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Division II
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No. 54003-7-II

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

MATTHEW HINK
respondent
v.
MELODY RUDE
appellant

APPELLANT'S OPENING BRIEF

Melody Rude
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ASSIGNMENTS OF ERROR

1. The trial court erred by issuing an Anti Harassment Protection Order for Mr. Hink, on October 9, 2019, when the law specifically excludes it.
2. The trial court erred by allowing Mr. Hink's Anti Harassment Protection Order petition to go forward without the hearing scheduling requirements being met, thus unfairly burdening Ms. Rude.
3. The trial court erred by issuing the original an ex parte temporary Domestic Violence Protection Order, on June 12, 2019, in violation of Ms. Rude's constitutional and procedural rights.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Can the trial court issue an Anti Harassment Protection Order after finding that a Domestic Violence Protection Order should be in place?
2. Can the trial court proceed with a petition if the hearing deadline has past?
3. Can the trial court issue an ex parte temporary Domestic Violence Protection Order-Surrender of weapons, for a petition missing essential components?

STATEMENT OF THE CASE

Mr. Hink and Ms. Rude had met when Ms. Rude was employed at a sports bar Mr. Hink frequented. RP 9-10. Mr. Hink and Ms. Rude became close friends, and began dating in 2017. RP 10. Ms. Rude had planned to relocate to with her 12 year old son, in August of 2017. Mr. Hink requested to relocate with Ms. Rude and her son, and Mr. Hink and Ms. Rude signed a lease on an apartment together. RP 10. Near the end of the lease, in August of 2018, Mr. Hink decided he should buy a home with a yard for Mr. Hink, Ms. Rude and her son to share. CP 7, RP 10. After moving to the home Mr. Hink and Ms. Rude's relationship began to deteriorate. CP 7, RP 13-14. Mr. Hink began abandoning Ms. Rude and her son after arguments. RP 13-14. On June 10, 2019, Mr. Hink and Ms. Rude had an argument and Mr. Hink left the residence, giving no indication of his intentions. CP 9, RP 10-12. Mr. Hink retained attorney, Lily Wilson. RP 12. On June 12, 2019, Mr. Hink, and his attorney, filed an ex parte temporary Domestic Violence Protection Order-Surrender of weapons, which was granted by Court Commissioner Kortokrax in Thurston County Superior Court. CP 7. Police officers arrived at the residence,

at 2054 Lakemoor Dr SW Olympia WA 98512, and evicted Ms. Rude from the residence, while her son was attending school. RP 15. Ms. Rude had no driver license, no income, no residential security, and a minor child. CP 87. Ms. Rude was completely dependent on Mr. Hink. Ms. Rude had fifteen minutes to gather all needed items for herself and her son, and exit the residence. RP 15, CP 87. Ms. Rude had no expectation of Mr. Hink's actions. Officers inquired about Ms. Rude's several knives. CP 82-84. Ms. Rude was confused over the question, and no weapons were visible, so the officers did not confiscate any weapons. Ms. Rude had no close friends in Olympia and was forced to relocate, with her son, to her parents in Port Orchard, WA. CP 87. Ms. Rude's son had two weeks remaining in the school year. Ms. Rude's son was unable to attend school the rest of that week. CP 87. Having no other option, on Sunday June 16, 2019, Ms. Rude sent her son back to the residence in Olympia, so that Ms. Rude's son could finish out the school year. RP 15. On June 26, 2019, Ms. Rude had counsel, who was unavailable, so, Ms. Rude appeared at the Domestic Violence Protection Order (DVPO) hearing without counsel. Mr. Hink requested that his petition be denied, Ms. Rude accepted, and Mr. Hink's

