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No. 53617-0-II
(with consolidated Cause No. 54061-4-II)

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

STACEY MARIE JURSS,

Respondent,

v.

LIAM ALOYSHA MOONEY,

Appellant.

Brief of Respondent

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I. INTRODUCTION

After enduring three days of hearings, and providing extensive testimony and documentation, Stacey Jurss obtained an Order for Protection against Liam Mooney for raping her ten years ago. Ms. Jurss has remained afraid of Mr. Mooney through the years and the trial court properly found it is reasonable for her to be afraid of him. Despite the finding that Mr. Mooney sexually assaulted her, Ms. Jurss has to co-parent with Mr. Mooney. The trial court established reasonable contact restrictions against Mr. Mooney until their daughter turns eighteen due to his sexual assault of Ms. Jurss, and his recent stalking and harassing behavior, which placed their daughter in the center of conflict.

Domestic violence proceedings are meant to be expedited and accessible proceedings. This case was remarkably heard over three separate days, spanned over a month of time, and allowed considerable time for Mr. Mooney's Counsel to cross-examine Ms. Jurss. The Court took even more time to consider the extensive testimony and documentation in the record and make a decision.

Mr. Mooney does not challenge the underlying basis for the Order, the sexual assault. In light of that, a one-year order will not provide Ms. Jurss with the protection she needs while they must remain in contact. The trial court rightly protected their daughter from being

used to harass and stalk Ms. Jurss, and to spare her from being exposed to any acts of domestic violence. The trial court rightly limited the access of Mr. Mooney's access to firearms after concluding he committed sexual assault. The evidence for the trial court's actions is substantial and this Order must be left in place so Ms. Jurss may have some measure of peace.

II. ISSUES

1. DVPO hearings are special proceedings, not subject to general civil rules, and RCW 26.50.060(1)(f) authorizes trial courts to order relief deemed necessary, not limiting the courts to relief requested in the petition. Did the trial court abuse its discretion by ordering relief outside of the petition after finding that the facts warranted such protection? (assignments of error 1, 3, 6, 9, 11)
2. Mr. Mooney sexually assaulted Ms. Jurss, Ms. Jurss testified extensively about her fear of Mr. Mooney, she provided documentation of her PTSD as a result of being sexually assaulted, and Mr. Mooney corroborated details of stalking and harassing behavior. Did the trial court abuse its discretion in concluding Ms. Jurss has a reasonable, ongoing fear of Mr. Mooney and have substantial evidence to support the finding that the Order should last longer than a year? (assignments of error 1, 2, 4, 5, 13)
3. The parties' child was conceived through the sexual assault, is intimately connected to their ongoing communication, and Mr. Mooney placed her at the center of conflicts. Did the trial court have substantial evidence to protect the parties' child? (assignments of error 1-4, 6-8)
4. Mr. Mooney sexually assaulted Ms. Jurss, the trial court heard extensive testimony concerning her ongoing fear of him, and of his more recent stalking and harassing behavior. Did the trial

court have substantial evidence to remove Mr. Mooney's access to firearms? (assignments of error 1, 2, 4, 9–11)

5. There is no dispute that Ms. Jurss was severely intoxicated at the New Year's Eve party, and Mr. Mooney testified that she did not drive them home, a third party did. Did the trial court abuse its discretion in concluding that Mr. Mooney knew Ms. Jurss lacked the capacity to drive and consent to sex? (assignments of error 4, 10, 12–14)

III. STATEMENT OF THE CASE

A. Ms. Jurss sought protection from Mr. Mooney after he raped her and continued to harass her.

This appeal stems from the Appellee, Stacey Jurss, seeking protection from the man who raped her, Liam Mooney. On March 20, 2019, Ms. Jurss filed a Petition for an Order for Protection. 1 CP 1.¹ The Court granted a Temporary Order for Protection on March 20, 2019 and on April 4, 2019, and extended the Order for Protection after each subsequent hearing while the parties presented the case. 1 CP 15–18, 167, 178, 308, 459. There were three hearings over three separate days spanning over a month of time in which the trial court heard testimony and entered exhibits; April 15, April 22, and May 6. 1 CP 190, 330, 500.

Ms. Jurss had previously sought protection from Mr. Mooney. She petitioned for an Anti-Harassment Orders against Mr. Mooney on

¹ This brief will follow the format for clerk's papers citations used in the Brief of Appellant. Clerk's papers in Cause No. 53617-0-II are referred to as "1 CP [page number]" and clerk's papers in Cause No. 54061-4-II are referred to as "2 CP [page number]."

February 7, 2018, and on February 13, 2019. 1 CP 96–110. Ms. Jurss based her petitions upon Mr. Mooney sexually assaulting her. 1 CP 5, 105. The sexual assault occurred about ten years ago and resulted in the conception of their daughter, H.J. *Id.* In her Petition for the Order for Protection at issue in this case, Ms. Jurss requested that the Court restrict the contact and distance that Mr. Mooney could have with her. 1 CP 1–4. Ms. Jurss listed their daughter on the Petition and also checked box 11, requesting restrictions between Mr. Mooney and their daughter. 1 CP 1, 3.

Ms. Jurss further requested that the Order should last at least for the duration of their daughter’s childhood because Mr. Mooney harassed her and she knew that as long as they share a child, she “will have to participate in a parenting plan with the Respondent.” 1 CP 12. Ms. Jurss has received years of therapy for PTSD. 1 CP 11. Her PTSD is triggered by contact with Mr. Mooney, which, “disrupts [her] ability to work and study or parent [her] child.” 1 CP 6. Ms. Jurss’ PTSD impacts her ability to live a normal life on a daily basis. 1 CP 5.

Ms. Jurss stated in her Petitions that she felt terrified of Mr. Mooney. 1 CP 9, 105. When he came up to talk to her at a school event for her daughter she said she felt trapped, and “was panicked and wanted to leave.” *Id.* Mr. Mooney, “aggressively pressured (her) to engage in correspondence with him that does not pertain to parenting plan issues.”

Id. He went to far as to contact her employer after being blocked from the company's social media, ThurstonTalk, and Ms. Jurss felt that he did so to interfere with her career. 1 CP 7, 103.

Ms. Jurss lives in anxiety and fear of Mr. Mooney that is made worse by his emails and calls "due to the arrangements of our parenting plan." 1 CP 6. She described the "crippling fear" she has as a result of threatening incidents like him following her to her car after a court hearing, being afraid of what he might say or do in front of their daughter, and how contact with him interferes with her ability to parent. *Id.*

B. Ms. Jurss testified extensively to her ongoing fear of Mr. Mooney.

Ms. Jurss testified in great detail about how Mr. Mooney's rape of her has resulted in her continued fear of him and his threatening conduct. During the April 15, 2020 hearing, Ms. Jurss stated Mr. Mooney raped her. 1 CP 203. She testified that she would rather live "without the reality that I'd been raped," but Mr. Mooney is a "dangerous person" and she is terrified that he wants to ruin her life and her daughter's life. 1 CP 203, 205. Ms. Jurss stressed that the best way to mitigate her negative responses is to avoid interaction with him. 1 CP 205. She tried to set boundaries with him but he "wouldn't leave it alone" and so she "need[ed] the court's help." *Id.*

Ms. Jurss experienced terrifying thought patterns after seeing Mr. Mooney, which made it so difficult to work that she had to reduce her hours at jobs and withdraw from classes. 1 CP 207. This terror stems from being raped by Mr. Mooney, when she was so intoxicated after coming home that she had no memories of that night. She testified that he “brought [her] home and took advantage of [her] without [my] consent or knowledge.” 1 CP 207. *Id.* Ms. Jurss realized through therapy that she was raped, accepted that she was raped, and has struggled with calling what happened to her rape. 1 CP 220. She said that even worse than having a roommate rape her is the fear that, “something would have happened even worse.” 1 CP 223.

