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No. 50350-6

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ERIN FREEDOM HAWTIN,
Respondent/Appellant,

v.

JENNIFER LYNN HART,
Plaintiff/Appellee

REPLY BRIEF OF APPELLANT

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Constitutional

First Amendment:

- Wash. Const. Art. I, § 4 *in passim*
- USCS Const. Amend. 1 *in passim*

Second Amendment:

- Wash. Const. Art. I, § 24 *in passim*
- USCS Const. Amend. 2 *in passim*

Due Process Clause:

- Wash. Const. Art. I, § 3 *in passim*
- USCS Const. Amend. 14, § 1 *in passim*

Equal Protection Clause:

- Wash. Const. Art. I, § 12 *in passim*
- USCS Const. Amend. 14, § 1 *in passim*

1. REPLY ARGUMENT

1.1. Trial Court Erred in “Rejecting” the Affidavit of Prejudice.

Ms. Hart argues that a party’s motion is not a prerequisite to a discretionary ruling, Mr. Hawtin orally moved Judge Hirsch prior to filing the affidavit of prejudice, and Judge Hirsch’s *sua sponte* April 6th, 2017, Order was discretionary as defined by the former statute.

1.1.1. April 6th Order was Void at Inception on Constitutional Grounds and Cannot Be a Discretionary Ruling.

Judge Hirsch’s April 6th Order was void on due process and constitutional grounds. See Section 1.4-1.7; Opening Brief. No order can be entered without due process.

1.1.2. The Plain Language of Former RCW §§ 4.12.040, 050 Requires a Motion from a Party.

The Court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning. State v. J.M., 144 Wn.2d 472, 480, 28 P.3d 720 (2001). “The court is required . . . to give effect to every word in a statute.” Hanson v. Tacoma, 105 Wn.2d 864, 871, 719 P.2d 104 (1986). “No word is deemed inoperative or superfluous. . . .” Dennis v. Dep't of Labor & Indus., 109 Wn.2d 467, 479, 745 P.2d 1295, 1302 (1987). Per the plain language of former RCW 4.12.050, “the court's discretion is invoked *only where*, in the exercise of that discretion, *the*

court may either grant or deny a party's request.” See Rhinehart v. Seattle Times Co., 51 Wash. App. 561, 578, 754 P.2d 1243, 1253 (1988) (emphasis added).

Here, the former statute is unambiguous and clear. Its words requiring a motion by a party must be given effect. Rhinehart more than certainly took into account In re Estate of Shaughnessy (an earlier decision) when making its holding; In re Estate of Shaughnessy decided whether a particular hearing in a probate was a proceeding under the former statute or not. The case has no impact on the issue correctly decided in Rhinehart, and at issue here.

Ms. Hart cites RP April 6, 2017, at 6, for the proposition that Mr. Hawtin orally moved Judge Hirsch. This argument misrepresents the record. Mr. Hawtin did not file nor make any motion on April 6, 2017; he preserved the record as to constitutional and due process violations occurring *sua sponte*. (RP April 5, 2017, at 6). Judge Hirsch by her own words believed she had no discretion in the matter and acted *sua sponte* before even hearing from any party. (RP April 6, 2017, at 4) (Judge Hirsch stating “I’m going to issue a stay of the return of firearms. . . .” before hearing from any party).

Finally, neither State v. Lile, 188 Wn.2d 766, 775, 398 P.3d 1052, 1057 (2017), nor the cases it cites, regarding motions and orders for

continuances, are in contradiction with Rhinehart; the cases decide different issues regarding the same former statute.

1.2. April 6, 2017, Order was Prejudicial, Not Supported by Law, the Issues are Not Moot and Involve Continuing Substantial Public Interest.

Ms. Hart argues that Judge Hirsch's April 6, 2017, order is moot because (1) this Court cannot provide any effective relief for Mr. Hawtin, and (2) exceptions to mootness doctrine do not apply.

