

FILED
COURT OF APPEALS
DIVISION II

2016 NOV 15 AM 10:45

NO. 49471-0-II

STATE OF WASHINGTON

BY AP
DEPUTY

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

BRUCE ALAN FISCHER,

Appellant,

v.

KAREN LYNN FISCHER,

Appellee.

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR THURSTON COUNTY
JUDGE CHRISTINE SCHALLER
COMMISSIONER INDU THOMAS

REPLY BRIEF OF APPELLANT BRUCE A. FISCHER

BRUCE A. FISCHER
APPELLANT, PRO SE
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SUMNER, WA 98390

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I. RESPONSIVE ARGUMENT

Appellant asks that the appellee's email dated 11/09/16 be stricken from the appeal court record and not considered by the court in their determinations and decision making. A Motion to Strike accompanies this Appellant's Reply Brief. The appellant respectfully asks that this court disregard the appellee's email that was accepted as a formal reply brief as it does not meet the published requirements of the appellate court.

The appellee failed to follow the court's brief format instructions under RAP 10.3(a)(1)-(8). In addition, Appellee made no attempt to address any of the assignments of error or points of law raised in the opening brief. No legitimate objections or arguments were made to address any of the errors raised in the opening brief. RAP RULE 10.3, CONTENT OF BRIEF, (c) Reply Brief. A reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) *and be limited to a response to the issues in the brief to which the reply brief is directed.* (emphasis added)

Appellee made no attempt to call up any of the record or cite any points of law for the appellate court to review or to support any legitimate

argument under RAP Title 9, Record on Review. RULE 9.1, COMPOSITION OF RECORD ON REVIEW; (a) Generally. The "record on review" may consist of (1) a "report of proceedings", (2) "clerk's papers", (3) exhibits, and (4) a certified record of administrative adjudicative proceedings.

Under RULE 10.7, SUBMISSION OF IMPROPER BRIEF, If a party submits a brief that fails to comply with the requirements of Title 10, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) *order the brief stricken from the files* with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules. (emphasis added). A motion to strike reply brief has been filed in conjunction with this Reply Brief of Appellant.

None of the appellee's recent allegations are supported by the record and are not properly brought before the appellate court. The appellee's email dated 11/09/16 is nothing more than unfounded slander meant solely to prejudice the court against the appellant. The appellee's

Reply Brief email also did not meet the court's service requirements under CR 5 - SERVICE AND FILING OF PLEADINGS. A party filing a brief must serve it in accordance with rules 10.2(h) and 18.5(a). An email filing is unacceptable under CR-5. The Division II court clerk's office confirmed the email filing issue in a message to the appellant dated 09/19/16 and 11/14/16;

The court does not accept the filing of briefs through this email. You must send your brief in by USPS or you can electronically file it through the JIS portal. This email, along with the attached brief and service will be deleted. The court will serve the reply brief on the respondent once it is filed correctly with this court. If you have any questions, please contact the court. Thank you.

The appellant does not know where the appellee lives and has no interest in ever having contact with the appellee. There is also not a need for any contact since the children are now grown adults and financial support payments have ended. Like the Freeman case (also originating in Thurston County) cited in the opening brief, No. 82283-2 WA. State Supreme Court Opinion, No. 26148-4-III, COA Published Opinion, the present day circumstances and facts just do not support current day claims of fear and the need for a protection order in this case. With no contact in ten years plus all of the other Carfagno factors, used in the Freeman Supreme Court ruling, are considered (*Carfagno v. Carfagno*, 288

N.J. Super. 424, 672 A.2d 751 (1995)), the appellee's fears are not reasonable or justifiable. The appellant respectfully asks that the panel focus on the facts of record and present day circumstances to apply the law based on the record that is properly provided to the court.

II. CONCLUSION

The appellant reaffirms all arguments and points of law raised in the opening brief. The appellee made no attempt to properly address or refute any of them. There is adequate legal authority under current state law cited in the opening brief to justify making a decision to deny renewal of this order that would restore the appellant's constitutionally protected rights. The ends of justice can be achieved here without impacting the legal framework already set forth by the state legislature and be in harmony with the U.S. and Washington State Constitution(s). The appellee's anonymity can also be maintained with the denial of renewal. The appellee is in no danger of contact let alone harassment, physical harm or violence from the appellant. The parties have no further need of contact and the panel can rest assured that the appellant has no interest in making any type of contact with the appellee. Circumstances have

drastically changed over the last ten years that have passed peacefully without incident.

III. RESTATEMENT OF RELIEF SOUGHT

The appellant respectfully requests that the appellate court provide relief by vacating the Thurston County order of protection, overturn the renewal and deny the conversion to a permanent order. Appellant asks this court to reverse the renewal of the order of protection and remand back to the lower court for the entry of an order consistent with this ruling. No fees or cost reimbursements are being sought.

RESPECTFULLY SUBMITTED on this 15th day of November, 2016.



Signature

BRUCE A. FISCHER
APPELLANT, PRO SE
8203 173RD AVE E
SUMNER, WA 98390

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OF THE STATE OF WASHINGTON

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KAREN LYNN FISCHER,

Appellee,

v.

BRUCE ALAN FISCHER,

Appellant

STATE OF WASHINGTON
CERTIFICATE OF
SERVICE AP
DEPUTY

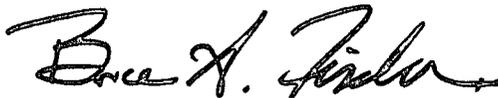
I certify that I caused a true and correct copy of the foregoing **APPELLANT'S
REPLY BRIEF** to be filed and served on the following in the manner indicated
below:

- Court of Appeals Div. II, 950 Broadway, Ste 300, Tacoma, WA 98402. Filed in person.
- I did NOT SERVE Document on PRO SE Petitioner/Appellee Karen L. Fischer to avoid a violation of existing protection order.*

Div II COA Administration to provide Appellee a copy per court instructions from case manager and clerk of the court on 8/26/16.

* Respondent is RESTRAINED from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any other means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by Respondent's lawyer(s) with petitioner. (emphasis added) – ORDER FOR PROTECTION (ORPRT) dated 8/18/2006 pg 2 of 4– RCW 26.50.060

DATED this 15th day of November, 2016, in Sumner, WA.



Signature

BRUCE A. FISCHER
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