denied, Ms. Rude accepted, and Mr. Hink's petition was denied. CP 7. Mr. Hink and Ms. Rude resumed communication. Mr. Hink and Ms. Rude were unable to maintain a successful line of communication and the situation deteriorated between the parties. Conflict ensued over Ms. Rude's, and her son's, belongings, access to the property, and issues pertaining to the relationship. CP 9-12. By mid August Ms. Rude had acquired Ms. Rude's, and her son's, belongings. CP 10-11. Shortly, after Ms. Rude had retrieved her, and her son's, personal property, Mr. Hink filed a petition for an Anti Harassment Protection Order (AHO). CP 7. There were just a few issues left between Ms. Rude and Mr. Hink, and by mid September Ms. Rude had ceased all communication with Mr. Hink. RP 57. On September 11, 2019, Ms. Rude's attorney was unable to attend, and a substitute attorney requested a continuance on Ms. Rude's behalf. The continuance was granted, and the hearing was rescheduled for October 9, 2019. CP 74. The hearing was confusing, as was the evidence. The trial court found that by a preponderance of the evidence that Ms. Rude had committed unlawful harassment and granted Mr. Hink the AHO. CP 90-92. Commissioner Kortokrax also found that Mr. Hink should

have filed a petition for a DVPO not an AHO. RP 56. On October 17, 2019, Ms. Rude went to the Thurston County Courthouse in Tumwater, WA, to file, pro se, a Motion for Reconsideration of the Anti Harassment Order. It was untimely filed, due to a misunderstanding at the court clerk's office. CP 116. Ms. Rude felt the all of the procedures and actions, by Mr. Hink, his attorney, and the trial court, suffered from inadequacy from the very start, and Ms. Rude filed a Notice of Appeal and an ex parte Motion & Declaration for Order of Indigency, on November 8, 2019. CP 108, CP 123-128. On January 7, 2020, the Supreme Court denied Ms. Rude's Motion for Expenditure of Public Funds. CP 132-133. Ms. Rude is acting pro se for this appeal.

ARGUMENT

1. The trial court erred in issuing an AHO after finding that a DVPO would have been granted.

Questions of law are reviewed de novo. RCW 10.14 is intended to provide relief from unlawful harassment. RCW 10.14.130, Exclusion of Certain Actions, states, “Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 7.90, 10.99, or 26.50 RCW.” Chapter 26.50 RCW is intended to provide relief to victims of domestic violence. At the close of the AHO hearing on October 9, 2019, Court Commissioner Kortokrax inarguably states, “I don’t know why this matter is being filed under unlawful harassment as opposed to DVPO, because this Court would be able to find, based off of that evidence, that there would be a basis for domestic violence protection order, but that’s not what’s being asked for today. The Court is looking at definitions under 10.14.” RP 56. According Court Commissioner Kortokrax’s own findings, the exclusion from issuing an AHO in any action specifically covered by chapter 26.50 RCW, bars Commissioner Kortokrax from granting an AHO. A new petition for a DVPO hearing should have been

filed with the Court, and Ms. Rude should have then been allowed to prepare a response and defense for a completely different evidentiary hearing. The trial court erred in allowing petition for an AHO turn into an evidentiary hearing on domestic violence, and then issuing an AHO. Ms. Rude had no reason to expect to prepare a defense against domestic violence allegations at an AHO evidentiary hearing. It is unreasonable for the trial court to expect a respondent to show up at an evidentiary hearing, for a specified complaint; prepared for all potential allegations (true, or not) the plaintiff may make during the hearing; regardless of whether, or not, its related to the actual complaint; and prove by a preponderance of the evidence that the plaintiff does not deserve the Court to grant relief. It is already a tremendous burden on a person who has to go through these situations. Having the court further the burden, without having the authority to do so, is untenable. The trial court did not have the authority to issue an AHO for an “action that is specifically covered by RCW 26.50”. The legislature included the exclusion in RCW 10.14 to prevent these exact types of occurrences from happening. The trial court erred in granting an AHO that was outside of the trial court’s authority to grant.