Ms. Jurss has tried many methods to gain protection in order to stay safe and healthy while following the parenting plan given her diagnosis of PTSD. 1 CP 231. The current parenting plan requires the parties to use Our Family Wizard (OFW) to communicate about school events. However, Mr. Mooney does not use it properly and came to a school event without giving any indication or warning through OFW or otherwise that he was going to be there. 1 CP 233. Mr. Mooney even contacted Ms. Jurss’ employer. 1 CP 232. She determined that he was doing this to harass her as it demonstrated that he does not respect her boundaries or “the boundaries of the court.” *Id.* 1 CP 232. Ms. Jurss is

interested in creating a peaceful, no contact method to co-parent and she does not believe litigation serves her or her daughter, but she is trying to get protections by “whatever means possible.” 1 CP 406–07.

Though Ms. Jurss has come to terms with having to co-parent with Mr. Mooney, contact with him is detrimental to her livelihood. 1 CP 411. She refuted the assertion that her limited and sometimes slow communication with Mr. Mooney is a sign that she does not want Mr. Mooney to be a part of her daughter’s life. 1 CP 412–14. Rather, it’s a sign that communicating with him is terrifying to her, and though in emergency cases she communicates more quickly, she prefers taking her time to respond in non-emergent situations. 1 CP 412–14, 610. The OFW messages are not a complete representation of how well she handles communicating with Mr. Mooney because they do not reflect the considerable time and energy she puts into each message, or the “fallout” that results afterward, wherein she lacks focus and has difficulty working and maintaining relationships. 1 CP 610. She feels the pressure to be cordial because of the Parenting Plan. *Id.* Mr. Mooney corroborated that communication with her over routine parenting issues was difficult as “she refuses to say anything about it and yells at me repeatedly.” 1 CP 531.

Additionally, Ms. Jurss’ fear of Mr. Mooney does not always outwardly manifest itself. Her exchange of her daughter with Mr.

Mooney's on April 28, 2019 is a prime example. 1 CP 513–24, 579, 589–90. On April 28, 2019, Ms. Jurss personally appeared and held her daughter's hand during an exchange of her daughter while Mr. Mooney present. *Id.* Though she did not show visible signs of distress and held her daughter's hand as they walked up the street, Ms. Jurss felt she had to be at the exchange and had to “hold it together,” and the fallout afterwards was detrimental. 1 CP 579, 582–84, 607–10.

Ms. Jurss sought this Order for Protection because Mr. Mooney, the man that raped her, has continued to harass her, violating her boundaries and the boundaries set by the court. 1 CP 92–93, 232–35. If Mr. Mooney had not harassed her by contacting her employer and continued to take actions to make “[her] life difficult,” then Ms. Jurss would not have gone to court for protection. 1 CP 615. But he would not “just let (her) be.” 1 CP 621.

C. Ms. Jurss' has had ongoing mental health symptoms as a result of Mr. Mooney raping her and continuing to harass her.

Ms. Jurss submitted comprehensive evidence documenting her PTSD and other mental health symptoms that she has suffered because Mr. Mooney raped her and the assault resulted in her pregnancy. 1 CP 87–88, 94–95, 133–34, 142–44. A letter from Dr. Leighton states that Ms. Jurss has been treated since March of 2017 for “PTSD and severe anxiety

related to being the victim of rape that produced a child and having a parenting plan that has required ongoing contact with the biological father.” 1 CP 88. A letter from Dr. Perry states that recounting the sexual assault and “having to claim the father as ‘unknown’ and a product of rape on the birth certificate” caused Ms. Jurss to feel shame and set up deep emotional hurdles for her.² 1 CP 142–44.

During her testimony, Ms. Jurss read from a declaration attributed to Emma Puro, a social worker, which added, “ever since Mr. Mooney became involved in these [dependency] proceedings, [Ms. Jurss] has had (sic) emotionally difficult time learning how to work with the reality of having the birth father enter her and [her daughter’s] life. 1 CP 396. Ms. Puro’s Declaration goes further to state the trauma from being sexually assaulted, and the outcome of that trauma, their child, “has been difficult for Ms. Jurss to sort out. She continues to address her victimization in therapy.” *Id.* Ms. Jurss did not know if Ms. Puro had consulted with Mr. Mooney before reaching her conclusions. 1 CP 416.

In Ms. Jurss’ sworn declaration from that the dependency matter she described how she does not remember the events of her daughter’s conception, has wrestled with how to identify Mr. Mooney, and has

² Despite these incredibly painful experiences, the letter notes that “Ms. Jurss has been a ‘poster child’ for treatment success and compliance and has developed a strong support system outside of the support from her family.” 1 CP 144.

worked with her providers to address her feelings “and experience as a survivor of sexual assault.” 1 CP 136, 139–40. Ms. Jurss explained that she sought the protection order because Mr. Mooney harassed her continually, compounding her PTSD and fear of him that stemmed from him sexually assaulting her and it resulting in a child. 1 CP 9, 226.

Ms. Jurss has suffered PTSD and anxiety as a result of being raped and she is being treated for it, but she has to raise a child with the person who raped her. *Id.*, 1 CP 399–400. Ms. Jurss has friends in recovery who have seen what it looks like when she is, “a victim of her fear.” 1 CP 236. It is not easy for her to tell her story, and she is trying to get relief for constant re-traumatization that comes with constantly having to interact with the person who raped her. 1 CP 236–37.

Ms. Jurss’ previous manager lowered her hours as a reciprocal impact of her PTSD. 1 CP 608. As a result of her trauma, she has missed work, it is hard to focus, and Mr. Mooney’s continuous contact with her, often knowingly violating her boundaries, directly relates to her ability to thrive and make a living for herself.³ 1 CP 609. Her trauma and his

³ Ms. Jurss even faces harassment through Mr. Mooney’s close contacts. Mr. Mooney’s girlfriend repeatedly tried to interact with Ms. Jurss on Instagram, even creating a second account after Ms. Jurss blocked one, and knowing it was her made Ms. Jurss need to pull over on the side of the freeway and throw up, feel like she was about to have a panic attack, and sit on the side of the road and cry. 1 CP 611-12.

contact also makes it difficult to pay bills and care for her daughter. *Id.*

Ms. Jurss is relieved and at peace in Mr. Mooney's absence. 1 CP 238.

Mr. Mooney does not see the impact because she has to be strong for her daughter. 1 CP 613. But the impact of his interactions with her feel life threatening because it impacts her ability to hold down work and function. *Id.* Ms. Jurss had to drop out of classes and her work was affected because of Mr. Mooney's actions. 1 CP 621. Ms. Jurss sought the protection order because Mr. Mooney harassed her continually, compounding her PTSD and fear of him that stemmed from him sexually assaulting her. 1 CP 9, 226.