1.2.1. April 6, Order Violated the Law and was Prejudicial to Mr. Hawtin's Constitutional and Statutory Rights.

Appellate courts will review prior orders if they prejudicially affect the final judgment. RAP 2.4; Franz v. Lance, 119 Wn.2d 780, 782, 836 P.2d 832, 833 (1992). Here, the April 6, 2017, *sua sponte* Order by Judge Hirsch was entered without regard to Mr. Hawtin's constitutional rights. See Section 1.4-1.7; Opening Brief. The hearing was forced upon Mr. Hawtin with mere hours of *sua sponte* notice. The April 6th Order modified a permanent protection order in violation of applicable statutes regarding modifying a protection order and regulating firearm possession. See Section 1.6; Opening Brief. Judge Hirsch ruled before hearing from any party or counsel at all. (RP April 6, 2017, at 4).

Mr. Hawtin, for his part, timely raised procedural and due process concerns as to the setting of the hearing before being cut off from any

further objections. (RP April 6, 2017, at 5-6). The April 6th Order was entered without due process, among other fatal defects (see e.g., Section 1.4-1.7; Opening Brief), and it is void. His affidavit of prejudice was erroneously rejected. See Section 1.1; Opening Brief at 22-23. Accordingly, demonstrating the severe prejudice the April 6th Order had on Judge Hirsch's final April 14th order is easy. Had Judge Hirsch been prevented from hearing Mr. Hawtin's case after April 6th, there would have been no April 14th final order from Judge Hirsch, and likely no appeal.

1.2.2. April 6, 2017, Order is Not Moot and Issues of Continuing Substantial Public Interest Mandate Its Review.

A case is moot if “the court can no longer provide effective relief.” In re Det. of M.W., 185 Wn.2d 633, 648, 374 P.3d 1123 (2016). Even if moot, Courts of Appeal address questions “of continuing and substantial public interest.” Here, this Court plainly can provide effective relief. It can void the April 6, 2017, Order, based on constitutional grounds such as due process. It can vacate the Order on statutory grounds for failing to follow applicable statutes dictating procedure (including personal service of a petition and five days of notice) for modifying a permanent protection order. It can order Judge Hirsch to recuse herself. Furthermore, this Court can order the return of Mr. Hawtin's Second Amendment rights because

that is what the only fact-finder in the case ordered, and because Mr. Hawtin poses “no credible threat” with firearms. (RP April 5, 2017, at 119-20, 126).

Regardless, this Court’s guidance is very much needed to prevent this injustice from occurring again. This matter has significant public interest ramifications. A Washington citizen—a decorated veteran no less—has had his fundamental constitutional, e.g., due process, equal protection, and First and Second Amendment rights trampled. It will occur again. Both Judge Hirsch and, apparently, some employees at Thurston County court (charged with the task of reviewing protection orders issued) erroneously believe that if a domestic violence protection order is issued, such order always mandate the removal of Second Amendment rights. The record shows Judge Hirsch postulates that no due process is needed to impose such belief, even where the finder of fact specifically ordered Second Amendment rights restored to the respondent and the respondent was found to be of “no credible threat” with firearms.

Not only is this erroneous belief held, but as Mr. Hawtin’s case demonstrates, such belief is so pervasive that constitutional rights such as due process, equal protection, and First Amendment rights protecting against prior restraints are ignored if they clash with this belief.

Oversight and guidance by this Court is needed to ensure judicial

officers understand that they may tailor protection orders, as they see fit in equity, to do substantial justice to the parties. Mandatory fill-in-the-blank protection order forms can be mistakenly filled out by a judicial officer on a busy calendar. This Court should clarify that the substance and intent of a judicial officer's ruling control rather than the form on which the ruling is made. Where an alleged discrepancy is found, a court reviewing a judicial fact-finding officer's order must respect constitutional and statutory protections to which the parties are entitled. Fundamental to this review is that the reviewing judicial officer must understand the record before acting. He or she must have both factual and legal justification for modifying a permanent protection order entered after a contested hearing. This simply did not happen in regard to the April 6th Order.

