care. CP 76-80.

The trial court, Judge Hickman presiding, heard that writ on two separate occasions. The trial court first heard the writ on July 25, 2006. Ms. Muriel had no opportunity to prepare any defense to Mr. Meredith's allegations and the trial court, out of an abundance of caution, placed Daliana into foster care that evening. CP 82-83.

The trial court reconvened the writ return hearing on July 28, 2006. Ms. Muriel was given an opportunity to prepare and present her evidence of Mr. Meredith's ongoing abuse and to provide the trial court with numerous declarations from herself, from an immigration attorney, and from third party witnesses. It even came out at that hearing—by Mr.

Meredith's own previous admission—that he had attempted to have Ms. Muriel (while pregnant with his child) deported by writing a letter to the Department of Homeland Security alleging her immigration into the U.S. was fraudulent. CP 158-59; 197; 835-58; Ex. 14

At the conclusion of that hearing, the trial court ordered Daliana immediately back into Ms. Muriel's care. It further provided that Mr. Meredith could have only supervised visitation with Daliana, limited to two hours at any one time. CP 92-94.

At the conclusion of that hearing, Mr. Meredith reacted in a physically aggressive manner as described by Assistant Attorney General Renee Morioka:

> It was at this point that Anthony Meredith took about two quick steps toward Attorney Starks' and mother's direction but Attorney Dickinson stopped his progress.
>
> ***
>
> During Mr. Meredith's yelling, the judicial assistant then approached Attorney Dickinson and asked Attorney Dickinson to immediately escort his client and his mother out into the hallway and that security had been summoned.
>
> ***
>
> [T]he judicial assistant locked the door so that they could not return to the courtroom.

Ex. 18.

Ms. Morioka would go on to testify at trial that she was so concerned about Daliana's safety in light of Mr. Meredith's behavior that

she personally traveled to DSHS to oversee Daliana's return to Ms. Muriel. RP 251.

Mr. Meredith's father, George Meredith, was so appalled by his son's behavior that he paid Ms. Muriel's attorneys' fees and costs throughout the divorce litigation. RP 415. Mr. Meredith reacted by attempting to intimidate his father, sending multiple letters to his father (one from a Virginia attorney) threatening a lawsuit for libel, slander, defamation, and intentional infliction of emotional distress. His father provided a declaration regarding these intimidation tactics, which included an admission by Mr. Meredith that Mr. Meredith intended "to sue the people who filed declaration[s] on Jazmin's behalf." CP 869-77. He also testified at trial about Mr. Meredith's behavior. RP 417-18

Mr. Meredith also attempted to intimidate a priest who had provided a declaration on Ms. Muriel's behalf. Mr. Meredith attempted to pressure the priest into signing a wholly fabricated declaration that Mr. Meredith had prepared without any input from the priest. The priest refused to sign the fabricated document and instead provided a second declaration to the court regarding Mr. Meredith's behavior. CP 862-68.

On August 21, 2006, the family court heard Mr. Meredith's motion for temporary orders, wherein he again asked for custody of Daliana. The family court rejected his request and instead entered temporary orders

keeping Daliana in Ms. Muriel's custody and maintaining the trial court's requirement of limited, supervised visitation. CP 392; 878.

On March 15, 2007, the court heard yet another motion by Mr. Meredith seeking custody. CP 270-75. This time, Mr. Meredith went so far as to allege that Ms. Muriel had physically abused Daliana (due to a dime sized bruise she had suffered as a result of "cruising" along a coffee table as she was learning to walk) and was not adequately feeding her. His coldly calculating, bullying behavior after dragging the child to the hospital—and risking having the now hysterical child drugged so that a CT scan he knew to be completely unnecessary could be performed—is perfectly encapsulated by the police report drafted by Officer John Neal of the Lakewood Police Department. Officer Neal's report made it clear that he quickly understood what type of person he was dealing with in Mr. Meredith:

> The complainant was the father of the child in question and not the hospital.
>
> ***
>
> I spoke with Anthony in length who first "flashed" his badge and made a point to tell me he was an attorney working for the Attorney General's office in the State of Virginia. I advised him that had no bearing on the investigation and told him to just tell me why I had been called. Meredith went into an extended conversation about his wife Jazmin assaulting him in the state of Virginia along with a private investigator. Also that she fled the state and came to Washington to avoid being prosecuted. He stated his wife was very dangerous and pointed out that she came from the Murder capital of the world, Columbia.