D. Mr. Mooney wrote an email to Ms. Jurss' employer after learning where she worked from their daughter.

Ms. Jurss submitted an email to Ms. Jurss' employer dated February 7, 2019 in which Mr. Mooney blamed her from blocking him from a social media resource due to their "rocky" relationship. 1 CP 92–93. The Court and Ms. Jurss questioned him about why he believed she blocked him, and he stated that his belief came from first learning she worked at ThurstonTalk from their daughter. 1 CP 533. He admitted he did not know for sure it was her, and he took no other action to alleviate the issue other than send the email blaming her for blocking him for personal reasons. 1 CP 533.

Mr. Mooney testified that he did not accuse Ms. Jurss of blocking him in the email, instead he only mentioned she worked there, managed the program, that he was blocked, and he wanted to know why. 1 CP 533–34. In his email to ThurstonTalk, Mr. Mooney wrote, “As (sic) neither of us interact directly with @ThurstonTalkWA, I can only conclude that Stacey has blocked us for personal reasons.” 1 CP 92–93. He also wrote, “I am aware that Stacey Jurss, the mother of my child [name redacted], runs ThurstonTalk social media, and is responsible for managing and posting the ThurstonTalk Instagram. My relationship with Stacey is rocky, but that has no absolutely no bearing on my right to access ThurstonTalk.” 1 CP 92–93. During the hearing, Mr. Mooney went on to claim Ms. Jurss was creating conflict in the co-parenting relationship, and affirmed that cooperation was disintegrating quickly. 1 CP 536.

The trial court asked Mr. Mooney why he needed access to ThurstonTalk outside of Instagram and Mr. Mooney replied that it was a means of getting information about the community, and that it was an important service to him that he felt he had the right to. 1 CP 570–71. Mr. Mooney stated it was not his goal to get Ms. Jurss fired, but rather he wanted access to his community, and he referred to the email. 1 CP 571. But then Mr. Mooney admitted he had alternatives for accessing

ThurstonTalk. 1 CP 569. Tim Shaw stated the same in his Declaration. 1 CP 128–32. Both parties acknowledge that this harassing message was a tipping point in Ms. Jurss’ request for the Order. 1 CP 534, 615.

E. Mr. Mooney repeatedly attempted to add “Mooney” to their daughter’s name over Ms. Jurss’ repeated objections.

Another way that Mr. Mooney has harassed Ms. Jurss is repeatedly attempting to add his last name to their daughter’s name. 1 CP 233–34. A psychologist stated that changing their daughter’s name would not be in her best interest and would be confusing to her. 1 CP 87–89. Despite this recommendation, a court order denying his request to change her name, and Ms. Jurss’ continued objection to the name change, Mr. Mooney continued to use his last name when referring to the child. 1 CP 233–34; 1 CP 81–82, 135–36. Ms. Jurss testified that he used his last name in his interactions with their daughter and she provided photographs of their daughter’s school materials that included the daughter’s first name with his last name, Mooney. 1 CP 81–82, 135–36. When the trial court asked Mr. Mooney why he would use his last name on her school materials after the court denied his request to change her name and after a psychologist identified it was not in the child’s best interest, he stated that the psychologist does not, “know my daughter or know the relation to her cultural family.” 1 CP 577.

Ms. Jurss testified how this harassment fuels her fear and disrupts her life: “[o]ver and over when the person who raped me tries to bully me into what he wants, it affects me in a way that disrupts my life; it affects me in a way that makes it impossible to recover.” 1 CP 234–35. She just wants him to leave her alone. 1 CP 235. Ms. Jurss testified that Mr. Mooney’s petition to change their daughter’s name to include his last name made her “worried and concerned and scared.” 1 CP 288–89.

F. Mr. Mooney harassed Mr. Jurss by following her to her car, along with his father, after a court hearing.

After a previous court hearing between the parties, Mr. Mooney and his father followed Ms. Jurss to her car and verbally harassed her.⁴ 1 CP 6. The hearing was regarding Mr. Mooney’s petition to change their daughter’s name to include his last name. 1 CP 525–26. Ms. Jurss stated “I can’t even begin to describe the crippling fear I experience as a result of events like these.” 1 CP 6. She feared that Mr. Mooney “has [become] more emboldened over time and I am afraid of what he might say or do in front of my daughter.” *Id.*

G. Ms. Jurss’ in-court behaviors and additional evidence of fear.

⁴ There was some confusion regarding the date of this incident. Though the petition stated it was on January 25, 2018, testimony later clarified that it was on February 8, 2018, after the hearing regarding the Mr. Mooney’s name change request. 1 CP 525–26.

Over the course of the proceedings, the trial court had to tell Ms. Jurss on multiple occasions to slow down, to take a breath, and to, “take all the time that you need . . . (sic) . . . Just take a breath.” 1 CP 202, 206–07. The Clerk also told her to slow down. 1 CP 210. On May 6, the trial court cut her off from speaking further as she was starting argument. 1 CP 591. She stopped and apologized three times, saying she was very upset. 1 CP 591. When Ms. Jurss had the opportunity to cross-examine Mr. Mooney, she asked the trial court that she not have to speak to Mr. Mooney directly. 1 CP 539. The trial court allowed her to direct questions to the bench. *Id.* The proceedings followed that directive overall with some exceptions where there were direct exchanges between the parties. 1 CP 539–75.

Ms. Jurss also filed an investigative report from Casey Johnson dated January 8, 2016. 1 CP 113–25. Mr. Johnson’s private consulting firm conducted an investigation into the sexual assault allegation. 1 CP 113–24. The investigator, Mr. Johnson, interviewed nine people. 1 CP 114. The list does not include Mr. Mooney, however the investigator declared that he reviewed a statement Mr. Mooney made during a court hearing from August 31, 2015. *Id.* Mr. Mooney denies the accuracy of that recording. 1 CP 517. The investigator concluded that he believed their daughter was conceived due to non-consensual sexual intercourse,

and found consistency in Ms. Jurss account of being black-out drunk on the night in question and having no memory of the event, and that Mr. Mooney admitted that he and Stacey had sex. 1 CP 113, 124. There have been other times, including during mediation, when Ms. Jurss wanted Mr. Mooney to admit to sexual assault. 1 CP 528–29.

H. Based on extensive testimony and other evidence, the court granted the order for protection, properly finding that Mr. Mooney raped Ms. Jurss and continued to be a threat to her and her daughter.

After the three days of hearings, the trial court announced it was going to take additional time to make a ruling and asked the parties two follow-up questions: how they got to the party and whether Ms. Jurss served Mr. Mooney alcohol. 1 CP 624–25. Ms. Jurss responded that Mr. Mooney drove them in his truck and she did not believe she supplied him with alcohol. *Id.* Mr. Mooney stated that Ms. Jurss drove them to the party in her van and supplied him with alcohol. *Id.* However, Mr. Mooney had previously testified that someone else drove them home. 1 CP 554–58.