1.3. Neither Court Rules nor Statutes Provide Authority to Uphold the April 6, 2017, or April 14, 2017, Orders.

Ms. Hart argues that CR 59(d), CR 60(a), CR 62(b) and equitable powers grant the trial court authority to issue *sua sponte* orders in protection order hearings without due process. She cites inapplicable caselaw.

1.3.1. Court Rule 59(d) Does Not Provide Authority to Amend April 5th Protection Order Under the Circumstances.

Court Rule 59 allows a judicial officer acting as the finder of fact to reconsider his or her own legal and/or factual findings. See CR 59.

Nowhere in the rule is it contemplated that a judge—who never heard or reviewed the record—may overturn the decision of a commissioner that did. See CR 59; see also Davenport v. Taylor, 50 Wn.2d 370, 311 P.2d 990 (1957) (holding trial court cannot, in effect, by simply appraising the evidence, substitute its judgment for that of the jury/fact finder). In practice, CR 53—not CR 59—allows revision of a commissioner, but, even then, commissioners are entitled to deference. See CR 53; LCR 53.2; Ives v. Ramsden, 142 Wn.App. 369, 382, 174 P.3d 1231 (2008) (holding credibility determinations cannot be overturned).

Regardless, CR 59(d) specifically requires “notice and opportunity to be heard” before the court can act *sua sponte*. Court Rule 59(f) also provides that the court must have knowledge of the record in the case: “In all cases where the trial court grants a motion . . . , it shall, in the order granting the motion, *state whether the order is based upon the record or upon facts and circumstances outside the record* that cannot be made a part thereof.” See CR 59(f). Here, CR 59 simply did not, and cannot now, provide authority for Judge Hirsch to *sua sponte* revise and amend the Commissioner’s protection order. She had no knowledge or understanding of the evidence, or record. Moreover, both the April 6th and the April 14th Orders were issued without meaningful notice or opportunity to be heard; as such they are void. See Section 1.5; Opening

Brief at 25-32.

1.3.2. State v. Loux Does Not Provide Authority to Amend April 5th Protection Order Under the Circumstances.

State v. Loux is a criminal case regarding resentencing of a defendant. 420 P.2d 693, 694, 69 Wn.2d 855, 855 (1966). Ms. Hart argues that because a superior court could correct an erroneous criminal sentence—Judge Hirsch could revise Commissioner Kratz’s April 5th protection order without due process. State v. Loux stands for no such proposition; the decision involved intricacies specific to criminal law and sentencing which are not present here. Furthermore, the trial court that resentenced the criminal defendant in State v. Loux reviewed the record and was advised as to the case and its history. Judge Hirsch did not review Mr. Hawtin’s case; she erroneously claimed she was just correcting a clerical error.

1.3.3. Court Rule 60(a) Does Not Provide Authority to Amend April 5th Protection Order Under the Circumstances.

Court Rule 60(a) provides that “errors . . . arising from oversight or omission” may be corrected *sua sponte*. “The rule allows a trial court to grant relief from judgments only for clerical mistakes.” Presidential Estates v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100, 103 (1996) (holding CR 60(a) cannot be used to go back and rethink the case and enter an amended order that conflicts with the original). “It does not permit

correction of judicial errors.” Id.

A clerical error is a mistake mechanical in nature which does not involve a legal decision or judgment by an attorney. In re Marriage of King, 66 Wn. App. 134, 138, 831 P.2d 1094 (1992). “[M]echanical mistakes . . . do not involve matters of substance.” Id. A judicial error is an error of substance. Id. “The test for distinguishing between ‘judicial’ and ‘clerical’ error is whether, based on the record, the judgment embodies the trial court's intention.” Marchel v. Bunger, 13 Wn. App. 81, 84, 533 P.2d 406, review denied, 85 Wn.2d 1012 (1975). An example of a clerical mistake under CR 60(a) is a mathematical error on a child support worksheet. In re Marriage of King, 66 Wn. App. at 138. Vacating a final order under CR 60 requires respecting procedural due process rights of a party. See Allen v. Allen, 12 Wn. App. 795, 532 P.2d 623 (1975).

