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STATE OF WASHINGTON

No. 42617-0-11 
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**In the Court of Appeals for
the State of Washington
Division II**

WILLIAM M. PRICE & SUSAN G. PRICE

Respondents

v.

VERONICA G. PRICE

Appellant

RESPONDENTS' BRIEF

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I. INTRODUCTION

Appellant Veronica Price challenges a temporary restraining order that removed her from vacation property in which she and her nephew by marriage, Respondent William Price, share undivided ownership interests.¹ As family matters inevitably do, the emotions spilled into business matters, resulting in chaos which required court intervention in the form of a short anti-harassment order designed to keep the peace.

The harassment order in question arose during a scheduled use of the property by William Price, his wife, children and young grandchildren. Pursuant to an earlier agreement, the Prices arrived at the house in early August 2011 expecting the house to be vacant. Ms. Price was not at the house when the Prices arrived and remained gone for the first week. Upon her return William and Susan Price assert that Veronica Price repeatedly engaged in a course of conduct that included irrational outbursts, screaming, obscenities, stalking and other conduct which frightened their young grandchildren.

¹ Veronica Price inherited the largest share of the property (5/6) upon the death of her husband, William Price's uncle.

After listening to both sides of the issue, the trial court concluded that Veronica Price had engaged in verbal harassment. He entered an order that prevented Veronica Price from contact with the Prices or the house for a short period thereby allowing the Price family to remain at the house two of the three days left on their scheduled vacation.

Ms. Price challenges both the factual and legal underpinnings of the temporary protection order. These arguments should be rejected. The trial court's decision was both lawful and based on substantial evidence. The statutes in question do not violate Ms. Price's constitutional rights. For these reasons and those discussed below, Respondents request that this court affirm the decision below.

II. RESPONSE TO ASSIGNMENT OF ERRORS

1. The superior court did not err in granting an ex parte order temporarily restraining Appellant from contacting Respondents.
2. The superior court did not err in finding that Appellant violated RCW 10.14.080 and committed unlawful harassment as defined therein.

3. The superior court's denial of Appellant's motion for reconsideration was proper.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does substantial evidence support the trial court's decision to order a short term restraining order?
2. Did the Court's application of the anti-harassment statute, RCW 10.14.080, to the facts of this case violate the Appellant's constitutional rights to free speech or due process?

IV. COUNTER STATEMENT OF THE CASE

A. Factual Statement

This dispute arises as a result of interests in a family vacation home being handed down through the generations. Veronica Price was married to "Jerry" Frederick Price who was Respondent William Price's uncle. The couple owned an undivided five-sixths interest in property located at 1901 N. Boulevard Avenue, Long Beach Washington. CP 6. The remaining one-sixth interest was shared by other family members. Respondent William Price retains

a 1/30th interest in the vacation property. **CP 19.** The vacation home has been in the Price family since sometime in the 1900s.

VRP 18.

In late 2010, Jerry Price died. **VRP 22.** Shortly after his death, Veronica Price unilaterally moved from her home in Seattle into the vacation home apparently with the intent of making it her permanent residence. **VRP 23-24.** It is not clear whether she retained another residence. Ms. Price asserts that she did not. **CP 19.** William Price testified that less than a month before the confrontation, he was asked to come and retrieve property that his uncle had willed to him. **VRP 12.** He was directed to a residence on Palantine Avenue in Seattle where it appeared Ms. Price had personal property. **VRP 12.** He admitted that he did not know whether she had a place to go other than the vacation house at the time of his family's August visit. **VRP 13.**

According to William Price, he and Ms. Price verbally agreed that Ms. Price would not be at the house during the August trip.

VRP 13. Ms. Price disputes that this agreement existed.

However, consistent with that agreement, when William and Susan Price arrived at the beach residence with their children and grandchildren to begin their vacation, Veronica Price was not there. **VRP 13.** Several days subsequent to their arrival, however, Veronica Price appeared at the beach house and began harassing the Respondents and their grandchildren, ages 5, 9, 13, and 5. **CP 1-3, VRP 15-18.**

On August 16 and 17, 2011, Appellant returned to the beach residence and once again accosted and verbally attacked Respondents and their minor grandchildren. **CP 1-3, VRP 14-18.** During this time frame, Veronica Price also engaged in contact that could be considered stalking. She admitted that she spent time in her car, watching the residence, and snuck into the house at night. **CP 21.** William and Susan Price described her as sitting for hours, watching the house. **CP 1-3, VRP 14.**