***

> Once again I asked him to explain what occurred to make him call 911.

CP 949-61.

Mr. Neal also testified at trial regarding his impressions of Mr. Meredith, and his suspicion that Mr. Meredith had taken Daliana to the hospital and called 9-1-1 to try to gain an upper hand in the family law litigation. RP 401.

In all, two physicians, a social worker, and a police officer examined Daliana and concluded she was a happy, healthy child who had not been abused and was not underweight. CP 879-961; Exs. 21 and 22. Despite that, Mr. Meredith nonetheless launched the motion to change custody and filed false, venom-filled, misogynistic declarations in support of that motion. What follows is a small selection of his words:

> Jazmin has a revolving door of adulterous perverted sexual liaisons with a parade of lovers of both sexes, indulging in sensuality morning, noon and night, day after day.
>
> ***
>
> Bluntly, it is unacceptable for my daughter Daliana to be raised by two scheming, promiscuous, adulterous lesbians[.]
>
> ***
>
> Jazmin can provide our baby with a life on the run as an illegal alien who will be deported when she is caught, with a myriad of illicit lovers of both sexes who have fought over her in the past ..., bouncing from house to house, affair to affair, city to city, and jail to jail.
>
> ***

> Jazmin engage[d] in rampant ongoing perverted adulterous sexual acts with a literal parade of different male and female lovers, one after another, hour after hour, day after day[.]
>
> ***
>
> It is not in the best interests of Daliana to be raised in an environment that is indistinguishable from a brothel, or to be raised by a woman, like Jazmin, who has no moral compass and who cannot control her provocative lustful adulterous desires.

CP 288-96; 962-1002

Mr. Meredith's various statements to the court were not simply limited to the kind of sexually assaultive, sexually obsessed language above. He also resorted to absolute lies, claiming, for instance, that "Jazmin mischaracterizes the bruise as 'dime-sized' and therefore not abuse. The pictures clearly show that Daliana's bruise was much larger than a dime." CP 963. In fact, the pictures showed that the bruise was dime sized. Moreover, the examining physician so stated in the medical report: "The patient has a small dime-sized bruise on her upper left cheek[.]" CP 908; Ex. 22 (February 16, 2007, History and Physical Examination by Krista K. Barret, MD, at page 2).

The family court denied Mr. Meredith's motion and ordered that the August 21, 2006, orders were to remain in full force and effect, including the requirement for limited, supervised visitation. CP 306-07. Mr. Meredith's motion had so little merit that the family court awarded

fees and costs to Ms. Muriel for having to contest the petitioner's motion. CP 306.

On April 27, 2007, the trial court heard and denied Mr. Meredith's motion for revision of the March 15, 2007, orders. CP 366-67. The trial court also ordered the parties to submit to CR 35 mental health examinations as requested by Ms. Muriel. CP 368. The mental health examiner would ultimately conclude that Mr. Meredith was dangerous. Ex. 17.

The last pretrial skirmish regarding Mr. Meredith's restricted visitation rights came on June 28, 2007. Mr. Meredith again requested a change to visitation and a loosening of his visitation restrictions. CP 377-81. The trial court denied the motion. CP 467. That result was not surprising. On top of the evidence of his previous bad faith and abusive conduct, at the time he filed the motion, he had not submitted to the court-ordered CR 35 examination. He had further failed to exercise any routine visitation with Daliana, preferring instead to only schedule visitation when he felt like filing a motion and therefore planned to be in Washington anyway (in fact, he had stated to a hospital social worker that he had

cancelled scheduled visitations in November and December 2007 "because court was cancelled."[1]) CP 883; 921.

