

FILED

Court of Appeals

Division II

State of Washington

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COURT OF APPEALS

DIVISION TWO

STATE OF WASHINGTON

ANGEL GUTIERREZ

APPELLANT

V.

LUVY GUTIERREZ

RESPONDENT

BRIEF OF RESPONDENT LUVY GUTIERREZ

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I. TABLE OF AUTHORITIES

RCW 10.14.030

RCW 10.14.080

RCW 26.09

CR 59

CR 60

II. ASSIGNMENT OF ERRORS

1. The Respondent, Luvy Gutierrez, asks the Court to find that the Thurston County Superior Court did not err when ruling Mr. Gutierrez is restrained from entering or being within 500' of the family residence under **10.14 RCW**.
2. The Respondent, Luvy Gutierrez, asks the Court to find that the Thurston County Superior Court did not err when it applied **10.14 RCW** factors to the nuclear family.

III. STATEMENT OF THE CASE

The Respondent agrees with the statement of the case as provided by the Appellant with the additional information that the Harassment Protection Order expired May 23, 2020.

IV. ARGUMENT

Ms. Gutierrez, filed for the Harassment Protection Order on May 3, 2019. Ms. Gutierrez and Mr. Gutierrez are married and were already separated. Ms. Gutierrez requested the protection order to address the turmoil between the parties. The petition was appropriately filed as a harassment protection Order as the alleged actions do not fall under any other protection order format or requirement.

There is no dispute that the family residence is a real property interest of both Ms. Gutierrez and Mr. Gutierrez. I believe that both parties would agree that they were already going to be involved in a Legal Separation of Marriage action which was filed on May 16, 2019. The hearing on the protection order was held on May 23, 2019, seven days later.

The court heard extensive testimony and argument from both parties over a period of 1.5 hours. The Court evaluated and applied all of the factors under **RCW 10.14.080** to determine if a protection order should be granted. No argument is being made that the Court did not understand the factors to be evaluated under **RCW 10.14.080**. No argument is being made that the Court's findings as to the actions between the parties are in error. The Court made a complete ruling as to

what actions that occurred between the parties formed the basis for the granting of the harassment protection order.

Opposing attorney makes it clear he pointed out to the Court two separate times that **RCW 10.14.080** was not the appropriate statute to be applied in the case and that **RCW 26.09** was the appropriate, **TR pg. 72, Line 14-22**. The opposing attorney in his **Brief, Pg. 4, Line 2**, states that he should have made a motion the harassment protection order was the wrong procedural course.

He did not make any such motion. He instead treated the matter as if it had been properly filed.

The opposing attorney could have filed a motion for reconsideration or a motion for revision within ten days of the Court ruling. **CR 59**. No such motion was filed. The opposing party could have also filed a motion for relief from judgment or order **CR 60**.

The argument that constitutionally protected free speech is not included under a course of conduct under **RCW 10.14.080(1)** is inaccurate. Course of Conduct is defined in **RCW 10.14.030**.

RCW 10.14.030

Course of conduct—Determination of purpose.

In determining whether the course of conduct serves any legitimate or lawful purpose, the court should consider whether:

(1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

- (4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:
- (a) Protect property or liberty interests;
 - (b) Enforce the law; or
 - (c) Meet specific statutory duties or requirements;
- (5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;
- (6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

The Statute refers to lawful purpose which can arguably be inferred to be protected free speech, but such speech in this case clearly shows that it was made to unreasonably interfere with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner. **RCW 10.14.030 (5).**

No motions were filed to advocate any of the above available actions.

When the hearing was taking place the Petition for Legal Separation had already been filed with the Thurston County Superior Court seven days prior. The record is clear that the Court was aware that the Petition for Legal Separation has already been filed, **TR Pg.8, Lines 2-8**, and **TR Pg. 9 Lines 10-18**. The Petition for Legal Separation is also identified at **TR Pg. 30 Line 1** and also identified at **TR Pg. 34 Line 3**.

The testimony is also clear that Mr. Gutierrez had moved out of the family residence a long time ago. **TR Pg. 56 Lines 8-25** and **TR Pg. 57 Lines 1-11**.

In his testimony Mr. Gutierrez stated that he has not been in the residence for at least a year. **TR Pg. 63 Line 25 – TR Pg. 26 Line 1.**

V. CONCLUSION

The Court had clear knowledge that the parties were no longer living together. Mr. Gutierrez had not been in the house for over a year. The Court was aware that a Petition for Legal Separation had been filed. If this Court finds that the Court in the protection order hearing violated Statutory or Case Law it should consider the specifics of the facts in this case and give discretion to the protection order Court as to the impact to Mr. Gutierrez of being prohibited from access to the residence.

I request that the Court deny the Petition of Angel Gutierrez to dismiss the Anti-Harassment Protection Order signed by the Thurston County Superior Court on May 23, 2019.

September 30, 2020

Respectfully submitted,



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LAW OFFICE OF PHILIP KRATZ

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Transmittal Information

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