On May 8, 2019, after taking two additional days to reach a decision, the trial court issued its Findings and Conclusions, and it concluded by a preponderance of the evidence that Mr. Mooney sexually assaulted Ms. Jurss. 1 CP 656–67. The trial court also concluded that she

has an ongoing, reasonable, fear of Mr. Mooney. 1 CP 656–57. In reaching that conclusion, the trial court noted Ms. Jurss’ testimony that her mental health has been impacted by the trauma of realizing she was sexually assaulted. *Id.* The trial court stated that “even simple courtesies interactions with Mr. Mooney place her in fear” and determined that where interactions lack fear does not mean she was not in fear, but rather making the most of a difficult situation. *Id.*

The trial court subsequently entered an Order for Protection effective until September 28, 2028, or the day the parties’ daughter will turn eighteen, and ordered that the parties will no longer have to communicate about parenting issues. 1 CP 646. The Order for Protection includes additional findings, including that a one-year order is insufficient to prevent further acts of domestic violence. 1 CP 651. The underlying issue concerning whether there is enough evidence to find Mr. Mooney sexually assaulted her is not being challenged on this appeal.

IV. SUMMARY OF ARGUMENT

The Court should affirm the trial court’s ruling that Mr. Mooney sexually assaulted Ms. Jurss, and that she should be protected until her daughter’s eighteenth birthday. The trial court had substantial evidence

to find that a one-year order would be insufficient to prevent further acts of domestic violence as the trial court heard and saw extensive evidence of Mr. Mooney's stalking and harassing behavior, Ms. Jurss' crippling ongoing fear of him, and physical harm to Ms. Jurss that results from Mr. Mooney's actions—all stemming from Mr. Mooney's sexual assault of Ms. Jurss.

Ms. Jurss explicitly requested in her Petition that she should be protected for longer than a year due to the ongoing communication she must have with Mr. Mooney concerning their daughter. Ms. Jurss and Mr. Mooney have a child together who was born from the sexual assault at issue, it is not therefore unforeseen or unreasonable to include the daughter in the Order, especially when Ms. Jurss repeatedly described the detrimental impacts Mr. Mooney has on her, how that negatively impacts her daughter, and had checked a box providing for some protections for her daughter. It is reasonable for the trial court to take away Mr. Mooney's access to firearms when the trial court concluded that he committed sexual assault, heard substantial evidence of ongoing stalking and harassing behavior, and entered an Order for Protection against him.

A. The standard of review in this case is abuse of discretion.

The standard of review for an appeal of a conclusion in a domestic violence protection order is abuse of discretion. *Rodriguez v. Zavala*, 188 Wn.2d 586, 590–91, 398 P.3d 1071 (2017). The Court of Appeals will not disturb the superior court’s ruling unless its decision was unreasonable or based on “untenable grounds or reasons.” *Freeman v. Freeman*, 169 Wn.2d 664, 671, 239 P.3d 557 (2010). The Court of Appeals reviews the findings of fact for substantial evidence. *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011). Substantial evidence exists when there is enough evidence to persuade a fair minded, rational person of the truth. *In Re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018, 1021 (2002). *See Larriva v. Larriva*, No. 49868-5-II, 2018 WL 1919819, at *3–4 (April 24, 2018) (unpublished opinion, cited as persuasive authority under GR 14.1). The trial court did not abuse its discretion as there was substantial evidence supporting its decisions.

B. The trial court properly exercised its authority to order relief that was not specifically requested in the petition.

Mr. Mooney argues that the trial court abused its discretion by ordering relief that was not specifically requested in Ms. Jurss’ petition. Brief of Appellant at 13–14. However, protection order hearings are “special proceedings” allowing the court leeway on the general civil rules of procedures. CR 81; *Scheib v. Crosby*, 160 Wn. App. 345, 350–53, 249

P.3d 184 (2011). Mr. Mooney’s brief offers no authority for ignoring the plain language of the Domestic Violence Prevention Act (DVPA), which grants trial courts authority to order, “other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter.” RCW 26.50.060(1)(f). While Mr. Mooney’s brief points to the notice requirement, there is no support in the applicable court rules, statutes, or case law that proper notice requires each and every aspect of potential relief be raised in the petition in order for it to be contained in the final order for protection.

1. *The trial court had authority to order relief that was not specifically requested in the petition.*

The trial court holds discretion when entertaining petitions for domestic violence protection orders. *In re T.W.J.*, 193 Wn. App. 1, 6, 367 P.3d 607 (2016). “Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Id.* (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

Mr. Mooney argues that the trial court did not have the authority to grant relief that was not in the petition because of Superior Court civil

rules 7 and 8 regarding pleading and motion requirements. Brief of Appellant at 13. However, this argument misses the fact that protection orders under the DVPA are “special proceedings not governed by the civil rules.” *Scheib*, 160 Wn. App. at 350. Superior Court civil rule 81 provides that civil court rules shall govern all civil proceedings “[e]xcept where inconsistent with rules or statutes applicable to *special proceedings*.” CR 81 (emphasis added); *See Scheib*, 160 Wn. App. at 351–53 (noting that the term “special proceeding” is not defined but that case law provides guidance and holding that “[g]iven all, we hold DPA protection orders are special proceedings”). Thus, in order to understand the court’s authority and procedural limitations during DVPA protection order hearings, we must look to the court’s equitable powers and the statute that governs the proceedings, Chapter 26.50 RCW.

Judicial officers have extraordinary powers to act sua sponte in protection order proceedings by fashioning relief that was not included in the petition. The Washington State Supreme Court addressed this authority in *Hough v. Stockbridge*, 150 Wn.2d 234, 76 P.3d 216 (2003). Although that case addressed an anti-harassment protection order in District Court, the rationale applies in this case. In *Hough*, the Court stated that the District Court has authority to issue mutual protection

orders on *its own* motion because district courts have equitable powers and the statute specifically grants broad discretion to fashion relief. *Id. at 236.*

The Washington Constitution vests superior courts and district courts with jurisdiction in cases in equity. WASH. CONST. art. IV, § 6. Anti-harassment protection orders and domestic violence protection orders are actions in equity. *State v. Brennan*, 76 Wn. App. 347, 354–66, 884 P.2d 1343 (1994); *Blackmon v. Blackmon*, 155 Wn. App. 715, 721, 230 P.3d 233 (2010). There is nothing in the domestic violence statute that limits the court’s equitable powers, as the Court found regarding the anti-harassment protection order statute in *Hough*.

Instead of limiting the court’s equitable powers, both statutes in fact grant courts broad discretion in granting relief that the court deems proper in protection order proceedings. The anti-harassment protection order statute provides that a court granting a protection order, “shall have broad discretion to grant such relief as the court deems proper.” RCW 10.14.080(6). The equivalent provision in the DVPA, RCW 26.50.060(f), allows the Court to “[o]rder other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter . . .” In *Hough*, the Court also noted that a court sitting in equity “may fashion broad remedies to do substantial

justice to the parties and put an end to litigation.” 150 Wn.2d at 236 (quoting *Carpenter v. Folkerts*, 29 Wn. App. 73, 78, 627 P.2d 559 (1981)). The facts of the relationship between parties should guide a court’s discretion. *Hough*, 150 Wn.2d at 236; *see also Trummel v. Mitchell*, 156 Wn.2d 653, 668, 131 P.3d 305, 314 (2006).