The parties tried the case before the Honorable Kitty-Ann van Doorninck from October 1, 2007, through October 5, 2007. CP 524-28; RP 1-510. The trial court issued its oral ruling on October 10, 2007. CP 528; RP (Oral Decistion) 1-30. The trial court thereafter entered final orders on November 9, 2007. CP 616-96; RP (Presentation) 1-30.

III. STANDARD OF REVIEW

This Court reviews the trial court's decisions in the instant case for abuse of discretion. See, e.g., In re Marriage of McDole, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993). Abuse of discretion only occurs if the trial court's decision was *manifestly unreasonable* (i.e., outside the range of acceptable choices given the facts and legal standards), based upon *untenable grounds* (i.e., unsupported by the record), or based upon *untenable reasons* (i.e., based on an incorrect legal standard or upon facts that do not meet the requirements of the correct legal standard). In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

Additionally, this Court is guided by the principle that decisions in dissolution proceedings are seldom changed on appeal because such

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[1] LINX: See 3/9/2007 "Sealed Personal Health Care Records" at pages 5, ¶ 7 (summary) and 43.

decisions are difficult and the parties' emotional and financial interests are best served by finality. In re Marriage of Landry, 103 Wn.2d 807, 809, 699 P.2d 214 (1985).

IV. ARGUMENT

A. The Trial Court had Substantial Evidence to Support Its Findings that Mr. Meredith Committed Domestic Violence against Ms. Muriel and Engaged in the Abusive Use of Conflict.

Where the trial court has weighed the evidence, this Court's role is to simply determine whether substantial evidence supports the trial court's findings of fact, and if so, whether those findings support the trial court's conclusions of law. See In re Marriage of Greene, 97 Wn. App. 708, 986 P.2d 144 (1999). "Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

The trial court clearly weighed the evidence in this case as demonstrated by its oral ruling and as demonstrated by its very thorough written Findings of Fact and Conclusions of Law. CP 650-90. As a result, this Court need only determine whether substantial evidence existed on the record to support those findings. And, in doing so, this Court must remember that it may not substitute its judgment for the trial court's

judgment, weigh the evidence, or otherwise adjudge witness credibility. See Greene, 97 Wn. App. at 714.

Substantial evidence on the record came, first and foremost, in the form of Ms. Muriel's testimony. Ms. Muriel testified that Mr. Meredith forced her to have unwanted sex, causing her vaginal injury. RP 297-98. She testified that he hit her with a closed fist, causing bruises, and that he pulled her hair and tried to push her down a flight of stairs. RP 299, 301. She testified that he would call her a prostitute, a bitch, a dog, and a whore. RP 291, 300. She testified that he would keep her locked in the house. RP 302-03. She testified that he tore up her personal items. RP 290. She testified that he would hold her, scream at her, and hit himself. RP 291. She testified that he would monitor her internet usage and hired private investigators to follow her. RP 303-04, 316. She testified that she was afraid of him. RP 291. The trial court found her to be credible. RP (Oral Decision) 17.

But Ms. Muriel's testimony was not the only substantial evidence of Mr. Meredith's abusive nature. The trial court also heard from Renee Morioka, an Assistant Attorney General who was present in court during an aggressive, physical outburst by Mr. Meredith. RP 243-251. Ms. Morioka testified that Mr. Meredith's behavior led the judicial assistant (1) to inform the parties and counsel that security had been called, (2) to

instruct Mr. Meredith to leave the courtroom, and (3) to lock the courtroom door behind Mr. Meredith. RP 247-48. Ms. Morioka testified that after Mr. Meredith's outburst she became so concerned about everyone's safety (most importantly Daliana's safety) that she personally drove to DCFS to insure that Daliana was handed safely over to Ms. Muriel. RP 251. The trial court found Ms. Morioka's testimony to be credible. RP (Oral Decision) 6-7.