The Price family describes the incidents which occurred in a much different manner than does Veronica Price. In the petition for the temporary restraining order, Respondent William Price described the Appellant's words and conduct in his affidavit, stating that on

each of the three days the Appellant exhibited “irrational, emotionally charged outbursts” directed at all family members including Respondents’ minor grandchildren. **CP 2-3**. During these outbursts, Appellant “scream[ed] at the top of her lungs, at all family members,” calling them “liars” and “pigs,” used “extensive obscenities,” [sic] and accused the Price family of damaging the property. **CP 3**. In addition, Veronica Price came “physically too close to the family” and was “shaking [her] fist and fingers” as she continued on in an “enraged rant that made no clear sense” to the Price family. **CP 3**.

William Price described the effects of outbursts on the grandchildren as “making all children scared enough to run, hide, and cry. He also stated that Veronica’s tirades made “everybody. . . constantly on edge because she is volatile and unstable.” **CP 3**.

At the hearing on August 19, 2011, the court heard two diametrically different versions of what occurred. William Price testified that Veronica Price would “sit in her car” and eventually come into the house and begin “ranting and raving.” **VRP 14**.

His testimony was supported by that of his wife, Susan Price. Susan Price testified at the hearing that although the adults could deal with Veronica's outbursts, it was "not easy." **VRP 18.** She also testified that the five-year-old, nine-year-old and thirteen-year-old were affected and that they, therefore, sought a restraining order noting that it was for [the grandchildren's] sake more than for [the adults]. **VRP 18.**

In addition, Susan Price testified at the hearing that the first time that Appellant started "the rant, the tirade and the obscenities and the profanities," their grandchildren were present, causing the "oldest ones to [run] upstairs." She testified that they assumed that their youngest grandchild ran upstairs with the others. However, after Veronica Price left the premises, the Prices discovered that the five-year-old was not upstairs with the other minor grandchildren. Extremely upset, the young girl had "[run] out of the house in tears and down the block" **VRP 17.** They found the young child "hiding under some trees in the neighbor's yard crying and [she] didn't want to come back" to the beach residence. **VRP 17-18.** Susan Price testified that on Veronica's subsequent appearances at the house the

three youngest grandchildren were affected. **VRP 18.** The Prices were very concerned about the impacts of Ms. Price's behavior and the effects that her outbursts were having on their grandchildren. **VRP 17-18.** The Prices also indicated that they had taped the events, although apparently this tape was never shown to the judge. **VRP 15.** Instead, the judge asked Mr. Price to summarize what occurred. *Id.* The Prices also stated that they had dealt with Veronica Price for many years. **VRP 17.**

Ms. Price denied that she acted inappropriately and instead accused the Prices of being the harassers. Ms. Price asserted that Susan Price, a grandmother and a woman probably older than Veronica, instead verbally assaulted her and had to be restrained from physically attacking her. **CP 20.** Ms. Price claimed that she had heard from a neighbor that one of the family members had said that they were going to attempt to get sole ownership of the property and if she were to become the sole owner "they would burn the house down with me and my little dog in it." **CP 20.**

Ultimately the judge's decision reflected his belief that the William and Susan Price's version of events was true. Nonetheless,

Veronica Price continues to rely upon her own statements, while ignoring the other evidence, in seeking a reversal of the trial court's ruling.

B. Procedural History

This appeal involves the validity of a temporary order issued in August 2011. The process began on August 17, 2011, when the Prices filed a Petition for Temporary Protection Order alleging that on or about August 6, 2011, August 16, 2011, and August 17, 2011, Veronica Price harassed the Price family at the residence. **CP 3.**

The petition documents that Ms. Price argued with them in a threatening and hostile manner, screamed at them, called them disparaging names, and swore at them in the presence of their four minor grandchildren. **CP 1-3, VPR 13-18.** The court issued a temporary protection order that same day, restraining Veronica from contacting Respondents and their minor grandchildren, from attempting to keep them under surveillance, and from entering or being within 100 yards of the beach residence. **CP 4-5.** The court issued the order, noting it did so "to keep the peace" and specifying that "[a]ny partition[ing] of real property in a permanent basis; rights

to occupy and use property must be decided in a separate, superior court action” and that it made “no finding as to parties’ rights to title/deed.” **CP 5.**

Also on August 17, 2011, Ms. Price was served with the Temporary Order for Protection/Notice of Hearing and Petition for an Order for Protection. **CP 6-7.** On August 19, 2011, she appeared with her attorney of record before the court. **VRP 2.** The Price family appeared pro se. It appears that neither party requested that those providing testimony be put under oath, nor did anyone object to the taking of testimony without oath.² At no time did Ms. Price’s attorney request an opportunity to cross-examine William and Susan Price or suggest that other witnesses were needed to resolve the dispute.