As the Washington Supreme Court found in *Hough* with regard to the anti-harassment protection order proceedings, superior courts have equitable powers and specific statutory authority that allow them broad discretion to fashion relief outside of what was requested in the petition. In *Hough*, the Court was dealing with an instance wherein a trial court ordered mutual protection orders in the absence of a petition. Such an action is far more extreme than the court order in this case which only entered additional protections regarding Ms. Jurss’ daughter and Mr. Mooney’s possession of weapons.

2. *The trial court’s broad discretion to fashion relief not specifically petitioned for is not limited by the notice requirement.*

The notice requirement, which was only partially quoted by Mr. Mooney’s brief, provides: “no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.” RCW 26.50.060(5). The legislature

specifies the methods for service in RCW 26.50.050 that fulfill this notice requirement. Mr. Mooney appears to be arguing that to satisfy the notice requirement, each and every aspect of relief available under the statute must be contained in the original petition in order for the court to include it in the final order. However, that argument is void of support from applicable statutes, court rules, and case law. Mr. Mooney's brief only cites to court rules and cases dealing with complaints in other, non-protective order, civil proceedings.⁵ These other contexts, wherein a complaint rather than a petition starts the action, are different from protection order proceedings. Furthermore, if the legislature intended to require the type of highly specific notice Mr. Mooney appears to be arguing for, it would have said so. Instead, it granted trial court judges with broad discretion when crafting protection orders.

“Finally, the Legislature has shown that it has a strong interest in preventing domestic violence.” *Spence v. Kaminski*, 103 Wn. App. 325, 335, 12 P.3d 1030 (2000); *see also State v. Dejarlais*, 136 Wn.2d 939, 944, 969 P.2d 90 (1998) (RCW 26.50 reflects the Legislature's belief that

⁵ Mr. Mooney cites to *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006). This case deals with whether a complaint sufficiently asserted claims stemming from a contractual business relationship. The only other case Mr. Mooney cites to is *Winters v. Ingersoll*, 11 Wn. App. 2d 935, 456 P.3d 862. This case addressed whether there was proper notice for a UCCJEA hearing wherein no motion was filed as the statute specifically required one be filed. Neither case is similar or applicable to the matters at issue here.

the public has an interest in preventing domestic violence). Restricting a trial court judge from fashioning an order limited by the petition would undermine that intent. In light of the Legislature’s intent to grant trial courts discretion to fashion a remedy suitable to protect the petitioner and family members, and in recognition that RCW 26.50.060 does not require specific notice of every potential remedy that the court can order in a protection order, the statutes cannot be read to require such specific notice.

3. The court’s decision to order weapons restrictions and protect Ms. Jurss’ daughter was warranted by the evidence presented.

Mr. Mooney argues that it was, “patently unreasonable for the trial court to grant firearm restrictions that were neither requested in the petition nor litigated in the DVPO hearings.” Brief of Appellant at 14. This argument fails legally because the firearm restrictions need not be petitioned for in order for the court to order them, and it fails factually, because the necessary facts were litigated. Under RCW 9.41.800(3), courts *must* order weapons restrictions if the elements are met, regardless of whether the petitioner asked for weapons restrictions. As detailed in section E.I. of this brief, the elements under RCW 9.41.800(3) were met and thus the court had a duty to issue an Order to Surrender Weapons.

Here, the court found that firearms restrictions were necessary under another section of RCW 9.41.800. The statute provides that, “the court

may enter an order [restricting possession and access to firearms and other dangerous weapons] . . . if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.” RCW 9.41.800(5). The court litigated the facts necessary to make this finding. The facts regarding the incident wherein Mr. Mooney raped Ms. Jurss no doubt relate to his history of violent bodily harm and disregard for another individual’s personal safety. The court found that “due to [Ms. Jurss’] severe level of intoxication, she lacked the capacity to consent to sexual intercourse.” 1 CP 656–69. It further found that, “Ms. Jurss lacked capacity to consent that evening and Mr. Mooney *proceeded to participate in sexual intercourse with Ms. Jurss anyway.*” *Id.* (emphasis added). The court found that Mr. Mooney had committed this violent act that caused extreme harm to Ms. Jurss’ health and safety. *Id.* This is more than enough evidence to find that Mr. Mooney presented a serious and imminent threat to the health and safety of Ms. Jurss if he had possession or access to weapons.

Yet, even more evidence was presented over the course of the three-day hearing that bolsters the finding that he presented such a threat. Ms. Jurss testified that Mr. Mooney harassed her by repeatedly contacting her workplace, following her to her car, verbally harassing her as he followed

her, and continually attempting to change their child's name despite Ms. Jurss opposing it and a psychologist advising that doing so would be detrimental to the child's wellbeing. 1 CP 6, 92–93, 233–35, 525–26. All of these acts show a disregard for Ms. Jurss' boundaries and wellbeing and the capacity to threaten her health and safety. Based on these findings and evidence, it was entirely reasonable for the trial court to find that if Mr. Mooney possessed a firearm or other dangerous weapon, he would present a serious and imminent threat to the public health or safety of Ms. Jurss. Therefore, it properly ordered firearms restrictions on Mr. Mooney and the Order to Surrender Weapons should not be reversed.

Mr. Mooney argues that it, “was patently unreasonable for the trial court to impose restraints designed to protect the child when no such protection was requested in the petition or litigated in the DVPO hearings.” Brief of Appellant at 14. However, Ms. Jurss did in fact petition for restraints designed to protect her child, and the child was included in the Petition. 1 CP 3. This issue was also litigated during the extensive three-day hearing. The trial court heard multiple examples of how Mr. Mooney placed their daughter at the center of their conflict. 1 CP 1 CP 81–82, 135–36, 233–34, 533, 577. In addition, there is great risk to the daughter of harm for witnessing or being placed in the center of any further acts of domestic violence, so it is reasonable to protect her.

Further discussion concerning the need to protect the party's daughter is in Section D below.

C. The trial court properly concluded that Ms. Jurss has a reasonable, ongoing fear of Mr. Mooney and that the Order should last longer than a year based on the sexual assault, Mr. Mooney's email to her work, his continuing attempts to add his name to their daughter's name, her documentation of having PTSD related to surviving sexual assault, and her testimony from the hearing.

Ms. Jurss testified and brought forward extensive evidence concerning her fear of Mr. Mooney and his harassment in her life, and did so in her Petition, in her documentation, and in her extensive testimony. The definition of domestic violence in RCW 26.50.010 includes stalking, which accounts for placing a person in fear, even fear of injury to a person's property. RCW 9A.46.110, RCW 26.50.010. The definition of harassment in RCW 9A.46.020 addresses maliciously taking actions to harm a person's mental health. RCW 9A.46.010.

An order lasting longer than a year does not have to be based upon a recent event, but can be granted based on ongoing fear from a past event. *Spence v. Kaminski*, 103 Wn. App. 325, 328, 12 P.3d 1030, 1032 (2000). In *Spence*, the petitioner was granted a lifetime protection order against the respondent based on threats he made against her from years before, his interference in child custody, and his more recent harassing phone calls. *Id.* at 328–29. The Court found that RCW

26.50.020 and RCW 26.50.060 do not require a recent act of domestic violence. *Id.* at 334. The Court further stated that the past acts are sufficient to persuade a rational person that she was in fear of imminent harm, that ongoing custody issues present opportunities for conflict, that the facts supported the pre-printed finding that the Order should last longer than a year, and that her credibility is not reviewable by the Court of Appeals. *Id.* at 333.