The substantial evidence establishing Mr. Meredith's abusive nature also did not stop with Ms. Morioka. The trial court heard from a close friend of Ms. Muriel's, Dariam "Monic" Ramos. Ms. Ramos testified that Mr. Meredith would call Ms. Ramos and threaten—as an attorney—to send Ms. Ramos to jail. He would also call her a lesbian, a bitch, and so forth. RP 428. The trial court found Ms. Ramos "very credible and forthright." RP (Oral Decision) 9.

The court further heard testimony from forensic psychologist Dr. Thomas Clifford, whom the court appointed to perform psychological evaluations of both parties. Dr. Clifford testified that it was his conclusion that Mr. Meredith was dangerous and that the power differential in the parties' marriage was typical of a relationship with domestic violence. RP 201-207. He further noted that Mr. Meredith's allegations against Ms. Muriel "bordered on the bizarre" and that Mr. Meredith had made

comments regarding Ms. Muriel that were consistent with ethnic bias. RP 233, 209.

The trial court also heard testimony from John Neal, the police officer who responded to Mr. Meredith's 9-1-1 call from the hospital regarding Daliana's dime sized bruise. Officer Neal described Mr. Meredith as aggressive and demanding. RP 396. He essentially testified that he suspected Mr. Meredith had taken Daliana to the hospital and called 9-1-1 to try to gain an upper hand in the family law litigation. RP 401. When asked if he arrested Ms. Muriel, Officer Neal answered that it was "not only no, but hell no." RP 401. The trial court found Officer Neal "very credible." RP (Oral Decision) 8.

Finally, the court heard from Mr. Meredith's father, George Meredith. George testified that he decided to help Ms. Muriel with her legal costs in the divorce case when he learned from Mr. Meredith that Mr. Meredith intended "to get [custody of] the baby and get Jazmin deported." RP 415. George testified that once he had decided to assist Ms. Muriel, Mr. Meredith threatened to sue George, going so far as to personally make demands regarding George's finances and to have an attorney in Virginia do the same. RP 417-19. The trial court found George credible. RP (Oral Decision) 10.

Mr. Meredith did not deny his use of foul language toward Ms. Muriel and Ms. Ramos, RP 143-44. He did not deny his use of private investigators to follow Ms. Muriel around and check into her immigration status, RP 60, 163. However, he did deny Ms. Muriel's allegations of physical abuse. The trial court therefore remarked in its oral ruling and again at the final orders presentation hearing that Mr. Meredith's and Ms. Muriel's credibility were key factors in its determination. RP (Oral Decision) 12, 17; RP (Presentation) 27. And after considering their credibility the trial court found that "there's no question" that Mr. Meredith committed domestic violence. RP (Oral Decision) 18-19. It also found that Mr. Meredith had engaged in the abusive use of conflict. RP (Oral Decision) 19-20.

Taken by itself, Ms. Muriel's credible trial testimony was the only substantial evidence the trial court needed to make those findings. When this Court further considers the trial testimony from the additional witnesses above, whom the trial court also found credible, it becomes clear that the trial court possessed substantial evidence to make the findings that it did. Finally, Mr. Meredith's own behavior throughout the litigation demonstrated that he had issues that went well beyond the sort of emotional issues some dissolution litigants face. Most parties are at least able to control themselves enough to not get caught attempting to

intimidate witnesses, avoid writing sexually assaultive declarations, and avoid threatening to assault the other party while still in a judge's courtroom. Mr. Meredith was completely unable to control any of those impulses.

The trial court's findings and orders were clearly based upon substantial evidence.