Based upon the petition, testimony, and case record, the court found that the Ms. Price had committed unlawful harassment as defined in **RCW 10.14.080.** It, therefore, issued an order restraining Veronica Price from contacting the Price family and their four minor

² Failure to object to the taking of testimony without an oath being administered constitutes waiver of the error. *State v. Avila*, 78 Wn. App. 731, 738, 899 P. 2d 11 (1995); *State v. Dixon*, 37 Wn. App. 867, 876, 684 P. 2d 725 (1984).

grandchildren, from attempting to keep them under surveillance, and from coming within 100 yards of the beach residence until August 21, 2011 at 1:00 p.m. Attachment A, Order for Protection-Harassment. [Supplemental Clerk's Papers at _____.]

The court also ordered the Price family to vacate the beach residence by noon on August 21, 2011, so that Veronica Price could return to the beach residence one hour after they vacated the residence. Attachment A, Order for Protection Harassment. **RP 29, 30.** At 1:00 p.m. on August 21, 2011, the Order for Protection – Harassment expired. Attachment A, **RP 29-30.** The Prices have not returned to the property since August. They have not sought additional restraining orders.

On August 29, Veronica Price filed a motion to reconsider requesting the court to vacate the Order for Protection-Harassment and grant a new hearing. **CP 18.** In her declaration in support of her motion for reconsideration, Ms. Price began the first of her attacks on the work done by attorneys who represented her. She claimed that her attorney did not have sufficient time to prepare her case, that the attorney failed to meet her commitment to meet with

Ms. Price one hour before the hearing, that she did not have an opportunity to review what the attorney presented and that she failed to ask for a continuance. **CP 19.** Ms. Price then proceeded to dispute the factual basis for the restraining order, alleging that Susan Price was the aggressor, that the Prices had turned her from her home, that they had bullied her and caused damage to the house. **CP 19-23.** Clearly evident in the extensive statement submitted by Ms. Price is her extreme emotional fixation on what she considers to have been wrongs done to her by other family members through the course of her marriage.

Ms. Price attempted to support her position with several declarations from individuals who performed services at the house. **See e.g., 16-17; 25-26.** Some of this testimony relates to other family members not involved in the present dispute. **Compare CP 26 with VRP 27.** Neither individual was present during the entire time that Ms. Price interacted with her own family members.

The court denied the motion for reconsideration on September 16, 2011. **CP 33.** Ms. Price filed a timely Notice of Appeal. On December 11, 2011, Ms. Price's appellate attorney, David

Bustamante, filed Appellant's Opening Brief. Mr. Bustamante subsequently withdrew. Ms. Price then sought and obtained permission to file a "Corrected Brief" which was apparently prepared by a third attorney for Ms. Price's signature. Citations to Appellant's Brief are to this corrected document. At the time of the filing of this brief, counsel for the Respondents received notice that a fourth attorney had entered a notice of appearance in this case.

V. ARGUMENT

A. Argument Summary

Appellant challenges both the factual sufficiency of the temporary restraining order and the court's legal authority to enter it. Most particularly, the appellant claims that the court's order violated one or more of her constitutional rights, including her rights to due process, free speech and enjoyment of property. As an initial matter, it is important to note that many of Appellant's arguments lack legal support. For instance, Appellant's entire argument section IV A, which claims first amendment protection for the conduct described in the petition does not cite to a single case to support the argument.

In Argument section IV B, this omission is partially corrected, Appellant here ignores the leading Washington case on free speech and anti-harassment orders, *Trummel v. Mitchell*, 156 Wn.2d 653, 131 P.3d 305 (2006), discussed in detail in Part IV C (2) below. Correct application of the law contained in that case demonstrates why Ms. Price's constitutional attacks should be summarily rejected.