2. The trial court erred in allowing a hearing to go forward that had been scheduled past the clearly stated deadline.

Questions of law are reviewed de novo. When Mr. Hink's attorney filed the AHO petition on August 22, 2019, she set the hearing for September 11, 2019, CP 72, which was 20 days after the Court's receipt of the petition. RCW 10.14.070 states, "Upon receipt of the petition alleging a prima facie case of harassment, other than a petition alleging a sex offense as defined in chapter 9A.44 RCW or a petition for a stalking protection order under chapter 7.92 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order." Further along in RCW 10.14.070, it states, "The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085." RCW 10.14.080 deals specifically with the petition and issuance of ex parte temporary AHO's. When Mr. Hink's attorney filed the AHO petition, on August 22, 2019, CP 72, she failed to observe the hearing requirements under RCW 10.14.070, by setting the court date for September 11, 2019, twenty days after the Court's receipt of the petition for the AHO, not the required 14

days. The law is very clear when it states, "Upon receipt of the petition alleging a prima facie case of harassment, the court shall order a hearing which shall be held not later than fourteen days". This is under RCW 10.14.070 which is for all petitions of civil AHO's. RCW 10.14.010 also states, "The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator." The intention is for all civil AHO's to be speedy, not just ex parte temporary orders. This is in fairness to both the plaintiff and the respondent. Once the petition has been filed it should not be left, indefinitely, while the respondent is completely unaware of the petition. A court order that bears the weight of inhibiting the rights of an individual citizen, should be strictly guided, by the law under which it serves. This is specifically intended to prevent any unlawful behaviors

from continuing for an extended length of time. And, also intended, so that if, the allegations are invalid, the respondent should not have to bear the burden of the plaintiff's unfounded actions, and hostility. The fourteen day requirement is directly related to the petition's validity. The trial court erred by allowing the petition to go forward without the initial requirements of the petition having been successfully met. Ms. Rude's ability to defend against the allegations diminished without the protections of the statute being followed, as intended. The trial court erred in allowing a petition to go forward that had failed to adhere to the very clear, very specific, requirements of the law.

3. The trial court was obligated to ensure that all essential components of the petition were in order before granting an ex parte temporary DVPO-Surrender of weapons.

Questions of law are reviewed de novo. Ex parte temporary order for protection-RCW 26.50.070 (2) states, "(2) In issuing the order, the court shall consider the provisions of RCW 9.41.800, and shall order the respondent to surrender, and prohibit the respondent from possessing, all firearms, dangerous weapons, and any concealed pistol license as

required in RCW 9.41.800.”. RCW 9.41.800 addresses the surrender of weapons or licenses. Ex parte order of surrender of weapons falls under RCW 7.94.050-Ex parte orders and RCW 7.94.030-Petition for order. RCW 7.94.030(4)(b) states, “(4) A petition must: (b) Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent’s current ownership, possession, custody, access, or control.” It is essential in securing weapons, that may or may not exist, to have a list of the weapons, their descriptions, and their locations. If only, so the Court can, minimally, verify that the alleged dangerous weapons to be secured, aren’t kitchen knives, or some other household item. When Mr. Hink’s attorney filed the petition for an ex parte temporary DVPO-Surrender of dangerous weapons, CP 79-87, Mr. Hink, his attorney, and Court Commissioner Kortokrax all failed to observe the requirements under RCW 7.94.030(4)(b), that an itemized list of the weapons, descriptions and locations, be included with the petition. The right to bear arms is a strongly guarded constitutional right and it is not to be disrespected or discarded in the face of unproven allegations. When the trial court permitted the ex parte temporary DVPO-Surrender of weapons without the required itemized list of weapons

including descriptions and locations, the trial court; 1. failed to establish, to a minimum standard, that such weapons even existed, 2. allowed the surrender of weapons order to prejudice Ms. Rude's case without any evidence that the alleged weapons existed, or that a threat had ever been made, 3. Further infringed on the very short fifteen minute time allotment Ms. Rude was given to gather personal items for herself and her son, to provide for Ms. Rude and her son over an indeterminate length of time. Mr. Hink did not offer any evidence, or testimony, alleging any threats of the use of weapons by Ms. Rude, or the existence of any weapons, other than Mr. Hink's answers to a few questions on the petition. Mr. Hink, in fact, gave very conflicting information, regarding Ms. Rude's ownership of any weapons, and any allegations that Ms. Rude had made any threats to use any weapons against Mr. Hink. CP 1-12, CP 79-87, Which reinforces the purpose of the requirement to provide an itemized list with descriptions and locations. It was an extreme oversight to omit the required documents and grant the ex parte surrender of weapons. The trial court erred in allowing the incomplete petition to go forward, violating Ms. Rude's constitutional rights, and prejudicing her case. Had the DVPO petition been made to