B. The Trial Court Properly Exercised Its Discretion When It Entered a Parenting Plan with Limiting Factors.

Once it determined that Mr. Meredith had committed domestic violence against Ms. Muriel, the trial court properly exercised its discretion and entered a parenting plan in keeping with that determination. That is because RCW 26.09.191(1) and (2) provide that the court **shall** limit a parent's decision-making and residential time, as well as dispute resolution provisions, if it finds that parent has engaged in a history of acts of domestic violence.

Additionally, RCW 26.09.191(3) further authorized the trial court to limit Mr. Meredith's residential time based upon its finding that Mr. Meredith had engaged in an abusive use of conflict.

The parenting plan provisions that the trial court entered were reasonable and certainly well within its discretion. In fact, the trial court

made 22 specific written findings supporting that parenting plan in its written Findings of Fact and Conclusions of Law. CP 655-57.

Mr. Meredith specifically challenges the parenting plan (and a subsequent order) on "federal law" grounds to the extent they specifically allow Ms. Muriel to travel internationally with the child without first obtaining his authorization. However, Mr. Meredith fails to identify any such federal law and fails to otherwise brief the issue. The fact is there is no federal law prohibiting the trial court from making the determination it made.

C. The Trial Court Properly Exercised Its Discretion When It Entered an Order for Protection.

An order for protection is a civil remedy. City of Tacoma v. State, 117 Wn.2d 348, 351-352, 816 P.2d 7 (1991). Civil cases only require proof of the necessary statutory elements by a preponderance of the evidence. Reese v. Stroh, 128 Wn.2d 300, 312, 907 P.2d 282 (1995).

The trial court specifically referred to RCW 26.50.010 and its definition of domestic violence in its oral ruling, finding there was no question that Ms. Muriel was a victim of domestic violence and "no contradicting" that she feared harm. RP (Oral Decision) 18-19. It further made 11 specific written findings regarding Ms. Muriel's need for an

order for protection in its written Findings of Fact and Conclusions of Law. CP 653-54.

Based upon the trial court's thorough findings, the trial court properly exercised its discretion in entering a permanent order for protection.

Mr. Meredith also challenges the order for protection on First Amendment grounds to the extent the order specifically restrains him from contacting the federal government regarding Ms. Muriel's immigration status unless he first obtains the trial court's permission to do so. However, Mr. Meredith fails to brief the issue, instead resorting to more of his ubiquitous personal attacks on the trial judge and irrelevant citations to the canons of judicial conduct.

RCW 26.50.060 governs the relief that the court may grant in a domestic violence protection order. RCW 26.50.060(f) states that "the court may order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected."

This very Court has held that "[t]he court may specifically tailor a protection order to the petitioner's circumstances by including multiple provisions forbidding the respondent from a variety of misconduct against the petitioner." State v. Stinton, 121 Wn.App. 569, 575, 89 P.3d 717 (2004). The trial court thus has broad equitable powers to fashion

remedies appropriate to each case and is not limited to the forms of temporary or permanent relief specified by the dissolution statutes.

Ms. Muriel proved at trial that Mr. Meredith had attempted to interfere with her immigration proceedings. Mr. Meredith admitted upon cross-examination that he personally contacted the federal government regarding Ms. Muriel's immigration status, seeking to interfere with her immigration into the United States. RP 156-57. He may have hired a private investigator to do the same. RP 163. Immigration attorney Douglas Kresl testified that any continued contact by Mr. Meredith could cause injury to Ms. Muriel by delaying or damaging her petition to establish permanent residency, possibly even resulting in her deportation. RP 500-01.

Mr. Kresl also testified that Mr. Meredith had no need to contact the federal government as Mr. Meredith had no need to protect himself from any action taken. The actions taken by the immigration authorities only concern Ms. Muriel, not Mr. Meredith, and there are no referrals to law enforcement as a result of their investigation. RP 501-02; 507-08.

In fact, the Violence Against Women Act's confidentiality rules prohibit immigration authorities from contacting Mr. Meredith regarding Ms. Muriel's petition. See 8 U.S.C. § 1367(a)(2).