Where there is evidence of current fear based on past violence, there is a sufficient basis to grant an Order for Protection. *Muma v. Muma*, 115 Wn. App. 1, 6–7, 60 P.3d 592 (2002). In *Muma*, the petitioner allowed a one year DVPO entered in 1999 to lapse, but then she reapplied in 2001, and even though the most recent harms, such as the respondent kicking her down the stairs and chasing her around the house with an axe occurred in 1995, she was granted a new Order against the respondent beyond one year. *Id.* at 3–4. The Court held that *res judicata* did not bar the petitioner from seeking a new Order, that her current fear was a basis for a new Order. *Id.* at 6–7. The Court stated they should not wait for more acts of domestic violence to occur before issuing a new Order. *Id.*

Here, like in *Spence*, the trial court relied on Ms. Jurss’ extensive testimony over three days concerning her ongoing fear of Mr. Mooney

based on a previous act of violence, sexual assault. 1 CP 124, 139–40, 203, 205. Like in *Spence*, there is an opportunity for ongoing conflict due to custody issues, and Ms. Jurss specifically explained that the Order should last longer than a year due to having to co-parent with Mr. Mooney. 1 CP 6, 231–32, 233, 579, 589–90. As in *Spence*, the trial court determined in the lengthy Findings and Conclusions that Ms. Jurss has a reasonable, ongoing fear of Mr. Mooney, and the facts support that finding and the pre-printed language in the Order for Protection. 1 CP 656–57. Like *Spence*, this Court cannot make credibility determinations here, only base its decision on the evidence. Even more than *Spence*, the evidence here is extensive as Ms. Jurss delivered testimony concerning her fear over the course of three separate days, provided substantial documentation of her fear and PTSD from mental health and other professionals, and Mr. Mooney corroborated recent incidents demonstrating stalking and harassment. 1 CP 88, 92–93, 142–44, 203, 205, 233–34. The trial court’s reliance on this evidence is reasonable, tenable, and justified.

The Order for Protection here, like in *Spence*, states an additional finding, which is that the Order should last longer than a year because a one-year order will be insufficient to prevent further acts of domestic violence. 1 CP 651. Again, like in *Muma* and *Spence*, the basis for the

Order for Protection lies in current ongoing fear based upon a past serious infliction of physical harm, here sexual assault. The court should not wait for additional acts of domestic violence in order to grant an Order for longer than a year, and like in *Muma* and *Spence*, Mr. Mooney exhibited and confirmed behaviors that give rise to Ms. Jurss' fear including Mr. Mooney's contact with Ms. Jurss' employer, following her in the parking lot after court, and sending documents to her house with his name added to their daughter's name. 1 CP 6, 92–93, 135–36, 203–205, 233–34, 525–26, 577.

Further, as in *Muma*, this Order for Protection is based on current fear involving a past event. 1 CP 124, 139–40, 203, 205. Ms. Jurss, like the petitioner in *Muma*, described a current fear in great detail, not only due to PTSD from being sexually assaulted, but also based on Mr. Mooney's explicit mention of her in a complaint email to her employer. 1 CP 6, 92–93, 207, 232. Ultimately, like in *Muma*, Ms. Jurss' fear stems from sexual assault, a traumatic physical harm that a person does not simply get over. 1 CP 6, 231–32, 233, 579, 589–90. Additionally, Ms. Jurss has to have an ongoing co-parenting relationship with the person who caused the harm and the trauma. 1 CP 6, 407, 411, 536.

Mr. Mooney's effort to contact Ms. Jurss' employer was intimidation and should be considered an act of stalking as defined in

RCW 9A.46.110, as it gave Ms. Jurss credible fear of harm to her job and career aspects similar to the petitioners in *Spence* and *Muma*. 1 CP 92–93, 203, 205. Mr. Mooney contradicted himself in denying he blamed her, and although his credibility is not reviewable, his dishonesty is a fact the trial court could consider, and is a fact which substantiates Ms. Jurss’ fear of him. 1 CP 533–34. Further, this email is not simply an attempt to intimidate or get her fired, but an attempt from the person who raped her to get her fired through information he gained from their daughter. *Id.* His behavior is an escalation in potential harm to Ms. Jurss from other actions he has taken, including following her after a court hearing and sending the school documents with his name added to her house. 1 CP 7, 84–85, 103, 205, 233–34, 577.

Mr. Mooney also would not let go of the issue of adding his name to their daughter’s name, which is an act of harassment as defined in RCW 9A.46.020 and stalking, by placing Ms. Jurss in fear, like petitioners in *Spence* and *Muma*. 1 CP 233–34, 453. Ignoring Ms. Jurss’ consistent refusals and a psychologist’s recommendation to not add his name to their daughter’s name demonstrates Mr. Mooney will not stop this harassing behavior. 1 CP 84, 577. Instead of moving on from the denials, he has kept finding ways to “push on it,” justifying Ms. Jurss’ fear. 1 CP 233–34, 453. Continuing to push the issue and

mailing the documents to her house damages Ms. Jurss' mental health and places her in fear as she sees the person who sexually assaulting her refusing to accept boundaries and using their ongoing relationship with their daughter to harass her. 1 CP 7, 204–05, 232. This act also places their daughter at the center of the conflict. 1 CP 533.

Ms. Jurss even goes beyond petitioners in *Spence* and *Muma* by bolstering evidence of her fear with documentation from mental health providers, other treatment providers, and examples that show a risk of Mr. Mooney's behavior recurring. 1 CP 88, 94–95, 133–34, 142–44. The words of Ms. Puro support what Ms. Jurss continually stated; her fear is a result of being sexually assaulted. 1 CP 396.

Mr. Mooney admitted to being near her outside the court house on February 8, 2018, the same day he was served with an Order for Protection, which not only shows intimidation, but behavior that could lead to imminent fear of harm. 1 CP 525–26. Ms. Jurss wrote about her crippling fear of Mr. Mooney in her Petition, and testified about her fear of him over three days of hearings. 1 CP 6, 7, 203–05, 413.

Ms. Jurss' own behaviors during the proceedings added to the substantial evidence of ongoing fear to justify a long term order. While opening her testimony with both parties in the same room, the trial court and the Clerk had to slow Ms. Jurss down, and the trial court had to tell

her to calm down, showing that she was afraid and panicked. 1 CP 202, 206–07. Ms. Jurss requested that she not have to direct questions to Mr. Mooney during cross-examination, further indicating fear of direct interaction with him, despite the few sequences where she appears to be asking questions directly. 1 CP 539. Towards the end of the proceedings, there was an exchange in which Ms. Jurss apologized to the trial court multiple times for seeming to lose control of her emotions further demonstrating her desperation and fear. 1 CP 591.

Ms. Jurss has also filed multiple protection and anti-harassment orders, and repeatedly brought the issue of Mr. Mooney sexually assaulting her to Mr. Mooney’s attention on multiple occasions in years past, which the trial court reviewed. 1 CP 96–110. She had sought Mr. Mooney’s admission to the assault, and even had a private investigator conduct an investigation, which concluded that he sexually assaulted her. 1 CP 113–24, 528–29. Her past efforts and more recent effort to go to the trial court again to seek protection only adds to the evidence of her ongoing fear and desire for protection, like the petitioners in *Spence* and *Muma*.