Of equal importance is the fact that Ms. Price fails to apply the correct standard of review to the facts before the trial court. In essence, she urges the court to disregard William and Susan Price's evidence and to accept only hers. This the court cannot do. Here, the trial court had the opportunity to hear both sides of this dispute and clearly resolved credibility issues against Ms. Price. Ample evidence supports the trial court's conclusion that a temporary restraining order was appropriate for the short period of time that he ordered. The order fashioned by the court did not deprive Ms. Price of her rights to due process and/or free speech and is not unconstitutional as applied to the facts of this case. Finally, there is no legal authority for an award of attorney's fees in this case, even if Ms. Price should prevail.

B. Legal Standards

Appellant challenges an order entered pursuant to the state's anti-harassment statute, *RCW 10.14.080*. Under *RCW 10.14.080(1)*, a court may issue an ex parte temporary anti-harassment protection order upon filing an affidavit that "shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary anti-harassment protection order is not granted."

RCW 10.14.020(2) defines unlawful harassment:

[A] knowing and willful 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. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would *cause a reasonable parent to fear for the well-being of their child*.

RCW 10.114.020(2) [Emphasis added]. Course of conduct is defined in *RCW 10.14.020(1)* as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." Course of conduct" includes, in addition to

any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

To grant a protection order, the court must find that harassment has been shown by a preponderance of the evidence. ***RCW 10.14.080(3)***. A court cannot "prohibit the respondent from exercising constitutionally protected free speech" in granting a protection order. ***RCW 10.14.080(7)***. Under ***RCW 10.14.080(6)***, a court "shall have broad discretion" in granting relief, including restraining the respondent from contacting the petitioner, attempting to keep the petitioner under surveillance, and coming within a stated distance from the petitioner's workplace and residence.

C. Appellant's Constitutional Rights Were Not Violated by the Anti-harassment Order.

1. Statutes are Presumed Constitutional.

A statute is presumed to be constitutional unless it appears unconstitutional beyond a reasonable doubt. ***Haley v. Medical Disciplinary Bd.***, 117 Wash. 2d 720, 739, 818 P.2d 1062 (1991);

State v. Aver, 109 Wash. 2d 303, 306-07, 745 P.2d 479 (1987).

Whenever possible, it is an appellate court's duty to construe a statute so as to uphold its constitutionality. *World Wide Video, Inc. v. Tukwila*, 117 Wn.2d 382, 392, 816 P.2d 18 (1991) (quoting *State v. Browet, Inc.*, 103 Wn.2d 215, 219, 691 P.2d 571 (1984) *cert. denied*, 112 S. Ct. 1672 (1992)).

2. Substantial Evidence Exists Upon Which the Trial Court Could Constitutionally Base Its Finding that the Short Term Anti-harassment Order Was Warranted.

Substantial evidence exists when the record contains a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. When a court has weighed the evidence, an appellate court determines whether the court's findings are supported by substantial evidence. *Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 242-43, 23 P.3d 520 (2001) (citing *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)).

"The party challenging a finding of fact bears the burden of showing that it is not supported by the record." *Id.* In matters of credibility, the appellate court defers to the trial court. *Id.* at 244.

Contrary to the rules cited above, Appellant's arguments in support of her constitutional challenges rest upon the facts as she viewed them, not upon facts the court was entitled to find based on the record before it. Ms. Price argues, for instance, that "Veronica had a legitimate purpose for her behavior, but the Court nonetheless concluded that she engaged in unlawful harassment based on her words alone." **Corrected Brief at 17.**

Ms. Price's argument ignores contrary evidence in the record. That evidence in the record that the trial court was entitled to believe established that Ms. Price 1) had agreed to the visitation earlier in the year; 2) had agreed that she would not be present during the visit; 3) returned without notice to the home in violation of her agreement with the Price family; 4) began "screaming at the top of her lungs at all family members" including the grandchildren; 5) referred to the family as "liars, pigs" and used extensive obscenities; 6) engaged in conduct that was sufficiently frightening so that the children became upset, ran, hid and did not want to return to the house, 7) was physically close to the family while engaged in the harassment, shook [her] fist and finger and continued in an enraged rant that

made no sense; and 8) engaged in stalking behavior over the course of several days. **CP 3.**

Appellant's arguments in support of her constitutional challenges minimize this evidence and claims that her actions were done in defense of her property. These arguments should be rejected. There was no evidence that the Price family present that week had damaged the property during the visit. There were and are, available legal remedies Ms. Price could pursue without engaging in harassment conduct.

Ms. Price argues that the "context" of her "speech" was an "argument over the manner in which William and Susan were treating the property and the damages they had inflicted. . . ."