Mr. Meredith does not have a constitutional right to free speech that protects his ability to contact the federal immigration authorities concerning Ms. Muriel. Not all verbal expressions are entitled to the protections of the First Amendment.

Before analyzing whether the State is impermissibly encroaching on an individual's fundamental right of free speech, this Court must first determine whether that expression is the type to which the First Amendment extends protection.[2] The U.S. Supreme Court has recognized that there are a number of categories of speech that fall outside of First Amendment protection. See R.A.V. v. City of St. Paul, 505 U.S. 377, 382-86 (1992). One category of speech that the First Amendment does not protect is words that threaten injury to another person. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). The trial court properly determined that Mr. Meredith's unfettered contacting of immigration authorities was an attempt to cause injury by having Ms. Muriel deported.

In holding that certain forms of speech, such as "fighting words," are not protected by the First Amendment, the U.S. Supreme Court has noted that the Constitution does not shield "the lewd and obscene, the

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[2] Mr. Meredith did not argue that the trial court's order violated the Washington State Constitution; therefore, this Court's analysis is limited to the federal Constitution. State v. Knowles, 91 Wash. App. 367, 371, 957 P.2d 797 (1998).

profane, the libelous and the insulting or 'fighting' words – *those by which their very utterance inflict injury...*" Id. at 572 (emphasis added). Here, Mr. Meredith's words to the immigration authorities cause injury *via* his attempts to have Ms. Muriel deported.

"Prohibiting harassment is not prohibiting speech, because harassment is not protected speech." Thorne v. Bailey, 846 F.2d 241, 243 (4th Cir.1988). Therefore, enjoining future attempts to harass Ms. Muriel by attempting to interfere in her lawful immigration process is consistent with the Supreme Court's ruling in Chaplinsky and implicates no speech protected by the First Amendment.

At least one other court has reviewed this issue and found it lawful to restrain an abuser from further interference in his ex-spouse's immigration process. The District of Columbia has held that an abused spouse was entitled to be free from further abuse and upheld a protection order restraining the abusive spouse from contacting INS because his words were abusive and inflicted injury. Maldonado v. Maldonado, 631 A.2d 41, 43 (D.C. 1993). The Maldonado court determined that threats to harm another person *via* this type of interference constitutes conduct that the court may prohibit rather than speech protected by the First Amendment. Just as in Maldonado, the trial court's order for protection

restricts Mr. Meredith's verbal expression because of its threatening and injurious character, not because of its content.

And even assuming *arguendo* that Mr. Meredith's desire to contact the immigration authorities is constitutionally protected speech, the requested protection order's no-contact provisions do not violate the First Amendment. The U.S. Supreme Court's test for evaluating an injunction that regulates speech requires this Court to first examine whether the injunction is content neutral and, if it is, to then determine if the injunction burdens "no more speech than necessary to serve a significant government interest." Madsen v. Women's Health Center, Inc., 512 U.S. 753, 762-67 (1994). Here, the trial court's order for protection is both content neutral and narrowly crafted to burden no more speech than is absolutely necessary to protect Ms. Muriel from further abuse.

The trial court's protection order is content neutral in that it bars *action* by Mr. Meredith, not any particular form of speech. The order is narrowly crafted in that it specifically provides that Mr. Meredith can apply to the trial court for permission to contact the federal immigration authorities regarding Ms. Muriel if a situation arose that required him to do so. That provision provides an adequate safeguard to protect any possible unconstitutional infringement on Mr. Meredith's speech.

The trial court has the authority to fashion restraints specific to the cases before it to best protect each victim from further harm. The specific provision barring Mr. Meredith from contacting the federal government regarding Ms. Muriel's immigration status—without the court's permission—fell within the trial court's authority to protect Ms. Muriel from further harassment and harm at the hands of Mr. Meredith.