Here, Judge Hirsch’s April 6th and April 14th Orders cannot be classified as correcting a clerical mistake. The Commissioner specifically found Mr. Hawtin was not a credible threat with firearms. (RP April 5, 2017, at 125). He specifically ordered Mr. Hawtin’s firearms “returned” to Mr. Hawtin. (CP at 89). The next day, Judge Hirsch without any knowledge or understanding of the record, eviscerated both the substance and the intent of the Commissioner’s Order by preventing Mr. Hawtin’s Second Amendment rights from being restored. See Barrett, 129 Wn.2d at

326; In re Marriage of King, 66 Wn. App. at 138; Marchel v. Bunger, 13 Wn. App. 81, 84, 533 P.2d 406, review denied, 85 Wn.2d 1012 (1975). The April 14th Order was more of the same by Judge Hirsch and involved attorney judgment, not the mechanical application of fixing something akin to a mathematical error in a child support worksheet. See In re Marriage of King, 66 Wn. App. at 138; Allen, 12 Wn. App. at 797.

1.3.4. Court Rule 62(b) Does Not Provide Authority to Amend April 5th Protection Order Under the Circumstances.

Court Rule 62(b) provides that, under “*conditions . . . as are proper*,” the trial court may stay the execution of or any proceeding[] to enforce a judgment *pending disposition of a motion . . . pursuant to rule 59 . . . or order made pursuant to rule 60. . . .*” (emphasis added).

Here, as stated above, neither CR 59 nor CR 60 provide authority to justify Judge Hirsch’s Orders, dated April 6th and April 14th. See Sections 1.3.1, 1.3.3. There was no proper motion pending pursuant to CR 59 or CR 60. See Sections 1.3.1, 1.3.3. Additionally, the “conditions” under which Judge Hirsch entered her April 6th and April 14th Orders—considering the constitutional and statutory infirmities and violations that occurred—were anything but “proper.” See CR 62(b); Opening Brief. Thus, CR 62(b) provides no basis to uphold Judge Hirsch’s Orders.

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1.3.5. Hough Does Not Provide Authority to Amend April 5th Protection Order Under the Circumstances.

Hough v. Stockbridge holds that a judicial officer in equity, after conducting a hearing, has the power to issue mutual protection orders on his or her own motion. Hough v. Stockbridge, 150 Wn. 2d 234, 236, 76 P. 3d 216 (2003). Such power is limited to the judicial officer that was the trier of fact. See id. A judge revising a commissioner's decision would at least have had to have reviewed the record and testimony in the case before entering mutual protection orders when the commissioner, below, did not. See id.

Here, Ms. Hart fails to explain how this case provides authority justifying Judge's Hirsch's April 6th and April 14th Orders. Judge Hirsch did not review the record, did not have knowledge of the case, and (erroneously) said she was only correcting a clerical error. See Section 1.3. Moreover, Judge Hirsch's April 6th and April 14th Orders did the exact opposite of "putting an end to the litigation." See Hough v. Stockbridge, 150 Wn. 2d 234, 236, 76 P. 3d 216 (2003). Thus, Hough v. Stockbridge provides no basis to uphold Judge Hirsch's Orders.

1.3.6. Commissioner's Credibility Finding that Mr. Hawtin Posed No Credible Threat with Firearms is Dispositive to Any Argument that He Posed a Threat to the Community with Firearms.

