

No. 46004-1-II

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

JONATHAN MICHAEL BULLIS,
Appellant,

vs.

ALLYAH JASEM SALIM AYESH,
Respondent.

RESPONSIVE BRIEF

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I. INTRODUCTION

COMES NOW the Respondent, Allyah J. S. Ayesh, by and through her attorney of record, J. Anne Redford-Hall of the Redford Law Firm, and requests that this Court AFFIRM the Superior Court of Thurston County's entry of a Domestic Violence Protection Order (DVPO), and all other subsequent rulings in the Domestic Violence Protection Order Action (DVPA).

A. Statement of the Case

Allyah Ayesh petitioned and received a Temporary Order for Protection on December 11, 2013 against Jonathan Bullis. The court conducted an Evidentiary Hearing on January 10, 2014, but had to continue the matter due to time constraints, until February 28, 2014. RP 1, 45.

Ayesh testified, as did her sister in her support. Bullis testified, as did his mother in his support.

Mr. Bullis spends a significant amount of time in his opening brief alleging many things which are not and were not a part of the record on

the dates of the Evidentiary Hearings and are not part of the Verbatim Report of Proceedings.

At trial, two pieces of evidence were entered by Ayesh; none by Bullis. RP 16, 21. Mr. Bullis provides as part of the record below, Declarations which were neither offered nor entered into evidence by Bullis.

The court found that Bullis had committed domestic violence against Ayesh and entered a one-year order on February 28, 2014. RP 122. The trial court did not err in issuing a protection order against Appellant Bullis based upon the testimony and evidence presented at trial. There was sufficient evidence to support the trial court's findings and conclusions that Bullis engaged in domestic violence against Allyah Ayesh ("Ayesh").

II. ANALYSIS

Bullis contends that the trial court erred in issuing a protection order against him, due to the court's abuse of discretion.

Bullis first cites that the trial court found that on December 1, 2013, a struggle took place between Bullis and Ayeash that involved a firearm, quoting the court:

With respect to the incident on December 1st, given both of the parties' testimony, we have slightly different tellings and, frankly, slightly different tellings in your documents and in your testimony, both of you. It is natural and typical in life, so I am not looking for the exact same tellings.

What is clear and what has been proven by preponderance of the evidence is that there was a struggle. What is clear from the admissions of Mr. Bullis is that it involved a firearm, again something that I must be aware of in terms of increasing danger during an argument. Firearms should not be part of an argument. And it is clear that you broke a Christmas tree. All of those things have been established by a preponderance of the evidence. RP 120.

With respect to the 150 or so text messages sent by Bullis to Ayesh the trial court found that the messages were frightening, disturbing, suicidal, excessive, and battering; continuing after Ayesh requested Bullis to stop. RP 120. The court continued to say that the totality of the circumstances when taken together rise to the level of domestic violence.

I understand that I found that she can't establish the phone behavior was you. However, that explains why she came in. It kept going. It is escalating. She is getting more and more scared. There are text message and then her phone gets erased completely around midnight. That explains why she came in on the date that she came in. RP 121.

What is relevant to these proceedings and, frankly, most compelling is your own testimony where you admit that these things happened, in your own words. You were in a very bad mental place... RP 121.

But the actions that you took were absolutely frightening, threatening, intimidating, and though there is no overt threat to kill her, no intent on your part – and I believe you when you testify that you had no intent to cause her to fear for her life. You did cause her to fear for her life with your actions by bringing a firearm into the argument, by breaking the Christmas tree, by bombarding her with a barrage of text messages that vacillate from romantic to frightening to suicidal. That is domestic violence. RP 122.

Bullis cites the above, but then provides further explanation for his actions, claiming that he had a psychiatric evaluation that found him not to be a danger to himself or to others, but without evidence of such at trial. In addition, he fails to comment on his admissions at trial, which conflict with his insistence that the court abused its discretion. Those admissions clearly were the basis of the issuance of the Order for Protection at issue.

Bullis, thereafter, misquotes and misinterprets RCW 26.50.010(1) when he states “While Bullis’s numerous texts may constitute harassment, they are not in and of themselves evidence that Bullis placed Ayesh in fear of imminent physical harm, as is required by RCW 26.50.010(1)”

Appellant’s Amended Opening Brief, 21. The statute actually states:

“Domestic violence” means: (1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members....

Bullis overlooks and omits the term “the infliction of fear of imminent physical harm” replacing it with his interpretation of the “fear of imminent physical harm”. Bullis’ application of the wrong standard continues, in error to its wrongful conclusion.

A. Standard of Review

This court reviews the trial court's decision to grant or deny a domestic violence protection order for an abuse of discretion. *See* RCW

26.50.060; Hecker v. Cortinas, 110 Wn. App. 865, 869, 43 P.3d 50 (2002).

A trial court abuses its discretion when its decision is based on untenable grounds or reasons. In re Marriage of Cota, ___ Wn. App. ___, 312 P.3d 695, 699 (2013).

The court reviews a trial court's findings of fact for substantial evidence. In re Marriage of Fahey, 164 Wn. App. 42, 55, 262 P.3d 128 (2011), *review denied*, 173 Wn.2d 1019 (2012). Substantial evidence exists if the record contains sufficient evidence to persuade a fair-minded, rational person of the finding's truth. *Fahey*, 164 Wn. App. at 55. The party challenging a finding bears the burden of showing that it is not supported by the record. Standing Rock Homeowners Ass'n v. Misich, 106 Wn. App. 231, 243, 23 P.3d 520 (2001). Unchallenged findings are verities on appeal, and challenged findings are also binding on appeal if they are supported by substantial evidence. *Standing Rock*, 106 Wn. App. at 238, 243.

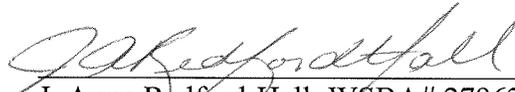
Evidence may be substantial even if there are other reasonable interpretations of the evidence. Sherrell v. Selfors, 73 Wn. App. 596, 600-01, 871 P.2d 168 (1994). This court must defer to the trial court's determinations on the persuasiveness of the evidence, witness credibility, and conflicting testimony. Snyder v. Haynes, 152 Wn. App. 774, 779, 217

P.3d 787 (2009). This court does not disturb the trial court's credibility determinations on appeal. *In re the Marriage of Eklund*, 177 P.3d 189, 143 Wn. App. 207, 212.

III. CONCLUSION

For the foregoing reasons, the decision of the Superior Court of Thurston County in issuing Ms. Ayesh a Domestic Violence Protection Order should be affirmed.

Respectfully submitted this 4th day of November, 2014.



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Attorney for Allyah Ayesh, Respondent

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November 05, 2014 - 12:15 PM

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