D. Mr. Meredith's Various Other Miscellaneous Issues and Arguments are Without Merit.

At pages 8 and 9 of Mr. Meredith's opening brief, Mr. Meredith appears to assign various errors to the trial court's findings of domestic violence against him. Much of what he argues (such as there being no evidence against him or no witnesses to his domestic violence) is clearly wrong given the thoroughness of the record as discussed above. What follows is a brief examination of his other arguments.

Mr. Meredith challenges the trial court's finding of domestic violence against him by arguing he was exonerated of the exact same allegations "by Superior Court Judge Bryan Chushcoff on the exact same evidence." Mr. Meredith is not telling the truth. In fact, Judge Chushcoff (who was relying on written affidavits, rather than the "exact same evidence," and had a confused record before him) made no findings whatsoever, instead ruling as follows:

> I would simply set it [the temporary order for protection] aside at this point and order the matter consolidated [with the dissolution case]. Any additional protection orders that—I'm not going to dismiss the petition as such. Judge Hickman[3] can issue a protection order as such, and he can also order restraining orders to be put in the dissolution case as well. I'm going to let him make that call.
>
> I'm not really punting this thing, but I do think one mind should look at it. Obviously, whoever has the divorce should have it. ... He is going to have an opportunity to hear from the parties and make a decision.

RP 22-23.

Judge Chushcoff clearly did not "exonerate" Mr. Meredith. Rather, he specifically ruled that the decision of whether to issue an order for protection should be made by the trial judge in the dissolution case. Which is exactly what happened.

Mr. Meredith also challenges the trial court's finding of domestic violence against him by arguing that the findings are contrary to the Guardian ad Litem's report and testimony. However, it is well-established law that trial courts are "not bound" by guardian's reports or recommendations, but instead must make their own assessment of children's best interests. See In re Marriage of Swanson, 88 Wn. App.

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[3] Judge Hickman was the assigned trial judge at the time Judge Chushcoff made his ruling. Judge van Doorninck was subsequently assigned as the trial judge.

128, 138, 944 P.2d 6 (1997). After weighing all the evidence, the trial court found the guardian in this particular case to be biased, to be caught up in irrelevant allegations, and to have no understanding of the dynamics of domestic violence. RP (Oral Decision) 10-12, RP (Presentation) 15. In fact, the guardian has since been removed from the Pierce County Superior Court's GAL Title 26 approved registry.

Mr. Meredith also challenges the trial court's finding of domestic violence against him by arguing they are contrary to a federal government investigation. There is no such investigation in the court records.

Mr. Meredith also challenges the trial court's finding of domestic violence against him by arguing they are contrary to a lie detector test that he took. Mr. Meredith took the lie detector test after the trial had been completed. Therefore, it was never part of the court record. But more importantly, Washington courts have consistently recognized that polygraph results are highly inaccurate and create a significant risk of misleading and prejudicing decision-makers. Accordingly, it is well-settled that polygraph results are inadmissible unless all parties have stipulated to their entry. See Industrial Indemnity Company of the Northwest v. Kallevig, 54 Wn. App. 558, 568, 774 P.2d 1230 (1989). Ms. Muriel never made any such stipulation. Therefore, the trial court

correctly disregarded Mr. Meredith's post-trial maneuverings regarding his alleged passing of a lie detector test.

Finally, Mr. Meredith challenges the trial court's finding of domestic violence against him by arguing they are contrary to the fact that Ms. Muriel has a criminal record. First, Ms. Muriel explained at trial the events that lead to her misdemeanor conviction for assaulting one of Mr. Meredith's private investigators who were following and recording her—while she was pregnant. RP 315-320; 340-48. Mr. Meredith's own father testified he felt the charges against Ms. Muriel were a "travesty of justice." RP 414. Second, the fact that Ms. Muriel has a misdemeanor assault conviction has absolutely no relevance to the issue of whether or not Mr. Meredith abused her. The trial court knew the information, it weighed party credibility, and it then made a ruling that was within its sound discretion.