Corrected Brief at 9. With due respect to Ms. Price, that version of events is simply her interpretation, one the trial court was entitled to reject.³ Moreover, her arguments ignore the scope of review this court employs in deciding this appeal. Here the issue is not who to

³ Ms. Price appears to have significant control issues. At the hearing, though represented by counsel, she insisted on interrupting, speaking for herself and getting the last word in even after the trial judge informed her that she was to work through her attorney. **See VRP 9, 10, 11, 13, 25, 26,27.** At the close of the hearing, the judge instructed Ms. Price to remain with her attorney until the language of the order was worked out. **VRP 32.**

believe, but rather whether substantial evidence exists to support the trial court's conclusion that harassment existed that required a temporary restraining order.

In a challenge to sufficiency of the evidence, the appellate court views "inferences in the light most favorable to the party that prevailed in the highest forum exercising fact finding authority. *Woods v. Kittitas County*, 162 Wn.2d 597, 617, 174 P.3d 25 (2007). This court does not reweigh the evidence nor make credibility determinations. *Standing Rock Homeowners Ass'n*, 106 Wn. App. at 244.

A fair reading of the evidence before the trial court demonstrates that the court Ms. Price did not act with a legitimate purpose, that her conduct as well as her speech was harassing both subjectively and objectively.

This conclusion is consistent with our Supreme court's interpretation of this statute. In *Trummel v. Mitchell*, 156 Wn.2d 653, 131 P.3d 305 (2006), the Supreme court rejected a similar constitutional claim based on its finding that substantial evidence supported the court's finding of unlawful harassment within the

meaning of *RCW 10.14.020*. Trummel resided in a low income housing complex where he placed unwanted newsletters on the apartment doors of fellow residents and accosted fellow residents as well as Mitchell, the administrator of the complex. Mitchell and residents reported incidents of Trummel yelling and screaming profanities and using disparaging terms such as “diabolical woman,” “disgusting runt,” and “racist.” *Id.* at 657. They also complained of Trummel disrupting resident meetings by yelling, videotaping, and instigating fights. *Id.* Additionally, they claimed that he spied on residents at night. *Id.* As a result, some residents reported no longer feeling comfortable entering common areas due to fear of encountering Trummel. *Id.*

It was Trummel, however, who petitioned the superior court for a temporary order against Mitchell. That order was granted. Trummel sought a permanent restraining order, and Mitchell cross-petitioned for an anti-harassment order against Trummel. The court denied Trummel’s petition for a permanent order and retained jurisdiction over Mitchell’s cross-petition.

In a subsequent hearing, the superior court relied on the testimony, affidavits, and materials from the prior hearing to find that Trummel committed unlawful harassment. The court noted in its oral ruling that it relied on Trummel's yelling at staff and residents, spying on residents, frightening them, and making them afraid to attend meetings and travel in common areas. *Id.* at 658. The newsletters comprised a relatively small part of the record considered by the trial court. *Id.* Inter alia, Trummel was restrained from entering the housing complex. *Id.* The court noted that its order effectively evicted Trummel from the housing complex, which it found necessary because Trummel's conduct made living at the complex unbearable for many of its other residents. *Id.* at 658-59.

On appeal, Trummel argued that his actions, including issuing the newsletters, were constitutionally protected activities, and, thus there was insufficient evidence to support the court's finding of harassment. *Id.* at 665. Mitchell countered that the court relied on Trummel's predatory conduct directed toward him and other residents. *Id.* at 666.

Our state Supreme Court found that Trummel’s conduct had little or no free speech protection, noting that he failed to show that, his “yelling and screaming at staff and residents, disrupting meetings, spying on residents, and threatening residents with criminal consequences if they failed to meet with him” was afforded any constitutional protection. Instead the court concluded such conduct was “predatory.” *Id.* at 667. It stated that the lower court focused properly on Trummel’s conduct and not his message, “consistent with the constitution, to properly issue an anti-harassment order.” *Id.* at 668. The court held that substantial evidence existed in the record documenting Trummel’s harassing conduct, which included his yelling and screaming, spying, threatening residents, and disrupting meetings.