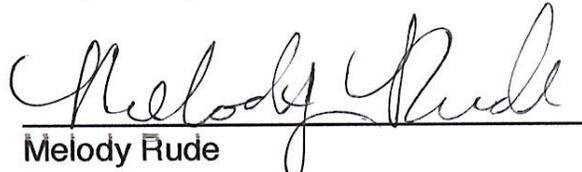
fulfill the requirements under the law, there is a strong likelihood that the temporary DVPO would not have been granted to Mr. Hink on June 12, 2019, and further affecting the granting of the AHO to Mr. Hink, on October 9, 2019. If the AHO petition would have even been filed, had proper procedures been followed at any time by Mr. Hink, his attorney, and the trial court. The issuance of an ex parte temporary DVPO-Surrender of weapons carries severe consequences for the accused individual, who has no opportunity to speak on their own behalf, at the time of issuance. It is the court's priority to, at least minimally, verify the information provided to the court, and to protect the rights of the accused, not just the accuser. Considering the effects it will have on the accused individual and their families, the court must ensure that all of the requirements for filing the petition, and issuing the order, are met. The trial court erred in allowing the temporary DVPO-Surrender of firearms to go forward incomplete; without any indication of any actual weapons in Ms. Rude's possession, or any verifiable, past, or impending, threat of use of weapons against Mr. Hink; violating Ms. Rude's constitutional and procedural rights.

CONCLUSION

When Ms. Rude attended the evidentiary hearing on October 9, 2019, it was for an Anti Harassment Order. The hearing was conducted as a Domestic Violence Protection Order hearing, instead of an Anti Harassment Order hearing. Court Commissioner Kortokrax found for a Domestic Violence Protection Order, and proceeded to issue an Anti Harassment Protection Order. Ms. Rude was ambushed at the hearing, and therefore, unprepared to defend against the allegations presented at the hearing on October 9, 2019. In addition, many other procedural safeguards were unacceptably overlooked, causing unnecessary trauma to Ms. Rude, and her family. Ms. Rude, respectfully, asks the Court to find that the trial court was excluded from granting Mr. Hink an Anti Harassment Protection Order on October 9, 2019. Ms. Rude also, respectfully, asks the Court to find that the trial court erred in going forward with an Anti Harassment Protection Order hearing that was scheduled outside of the clearly stated hearing deadlines, making the petition invalid. In, addition Ms. Rude, respectfully, asks that the Court finds that the trial court erred in granting Mr. Hink an ex parte temporary Domestic

Violence Protection Order on June 12, 2019, for a petition missing essential components. While, Ms. Rude desires to have the opportunity to be heard, Ms. Rude, respectfully, asks the Court to reverse the decision of the trial Court in granting Mr. Hink an Anti Harassment Protection Order on October 9, 2019.

Respectfully submitted June 23, 2020,



Melody Rude
Pro se appellant

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

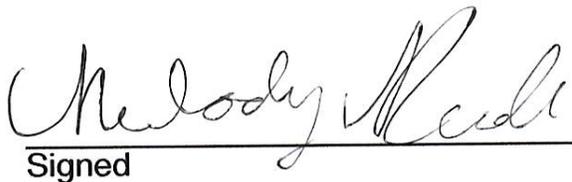
Matthew Hink
respondent

v.

Melody Rude's
appellant

No. 54003-7-II

I, Melody Rude, served the Appellant's Opening Brief, to Lily Wilson, attorney for the respondent, via the Odyssey Portal to her listed email address, lily@olympialegal.com, on June 23, 2020.


Signed


Dated

MELODY RUDE - FILING PRO SE

June 23, 2020 - 2:18 AM

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