E. Mr. Meredith's *ad Hominem* attacks on Judge van Doorninck Only Demonstrate the Weakness of His Appeal.

Judge van Doorninck is a well-respected jurist of long experience. She certainly does not need undersigned counsel to defend her. However, that said, Mr. Meredith's desire to place all of his problems at the trial court's feet is nothing short of ludicrous and indicative of his own larger problems. The fact is that Mr. Meredith never had anything other than

professionally supervised visitation with Daliana throughout the litigation below. Judge Hickman first made that decision only days into the case. CP 92-94. The family law court commissioner shortly thereafter imposed the same restrictions. CP 878. The family court again rejected yet another motion by Mr. Meredith in March 2007 to change custody of the parties' child, and maintained the requirement that Mr. Meredith have only limited, supervised visitation. CP 306-07. All told, for well over a year—while this case inched toward trial—no judge or court commissioner ever disturbed Judge Hickman's initial decisions. Mr. Meredith then had the benefit of a five day trial to try to convince yet another judge of the Pierce County Superior Court that all previous judicial officers were mistaken in their concerns. Mr. Meredith utterly failed to do so. Mr. Meredith has no one but himself to blame for the trial court's findings and orders.

F. The Court Should Award Ms. Muriel Her Fees and Costs on Appeal.

Ms. Muriel requests attorneys' fees and costs for responding to Mr. Meredith's frivolous appeal under RAP 18.9. An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so devoid of merit that there was no reasonable possibility of reversal. In re Marriage of Penry, 119 Wn. App. 799, 804, 82 P.3d 1231 (2004). If ever there was a frivolous appeal, this one is it.

IV. CONCLUSION

For the reasons stated above, Ms. Muriel asks that the court affirm the trial court's final orders.

Respectfully submitted this 30 day of May, 2008.

MCKINLEY IRVIN, P.L.L.C.

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PROOF OF SERVICE

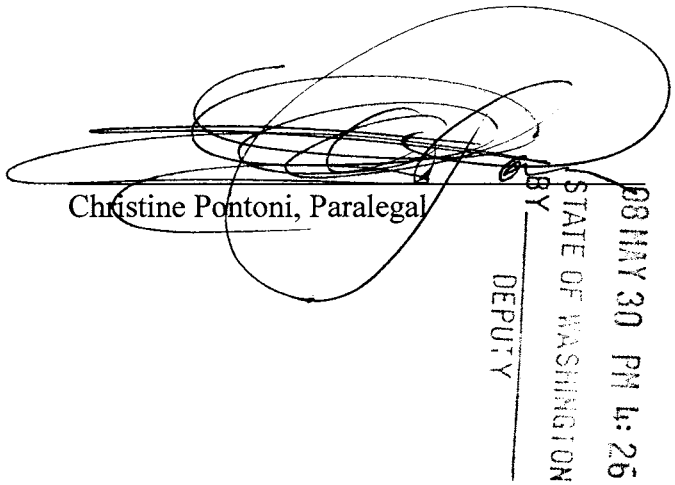
Christine Pontoni certifies as follows:

On May 27, 2008, I served upon the following a true and correct copy of this Brief of Respondent via first class regular U.S. mail:

Anthony P. Meredith, *pro se*
25 Pacifica #5429
Irvine, California 92618
(949) 333-3167

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND DATED this 27th day of May, 2008, in Seattle, Washington.



Christine Pontoni, Paralegal

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Marriage of: ANTHONY PHILIP MEREDITH, Appellant, and JAZMIN E. MURIEL, Respondents.	**NO.** 37098-1-II **AMENDED DECLARATION OF SERVICE**

Christine Pontoni, certifies as follows:

On May 30, 2008, I served upon the following a true and correct copy of the Brief of Respondent by:

☒depositing same with the United States Postal Service, postage paid.
☒e-mail.
☐arranging for legal messenger.
☐facsimile.

Anthony P. Meredith
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Original

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of June, 2008.

Christine Pontoni