The court relied on substantial evidence in determining that even routine interactions with Mr. Mooney cause Ms. Jurss fear. *Id.*, 1 CP 291, 589–90, 612. Ms. Jurss testified repeatedly that interacting with

Mr. Mooney causes her “crippling fear.” 1 CP 6, 203, 205, 231–33, 413, 610. Further demonstrating ongoing fear in comparison to *Spence* and *Muma*, Ms. Jurss testified extensively about how difficult it is to communicate about non-emergency parenting issues, like educational concerns, how OFW does not adequately reflect the time it takes to respond, and that she needs to take time when she does not have to respond to emergencies because of her fear. 1 CP 413, 610. Even though Ms. Jurss was involved in the exchange of their daughter on April 28, 2019, she explained that she was there because she felt it was the only option under the circumstances, she wanted to make sure her daughter was safe, and she knew how long she would have to hold it together for her daughter’s sake. 1 CP 513–24, 579, 589–90. Ms. Jurss also explained that her decision that day distracted her all morning, and she mentally prepared for how long it would take to hold “it together” for her daughter’s sake. *Id.* Interactions with Mr. Mooney debilitate her ability to function and focus, and this is supported by the documentation and testimony as to her diagnosis for PTSD. 1 CP 88, 342, 344–45, 608–10.

Finally, the trial court heard testimony over three days and took extra time to consider its ruling. 1 CP 624-25. The trial court considered documentation of Ms. Jurss’ PTSD and incidents that

involved stalking and harassment without much disagreement on the substance of those incidents. Ultimately, the trial court concluded Mr. Mooney sexually assaulted Ms. Jurss, and her ongoing fear Mr. Mooney on that basis is reasonable. 1 CP 656–57.

Relying on the extensive testimony concerning her fear, documentation, and accepting the underlying premise that Mr. Mooney sexually assaulted Ms. Jurss are reasonable, tenable grounds to conclude she has an ongoing fear of Mr. Mooney. At the very least, the examples of sending the school documents to her house, sending the scathing email to her employer, and at least being near her in the parking lot on the day he was served with an Order for Protection are escalating conflicts that are only made possible through their co-parenting relationship, and are unlikely to end so long as they have to co-parent together. 1 CP 6, 7, 81–82, 92–93, 135–36, 205, 233–35, 533, 577. Therefore, the trial court did not abuse its discretion in concluding Ms. Jurss has an ongoing fear of Mr. Mooney and finding that he is likely to continue acts of domestic violence.

D. The decision to include their daughter in the Order for Protection was reasonable and tenable based on Mr. Mooney’s recent acts of stalking and harassment, Ms. Jurss’ Petition, and the necessity of continuing to communicate about their daughter.

The Court had substantial evidence to find that their daughter should be protected as Mr. Mooney used their daughter in exhibiting stalking and harassing behavior with the addition of his name to hers and learning from her where Ms. Jurss worked before he made contact. Ms. Jurss also listed their daughter on the Petition and it is reasonable for the trial court to take actions to protect their daughter and keep her from being exposed to any domestic violence. A child's exposure to domestic violence is domestic violence. *Rodriguez*, 188 Wn.2d at 596–98.

Where a child is present for acts of domestic violence against another household or family member, it is considered domestic violence against the child. *Id.* In *Rodriguez*, the respondent did not physically touch the child, but the child was in the same home while the respondent committed domestic violence against the petitioner. *Id.* at 589–90. The Court held that exposure to domestic violence is domestic violence and the domestic violence statute allows for protecting the child in proximity to the domestic violence. *Id.* at 596.

Here, Mr. Mooney learned where Ms. Jurss worked from their daughter and subsequently sent the email to her employer blaming her for being blocked on ThurstonTalk due to their personal issues, which is an act of harassing and stalking that, although may be less intense than the experiences described in *Rodriguez*, are still acts of domestic

violence. 1 CP 92-93, 533. The child here is intimately involved in this Order for Protection, like *Rodriguez*, because acts of domestic violence, harassment and stalking do not just involve the parties, but can have ripple effects at best, and tragic consequences at worst, on their daughter. As in *Rodriguez*, the acts of domestic violence here happened principally against Ms. Jurss, not the child, but the Court must consider the child and the potential exposure of the child to domestic violence.

Mr. Mooney knew when she filed for the Protection Order that the underlying issue was whether he sexually assaulted her, and that she wanted protection. 1 CP 1–14. Ms. Jurss listed their daughter in common, so Mr. Mooney had reason to know that a Protection Order against him may impact his relationship with his daughter at the very least. 1 CP 1. Ms. Jurss even requested that the Court include some protections for her daughter. 1 CP 3. Ms. Jurss acknowledged throughout that she expects to have to continue to communicate with Mr. Mooney concerning parenting issues, but is worried about the impacts of domestic violence on their daughter. 1 CP 6–7, 9, 407, 411–12.

The trial court’s Order protects their daughter from being placed in the center of any further acts of domestic violence. The trial court’s Order acts as another restraint on Mr. Mooney’s behavior. The trial

court had reason to believe Mr. Mooney would use the daughter to further harass, stalk, and inflict psychological harm on Ms. Jurss. It is reasonable and tenable for the Court to seek to prevent and protect their daughter from such behavior and there was substantial evidence to support the trial court's ruling including their daughter on the Order. The trial court exercised sound discretion in protecting their daughter through this Order.

E. The trial court properly ordered surrender of weapons because substantial evidence supports its credible threat and risk of harm findings.

The trial court properly issued an Order to Surrender Weapons when it granted the Order for Protection. It appears from the Order for Protection, that the court restricted weapons access on the basis of finding that the possession of a firearm or other dangerous weapon by Mr. Mooney presents a serious and imminent threat to public health or safety, or to the health or safety of an individual. 1 CP 653-54.

There is substantial evidence in the records to support this finding. Even if there was not substantial evidence, the court had another basis for restricting firearms pursuant to the statutory mandate in RCW 9.41.800(3). There is substantial evidence in the record to support all of the findings necessary to trigger the automatic weapons restriction that the statute imposes.

1. Weapons surrender was mandatory pursuant to RCW 9.41.800(3).

Under RCW 9.41.800(3), the trial court had a mandatory duty to issue an Order to Surrender Weapons. RCW 9.41.800(3) provides that when a person is subject to a domestic violence protection order, an order to surrender weapons must be issued when: 1) the first restraint provision in the Order for Protection is ordered; 2) the court finds that the respondent had actual notice and an opportunity to participate in a hearing; 3) the court finds that the respondent presents a credible threat to the physical safety of the intimate partner or child; and 4) prohibits the use, use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

The elements were met⁶ and Mr. Mooney appears to concede this point in his Brief, but insists that the credible threat finding was just a “pro forma, boilerplate” finding that is not supported by substantial evidence. Brief of Appellant at 20–21. Mr. Mooney also argues that the credible threat finding “reflects an interpretation of the legal significance of the evidence to determine a present or future risk of harm, and should be reviewed de novo.” Brief of Appellant at 22. However, Mr. Mooney’s

⁶ Mr. Mooney’s brief does not elaborate on the element requiring a finding that the petitioner and respondent are intimate partners. This finding was properly made because Ms. Jurss and Mr. Mooney have a child in common. RCW 26.50.010 defines “Intimate partner” as including “persons who have a child in common regardless of whether they have been married or have lived together at any time.” RCW 26.50.010(7)(c).