The *Trummel* court noted that “courts have equitable powers under the Washington Constitution and the anti-harassment statute specifically grants courts broad discretion to fashion relief,” and that a “claim under chapter 10.14 RCW is a claim in equity.” *Id.* at 663 (citing *Hough v. Stockbridge*, 150 Wn.2d 234, 76 P.3d 216 (2003)). It, moreover, noted that the facts of the relationship between the

parties should guide the court's discretion in fashioning relief. *Id.* at 668 (citing *Hough*, 150 Wn.2d at 236.)). In turn, the court held that in protecting the tenants within the nexus of the landlord/tenant relationship, i.e. protecting them in their residences from further harassment by Trummel, the trial court acted within its discretion. *Id.*

Similarly, in this case, the trial court considered the relationship between the parties, the context of the dispute and the impact that Veronica's conduct had on those present, including the children. The trial judge then fashioned an appropriate, short term solution. Because under *Trummel, supra*, Veronica Price's speech was not protected in this context and because the order addressed both her speech and her conduct, the constitutional challenge based on free speech violation should be rejected.

Appellant also argues that the temporary order deprived her of due process under U.S. Constitution, Amendment XIV, §1 and Washington Const., Art. I, §3. Appellant acknowledges that a court may issue a temporary restraining order when there is a well-grounded fear of immediate invasion of a legal or equitable right.

Appellant's Corrected Brief at 18. She asserts, however, that no such factual basis exists. Again, Ms. Price's argument views the evidence in the light most favorable to her position. This is not the standard this court applies on review.

The evidence before the court established that the Prices had a legal right to peaceful possession of the vacation house and that Ms. Price was intentionally interfering with that right by engaging in conduct which caused substantial emotional harm to young children. Ms. Price argues, nonetheless that the "claim that a sixty-two year old woman posed any risk of great or irreparable harm is laughable."

Corrected Brief at 19.

With due respect to Ms. Price, this argument ignores the impact of her emotional explosions on the young children present and the very real fear that the children would experience as they tried to sleep realizing that the person responsible for the vitriolic attacks was lurking outside watching them. The evidence established that the youngest child was so traumatized that she ran to the neighbor's property, was hiding under some trees and did not want to come back. **VRP 18.** While Ms. Price may view these

events as trivial, the parents, and grandparents did not. They had a right to take action to protect their offspring and to protect their right to enjoy the property for the limited number of days that they had previously been promised by Ms. Price. Under such circumstances no due process violation occurred.

Here, as in *Trummel*, the trial court here fashioned a very narrow remedy which resulted in Ms. Price being excluded from the property which she co-owned with the Price family for a matter of two days so that they could complete their promised vacation without being harassed. Following that brief period, Ms. Price was allowed to return to the house and no further action was taken against her. This court should reject both the factual and constitutional attacks on the trial court's order.

3. RCW 10.14.020 Is Neither Constitutionally Overbroad nor Vague.

In analyzing the Appellant's claim that the statute in question is unconstitutional as applied in this case, one starts with the premise that "harassment is not protected speech" *Emmerson v. Weilep*, 126 Wn. App. 930, 939, 110 P.3d 214 (2005) (citing *State v. Alexander*,

76 Wn. App. 830, 837-38, 888 P.2d 175 (1995). “The gravamen of harassment is the thrusting of an unwanted communication upon one who is unable to ignore it.” *Id.*

A law is overbroad if it “sweeps within its prohibitions” a substantial amount of constitutionally protected conduct.” *City of Tacoma v. Luvene*, 118 Wn.2d 832, 839, 827 P. 2d 1374 (1992). A statute or ordinance will be overturned only if the court is unable to place a sufficiently limiting construction on a standardless sweep of legislation. *State v. Immelt*, 173 Wn. 2d 1, 5, 267 P. 3d 305(2011) (citing *City of Tacoma v. Luvene, supra.*)

The vagueness doctrine under the Fourteenth amendment of the United States Constitution serves two purposes: 1) to provide citizens with fair warning of what conduct they must avoid; and 2) to protect them from arbitrary, ad hoc, or discriminatory law enforcement. *State v. Halstein*, 122 Wn. 2d 109, 117, 857 P. 2d 270 (1993). A statute that regulates conduct, as opposed to speech, will not be considered unconstitutionally broad unless its impact on First Amendment activities is “both real and substantial in relation to the [statute’s] plainly legitimate sweep.” *State v. Lee*, 82 Wn. App. 298,

307, 917 P. 2d 159 (1996). (quoting *O'Day v. King County*, 109 Wn. 2d 796, 804, 749 P. 2d 142 (1988).)