Credibility determinations made after live testimony cannot be

revised or overturned on appeal. See Ives, 142 Wn.App. at 382. Here, Ms. Hart argues that Judge Hirsch had the authority to amend the April 5th Order and take away Mr. Hawtin’s Second Amendment rights “without a hearing” because of “community safety” concerns. Response at 21. This argument defies logic and borders on the absurd. The Commissioner heard all of the evidence and testimony in the case. He specifically found that Mr. Hawtin was not a credible threat with firearms, and he ordered Mr. Hawtin’s firearms and Second Amendment rights restored. Thus, “community safety” concerns—regarding firearms in the possession of Mr. Hawtin (a decorated veteran that has jeopardized his own life and protected each and every one of us, including our community, with firearms at war)—provides no basis to uphold Judge Hirsch’s Orders.

1.3.7. Commissioner’s April 5, 2017, Order Did Not Violate Federal Law.

The restriction of Second Amendment rights after the entry of a domestic violence protection order is governed by RCW 9A.41.800 and 18 U.S.C. § 922. As Ms. Hart admits, the Commissioner’s April 5th Order did not violate either statute. See e.g., Response Brief at 1-2, 21 (stating “given the possibility that the order violated federal law”), 30 (stating not until Judge Hirsch amended the April 5th Order on April 14th could Judge Hirsch’s new amended order violate federal law).

1.4. Ms. Hart has Failed to Rebut the Heavy Presumption that Judge Hirsch's April 6th and April 14th Orders were Unconstitutional Prior Restraints.

Ms. Hart argues that Judge Hirsch's Orders on April 6th and April 14th did not serve as a prior restraint because Mr. Hawtin allegedly failed to timely file a motion for reconsideration or revision of Commissioner Kratz's April 5 and June 28, 2017 orders.

Here, Mr. Hawtin responds by pointing out that Mr. Hawtin did timely file for reconsideration. (CP at 100). It was Judge Hirsch's erroneous April 6th and April 14th Orders that specifically, and unconstitutionally as a prior restraint, denied the Commissioner from hearing Mr. Hawtin's motion for reconsideration. (See RP June 28, 2017, at 9). Moreover, Mr. Hawtin's ability to move to revise the Commissioner's original April 5th Order was eradicated when Judge Hirsch amended that Order in totality on April 14th, 2017. Thus, Ms. Hart has failed to rebut the heavy presumption that the Orders were unconstitutional prior restraints on Mr. Hawtin's First Amendment rights.

1.5. Mr. Hawtin was Denied Due Process.

Ms. Hart argues that Mr. Hawtin was not denied due process because Judge Hirsch's April 6th and April 14th Orders (1) prevented risk to society that was great, (2) the deprivation of Mr. Hawtin's constitutional and statutory rights was extraordinarily short, and (3) Mr.

Hawtin was provided actual notice and opportunity to be heard.

1.5.1. Commissioner's Credibility Finding that Mr. Hawtin Posed No Credible Threat with Firearms is Dispositive to Any Argument that He Posed a Threat to the Community with Firearms.

See Section 1.3.6., supra.

1.5.2. Law Does Not Allow a Deprivation of Due Process Rights No Matter How Short the Duration and Mr. Hawtin Was Not Provided Meaningful Due Process.

All litigants are entitled to due process. See Olympic Forest Prods. v. Chaussee Corp., 82 Wn.2d 418, 422, 511 P.2d 1002, 1005 (1973). Orders issued without due process are void. Maxfield, 47 Wash. App. at 704; Olympic Forest Prods., 82 Wn.2d at 422. A due process violation cannot be justified because it can be undone later. Olympic Forest Prods., 82 Wn.2d at 430. Section 26.50.130, RCW, to comport with due process requires a motion by a party, a declaration supporting the motion, a request to terminate Second Amendment rights, five days of notice before the hearing, personal service, and adequate cause. See RCW 26.50.130; Gourley v. Gourley, 158 Wn.2d 460, 145 P.3d 1185 (2006).