Brief misconstrues the standard of review. As explained in *Goodwin*, cited in Mr. Mooney's brief, the credible threat determination "is properly construed as a legal conclusion" which means the appellate court "must determine whether substantial evidence supports the superior court's findings and whether those findings support the [credible threat] conclusion." *Goodwin v. Hollis*, No. 52019-2-II, 2020 WL 70809, at *9 (Jan 7, 2020) (unpublished, cited as persuasive authority under GR 14.1); *see also In re Dependency of Schermer*, 161 Wn.2d 927, 940, 169 P.3d 452 (2007) ("appellate review is limited to whether substantial evidence supports the trial court's findings and whether the findings support its conclusions of law"). Thus, the Court should not review the evidence de novo, but look to whether substantial evidence supports findings that in turn support the conclusion that Mr. Mooney is a credible threat.

The evidence and findings detailed in Section B.3 of this brief show that Mr. Mooney represents a credible threat to Ms. Jurss' physical safety. The court found that Mr. Mooney raped Ms. Jurss, an extremely violent act causing profound harm to her physical safety. 1 CP 656–57. Rape is one of the most severe acts of violating an individual's physical safety. This incident displayed Mr. Mooney's capacity for causing such physical harm. There was additional evidence of Mr. Mooney's recent harassment of Ms. Jurss. 1 CP 92–93, 233–34, 577. This evidence

supports the conclusion that Mr. Mooney poses a credible threat to Ms. Jurss' physical safety.

To support his argument that there was not substantial evidence, Mr. Mooney's brief cites to an unpublished opinion, *Goodwin v. Hollis*, No. 52019-2-II, 2020 WL 70809, (Jan 7, 2020). Brief of Appellant at 22. In *Goodwin*, this Court concluded that there was no evidence to support the conclusion that the respondent poses, currently or in the future, a threat to the physical safety of the protectant mother. *Goodwin*, at *9. The court concluded this because there was no evidence offered and no factual finding by the court that the respondent had committed a physical act against the protectant mother or threatened to commit a physical act against her. *Id.* The facts here are entirely different as the court made a finding that Mr. Mooney raped Ms. Jurss and there was ample evidence of Mr. Mooney further harassing Ms. Jurss. 1 CP 92–93, 233–34, 577, 656–57. This Court ultimately found in *Goodwin* that the Order to Surrender Weapons was properly issued because there was evidence in the record supporting the conclusion that respondent poses a credible threat to the physical safety of the protectant *daughter*. *Goodwin*, at *9–10.

There was evidence that the respondent had sprained the child's wrist when pulling her out of bed and more recently violated an agreement not to contact the child by sending birthday cards. *Id.* Similar to this

analysis, here, there was ample evidence of past physical harm and continued harassing behavior. This is sufficient evidence to support a finding that Mr. Mooney poses a credible threat to Ms. Jurss' physical safety. It appears that Mr. Mooney is merely challenging the superior court's interpretation of the evidence, which should not be disturbed on appeal. *See Sherrell v. Selfors*, 73 Wn. App. 596, 600–01, 871 P.2d 168 (1994).

2. *There is substantial evidence in the record to support the finding that that Mr. Mooney presents a serious and imminent threat to the health or safety of Ms. Jurss if he possesses a firearm or other dangerous weapon.*

Even if the mandatory weapons restrictions had not been triggered by RCW 9.41.800(3), the court properly ordered the restrictions under RCW 9.41.800(5). RCW 9.41.800(5) provides that the court may order weapons restrictions if it finds that “the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.” As detailed in Section B.3 of this brief, the court found that Mr. Mooney raped Ms. Jurss and there was ample evidence that he repeatedly harassed her in recent years. 1 CP 92–93, 233–34, 577. Based on these findings and evidence, there was substantial evidence in the record supporting the court's finding that if Mr. Mooney possessed a firearm or other dangerous

weapon, he would present a serious and imminent threat to public health or safety of Ms. Jurss.

F. The trial court did not err in entering Finding/Conclusion 12 and Finding/Conclusion 16 because they are supported by substantial evidence in the record.

Mr. Mooney argues that the trial court's Finding/Conclusion 12 and Finding/Conclusion 16 are not supported by substantial evidence in the record and thus should be reversed. In Finding/Conclusion 12, the order states that "[t]he court concludes that if Mr. Mooney knew that Ms. Jurss did not have the capacity to driver her car, he should have suspected she did not have the capacity to consent." 1 CP 477–78. Mr. Mooney argues that "[t]here is no testimony that Mooney knew Jurss could not drive home that night." Brief of Appellant at 24. However, the court did not need that exact testimony directly from Mr. Mooney in order to support this finding because there was overwhelming evidence that Ms. Jurss was severely intoxicated that night. 1 CP 113–25, 127, 139–40, 207–08, 396. It is entirely reasonable for the court to find from all of the evidence of Ms. Jurss' intoxication, and the absence of a dispute over this fact, that Mr. Mooney knew she was too impaired to drive, and should have suspected she did not have the ability to consent. 1 CP 554–58.

In Finding/Conclusion 16, the order states the following:

[t]he court further concludes that Ms. Jurss has proven, by a preponderance of evidence, that due to her severe level of intoxication, she lacked the capacity to consent to sexual intercourse. Because Ms. Jurss lacked the capacity to consent that evening and Ms. Mooney proceeded to participate in sexual intercourse with Ms. Jurss anyway, Ms. Jurss is entitled to the Order requested.

1 CP 478. Mr. Mooney's bare-bones argument states that Ms. Jurss was not entitled to the relief the court provided her. Brief of Appellant at 24. The prior sections of this brief detail the evidence that supported the trial court's findings. This was not a simple and quick proceeding, but rather an extensive three-day hearing at which the trial court Judge gave meaningful consideration to ample witness testimony and even requested more information from the parties after the hearing before issuing this detailed Order of Findings and Conclusions. The trial court's order should not be disturbed as there was substantial evidence in the record to support the court's findings.

V. CONCLUSION

The Court should affirm the trial court's ruling. Ms. Jurss has an ongoing fear of the person who sexually assaulted her. The trial court had the authority and obligation to include relief based upon the Petition and evidence presented. There is substantial evidence to justify the finding that the Order should last past a year, and the trial court properly found Ms. Jurss has a reasonable, ongoing fear of Mr. Mooney. The

trial court had substantial evidence to justify protecting their daughter from exposure to acts of domestic violence. The trial court had substantial evidence to find Mr. Mooney should not have access to firearms after concluding he committed sexual assault. The trial court had substantial evidence to find Ms. Jurss could not drive or consent to sex. The court below was best positioned to make these Findings and Conclusions and did so thoughtfully and thoroughly. These Findings and Conclusions on appeal should be left in place.

DATED this 11th day of May, 2020

NORTHWEST JUSTICE PROJECT

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