RCW 10.14.020 accommodates vagueness issues by testing the conduct at issue by both subjective and objective standards in determining whether it is “such that would cause a reasonable person to suffer emotional distress and, shall actually cause substantial emotional distress to the petitioner.” *Burchell v. Thibault*, 74 Wn. App. 517, 521, 874 P. 2d 196 (1994).

Ms. Price’s conduct meets this requirement. Taken in the light most favorable to the Prices, Veronica appeared at the house after promising that she would stay away, and engaged in several incidents where she ranted and raved and used obscenities. Both verbally and through her conduct, Ms. Price acted in an irrational, intimidating and harassing manner which caused actual fear in the children, harassment of the adults and fear in the adults for the children’s safety and well-being.

Ms. Price nonetheless argues that the court was improperly swayed by this impact on the children. She asserts also that “Veronica’s conduct, in attempting to protect her home from

relatives who were damaging it, would not cause a reasonable parent to fear for the well-being of their child.” **Corrected Brief at 16.**

These arguments should be rejected. First, the arguments rest upon Ms. Price’s view of the facts of the case, not the entire record before the court. Second, with due respect for Ms. Price, reasonable parents are in fact concerned when children or grandchildren exhibit obvious symptoms of trauma as did the five-year-old and her siblings.

Parents and grandparents alike would act to prevent the children from being further exposed to such intimidating conduct.

Third, Ms. Price’s self-serving statement that she was attempting to protect “her home” ignores the fact that the Price family had an equal right to be at the house. Her unilateral decision to take vacation property that only partially belonged to her and transform it into her “home” cannot justify her conduct in attacking another property owner’s legitimate use of the premises and harassing him and his visitors.

Finally, the trial court fashioned a very narrow remedy, which minimally impaired Ms. Price’s right to reside at the house. The restraining order was only in effect for 4 days. Although the Price

family had originally scheduled a longer vacation, the trial court decided that equity required that each party give up something. This is consistent with the trial court's equitable powers in such situations. "Sitting in equity, a court 'may fashion broad remedies to do substantial justice to the parties and put an end to litigation.'" *Hough v. Stockbridge*, 150 Wn.2d 234, 236, 76 P.3d 192 (2002) (holding that district courts, sitting in equity, have power to issue mutual protection orders sua sponte under Wash. art. IV, § 6 and Wash. Rev. Code § 10.14.080(6), under which broad discretion is specifically granted to fashion relief). In sum, the statute as applied to these facts is neither vague nor overbroad. Appellant's argument that the anti-harassment statute unconstitutional as applied to the facts of this case should be denied.

D. Appellant is Not Entitled to Attorney's Fees.

Appellant cites *RAP 14.2* as authority for granting attorney's fees if she prevails in this matter. *RAP 14.2* applies only to costs, not to attorney's fees. The correct rule is *RAP 18.1*. That rule only allows an award of attorney's fees where an independent law grants the right to attorney's fees. This is a

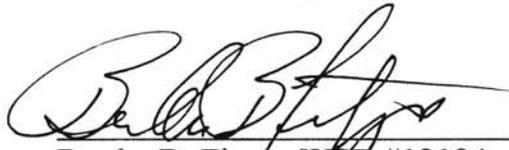
straightforward appeal brought by the appellant. Appellant does not cite nor is counsel aware of any statute or rule which would provide a legal basis for recovery of attorney's fees. The request for fees must be denied even if the trial court's order is reversed.

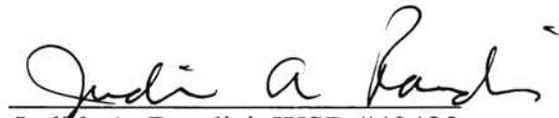
VI. CONCLUSION

Ms. Price, individually and through her attorneys, has raised a variety of factual and constitutional challenges to the trial court's temporary restraining order. The validity of those challenges depends on this court accepting the version of events proffered by Ms. Price. Because the trial court heard both sides of this dispute, properly considered the equities and fashioned a very narrow, temporary restraining order, which was consistent with the rights of all parties, his ruling should be affirmed.

Dated this 17th day of May 2012.

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

NO. 42617-0-II

William and Susan Price,
Respondents,

vs.

Veronica Price,

Appellant.