Here, as to the April 6th Order, Judge Hirsch took away Mr. Hawtin's Second Amendment rights and firearms before hearing from any party or counsel at all. (RP April 6, 2017, at 4). Ms. Hart's argument is that this was okay because it was for a short duration of time. This

argument is meritless because Mr. Hawtin was not given *any* meaningful opportunity to respond, because due process violations cannot be undone, and because the statutory procedure for modifying a protection order was ignored. See RCW 26.50.130; See Olympic Forest Prods., 82 Wn.2d at 422.

As to the April 14th Order, Ms. Hart argues that Mr. Hawtin was provided meaningful notice and meaningful opportunity to be heard. This argument lacks merit because the only speculative notice Mr. Hawtin was provided was that “the court . . . believes there may be a scrivener’s error in the Order for Protection.” (CP at 93). Based on this, Mr. Hawtin attempted to decipher what the possible scrivener’s error was but could not. (See Opening Brief at 11-14) (citing RP April 14, 2017, at 4-5, 12, 16). He got zero help from Ms. Hart as she filed nothing; Mr. Hawtin was not personally served with any motion or notice of issue; he was not personally served with any declaration supporting such a motion; and he was not provided any meaningful notice, argument, or substance of how and why Judge Hirsch was going to modify, amend, or further stay the Commissioner’s April 5th Order.

In sum, Judge Hirsch’s *sua sponte* notice of issue did not provide meaningful notice. See e.g., Olympic Forest Prods., 82 Wn.2d at 422 (holding notice must be meaningful to comport with due process). Mr.

Hawtin’s speculative and fruitless guessing as to the substance of the April 14th hearing cannot possibly substitute for the *meaningful notice that he was owed*. See id.

1.6. April 6th and April 14th Court Orders if Upheld Would Render RCW 26.50.130, RCW 9.41.800, and 18 U.S.C. § 922 Unconstitutional As Applied.

Ms. Hart argues that Judge Hirsch’s Orders did not render RCW 26.50.130 unconstitutional as applied because (1) Judge Hirsch followed the procedures in RCW 26.50.130 to modify a protection order; (2) Judge Hirsch had authority under CR 59, CR 60, and CR 62 to correct the “clerical error” in the Commissioner’s April 5th Order; (3) Mr. Hawtin was provided meaningful notice and opportunity to be heard, and (4) Mr. Hawtin was not denied any reconsideration or revision rights.

1.6.1. Judge Hirsch Did Not Follow the Procedures Set Forth in RCW 26.50.130 to Modify a Protection Order.

See Opening Brief at 23-25, 30-32, 38-40.

1.6.2. CR 59, CR 60, and CR 62 Does Not Provide Authority, Under the Circumstances, to Justify Amending Commissioner’s April 5th Order; Nor Can Those Court Rules Supplant the Procedure Set Forth in RCW 26.50.130 to Modify a Protection Order.

See Section 1.3; Opening Brief at 23-25, 30-32, 38-40.

1.6.3. Mr. Hawtin Was Not Provided Meaningful Notice or Opportunity to Be Heard.

See Section 1.5; Opening Brief at 25-32.

1.6.4. Mr. Hawtin was Denied His Rights to Reconsideration and Revision.

See Section 1.4; Opening Brief at 33-34, 41-42.

1.7. Mr. Hawtin's Equal Protection Rights Were Violated Under Any Level of Scrutiny.

Ms. Hart argues that Judge Hirsch's April 6th and April 14th Orders did not deprive Mr. Hawtin equal protection because both Orders were rationally related to the state's interest in preventing domestic violence and protecting human life. She argues Mr. Hawtin is not a part of a protected class and that he failed to identify any appropriate level of scrutiny.