DECLARATION OF SERVICE OF
RESPONDENTS' BRIEF AND OTHER
RELATED PAPERS

DECLARATION OF BERTHA B. FITZER

BERTHA B. FITZER declares under penalty of perjury pursuant to the laws of the State of Washington that the following is true and correct:

I am counsel for the Respondents in the above-entitled matter. Due to an issue with my computer, I actually served the Respondent's Brief today, rather than on May 17, 2012. Along with that Brief, I electronically served copies of the Motion to Extend Time for Filing of Respondents' Brief and the Supplemental Designation of Clerk's Papers by email to

Attorney for Appellant

Zenon Olbertz, 6080
1008 South Yakima Ave. Suite 302
Tacoma, Washington 98405

1 [X] Electronically to Paralegal Lee Ann, LeeAnn@hesterlawgroup.com who has been my
2 contact with Mr. Olbertz for getting materials to him on this matter.

3 I understand from the Pacific County Clerk's Office that my supplemental designation
4 contained the wrong docket number for the Temporary Restraining Order of August 19, 2011. I
5 have served an amended Designation of Supplemental Clerk's Papers on Mr. Zenon Olbertz
6 electronically through the above e-mail as of this day.

7 Dated this 18th day of May, 2012

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10 Bertha B. Fitzer
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FILED

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VIRGINIA LEACH CLERK
PACIFIC CO. WA

BY _____

**SUPERIOR Court of Washington
For PACIFIC COUNTY**

WILLIAM M PRICE III
Petitioner and SUSAN W PRICE (DOB)
vs.

VERONICA G PRICE
Respondent (DOB)

No. 11-2-00252-9

**Order for Protection -
Harassment (ORAH)**

Court
Address 300 MEMORIAL DRIVE
SOUTH BEND, WA 98586

Telephone Number: () _____

(Clerk's action required)

Warning to the Respondent: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 10.14 RCW and will subject a violator to arrest. Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under chapter 7.21 RCW.

1. Full Faith and Credit: The court has jurisdiction over the parties, the minors and the subject matter. This order is issued in accordance with the Full Faith and Credit provisions of VAWA. 18 U.S.C. § 2265.
2. Notice of ~~this~~ hearing was served on the respondent by personal service service by publication pursuant to court order other _____.
3. Minors addressed in this order:

Name (First, Middle Initial, Last)	Age	Race	Sex
Tyler, Shaker			
Billie Paul			
Clayton Paul			
McKenna Paul			

mailed to: PCSOV

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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, and **It is therefore ordered that:**

<input type="checkbox"/>	Respondent is restrained from making any attempts to keep under surveillance petitioner and any minors named in the table above,
<input type="checkbox"/>	Respondent is restrained from making any attempts to contact petitioner and any minors named in the table above.
<input type="checkbox"/>	Respondent is restrained from entering or being within _____ (distance) of petitioner's <input type="checkbox"/> residence <input type="checkbox"/> place of employment <input type="checkbox"/> other: <input type="checkbox"/> The address is confidential <input type="checkbox"/> Petitioner waives confidentiality of the address which is:
<input type="checkbox"/>	Judgment is granted against respondent for fees and costs in the amount of \$ _____.
<input checked="" type="checkbox"/>	Other: <u>Petitioners shall vacate 1901 N Boulevard, Long Beach by noon Aug 21, 2011. Respondent shall be excluded from the residence and maintain distance of 100 yds until Aug 21, 2011 at 1 PM.</u>

It is further ordered that the clerk of court shall forward a copy of this order on or before the next judicial day to:

_____ County Sheriff's Office
 _____ Police Department,
where petitioner lives and shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

The clerk of court petitioner shall forward a copy of this order on or before the next judicial day to:

_____ County Sheriff's Office,
 _____ Police Department, **where respondent lives** which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.

Or Petitioner has made private arrangements for service of this order.
 Or Respondent appeared; further service is not required.
 Or Respondent did not appear. The restraint provisions in this order are the same as those in the temporary order. The court is satisfied that the respondent was personally served with the temporary order. Further service is not required.

This Antiharassment protection order expires on 1:00pm ~~Aug 21~~ @ 8/21/2011.

If the duration of this order exceeds one year, the court finds that respondent is likely to resume unlawful harassment of the petitioner when the order expires.

Dated 8/19/2011 at 9:30 a.m./p.m.

[Signature]
Judge/Court Commissioner

I acknowledge receipt of a copy of this Order:

[Signature] 8/19/2011
 Petitioner Date

I acknowledge receipt of a copy of this Order:

[Signature] 8-19-11
 Respondent Date

Bonnie Marino-Blair WSBA #306
for Veronica Price