When violations of fundamental rights occur, the Court applies strict scrutiny. State v. Shawn P., 122 Wn.2d 553, 560, 859 P.2d 1220 (1993). Violations to important rights are tested under intermediate scrutiny. Id. Rationale basis scrutiny is applied to violations of non-fundamental rights. Id. Here, Mr. Hawtin's equal protection rights, demand either a strict or intermediate level of scrutiny. See id. Even under a rational basis level of scrutiny, however, it is clear Mr. Hawtin's rights were violated. Stated simply, the lynch pin to Ms. Hart's argument is that Judge Hirsch's Orders were justified because the State had a compelling, important, or rationale basis for taking Mr. Hawtin's Second Amendment

rights away (without due process). Her argument fails because the Commissioner made a specific credibility finding—based on live testimony—that Mr. Hawtin was not a credible threat with firearms. (RP April 5, 2017, at 125). So firm was the fact finder’s determination of this matter, he ruled, “I am not putting any restriction on [Mr. Hawtin] as far as firearms.” (RP April 5, 2017, at 125). He specifically ordered Mr. Hawtin’s firearms “returned.” (CP at 89). Thus, Judge Hirsch, i.e., the State, did not have any compelling, important, or rationale basis to take away Mr. Hawtin’s Second Amendment rights—let alone to deny him due process before doing so.

1.8. Judge Hirsch Violated the Code of Judicial Conduct and Should Have Recused Herself.

Due process, the appearance of fairness doctrine, and the Code of Judicial Conduct all require that a judge disqualify him or herself from hearing a case if that judge is biased against a party or if his or her impartiality may be reasonably questioned. West v. Wash. Ass'n of County Officials, 162 Wn. App. 120, 136-137, 252 P.3d 406, 414 (2011). The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes that “a reasonable person knows and understands all the relevant facts.” In re Hammermaster, 139 Wn.2d 211, 233-234, 985 P.2d 924 (1999).

Here, Ms. Hart argues that Judge Hirsch performed her duties in “exemplary fashion” by “ensur[ing] a domestic violence protection order was carefully and accurately entered.” Response Brief at 45. She argues that the Commissioner’s statement that he personally spoke to Judge Hirsch, off the record, and that she instructed him there’s no basis to go back and change anything on the April 14, 2017 Order—was just hearsay. (RP June 28, 2017, at 9). She argues such instructions would not cause a reasonable person to question Judge Hirsch’s impartiality. She argues Judge Hirsch was just correcting a clerical mistake, not taking away Mr. Hawtin’s First, Second, due process, and equal protection rights. In the alternative, Ms. Hart argues that “a judge sometimes may make good-faith errors of fact or law” and that “[e]rrors of this kind do not violate” the CJC. Response Brief at 46.

1.8.1. Judge’s Statement Off the Record to Commissioner Would Cause a Reasonable Person to Question Her Impartiality.

Here, on April 6th, Judge Hirsch took away Mr. Hawtin’s Second Amendment rights without hearing from him or his attorney. She cut off his objections during the hearing. She did this without reviewing the record and without knowledge of the evidence in the case, and in direct contradiction with the Commissioner’s credibility finding, ruling, and order. She then amended the Commissioner’s order in totality, without

meaningful notice of why or meaningful opportunity to respond. No other respondents in protection order hearings are treated in such ways. She then instructed the Commissioner that there was nothing Mr. Hawtin could do about it. Thus, it is hard to see how a reasonable person could not or would not question Judge Hirsch's impartiality. She should have removed herself from the case. See State v. Post, 118 Wn.2d 596, 619 n. 9, 826 P.2d 172, 837 P.2d 599 (1992); Buckley v. Snapper Power Equip. Co., 61 Wn. App. 932, 938, 813 P.2d 125, 128 (1991); Hammermaster, 139 Wn.2d at 233-234.

1.8.2. Judge Hirsch Was Not Just Correcting a Clerical Mistake.

See Section 1.3.

1.9. Ms. Hart is Not Entitled to Attorney Fees.

Mr. Hawtin has gone to great time and expense to preserve and defend his statutory and constitutional rights. Ms. Hart is not entitled in law or equity, under the circumstances, to any attorney fees.

Respectfully submitted this 16th day of April, 2018,



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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on April 16, 2018, I caused to be served:

1. Reply Brief of Appellant

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