

FILED

SEP 08 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

28730-1
No. **281396**

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

KOURTNEY SCHEIB,

Respondent,

v.

CHRISTOPHER CROSBY,

Appellant.

RESPONDENT'S BRIEF

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1. STATEMENT OF THE CASE

Kourtney Scheib filed a pro-se petition for a domestic violence protection order against Christopher Crosby in Spokane County District Court on November 16, 2009 under Case No. 909240DV. (CP 11-14). The district court judge granted the petition and issued a Temporary Domestic Violence Protection Order and Notice of Hearing. (CP 8-10). The hearing for entry of the final protection order was set for November 25, 2009. (id).

Christopher Crosby was served with copies of the petition and temporary order on November 23, 2009. (CP 7). His attorney and he appeared at the hearing on November 25, 2009. The district court re-issued the temporary protection order and made the following findings:

Petitioner was present and ready to proceed but
Respondent was not served timely [and]

Counsel for Respondent requested a continuance and indicated a desire to transfer to Superior Court. Petitioner wanted matter heard in District Court as soon as possible. Continuance for counsel to prepare or move to transfer on basis of pregnancy. (CP 1)

The District Court judge reissued the temporary order and set a new hearing date in District Court for December 8, 2009. (id).

Mr. Crosby's attorney mailed a Notice of Deposition to Ms. Scheib on November 25, 2009. (CP 3-4). The deposition was scheduled for December 4, 2009 at 4:00. (id).

The parties appeared for hearing in District Court on December 8, 2009. (RP 1 - 45). Kourtney Scheib was still pro-se. (RP 2). According to Mr. Crosby's attorney, the case was transferred to Superior Court by the District Court Judge "because of the nature of the case." (RP 6). The parties then walked from the district court to the superior court.

Respondent's attorney requested the Superior Court Judge to continue the hearing for a couple of weeks so he could complete Ms. Scheib's deposition. (RP 5-6). He stated that, in addition to the protection order proceedings, he wanted Ms. Scheib's deposition for another purpose:

MR. STENZEL: ... "It's also what we would call a pre-filing deposition and discovery matter too at the same time because Ms. Scheib is pregnant with my client's child and that would save us some time. (RP 5)."

When asked by the Superior Court Judge if he had requested a court order from District Court for a deposition, the attorney responded that he had not:

"I told Judge Walker I was going to take her deposition it was understood I didn't think I needed an order. (RP 9).

The Superior Court Judge denied Mr. Crosby's request for a continuance and the hearing proceeded under Superior Court Case No. 09-2-05516-0. (RP 9 and CP15). The Court permitted live testimony by direct and cross-examination. (RP 12-19). Mr. Stenzel was given full opportunity

to question Kourtney Scheib, (RP 21-32). Both Ms. Scheib (RP 38-39) and Mr. Stenzel (39-42) presented closing arguments.

The trial court, having ample opportunity to consider the information in Ms. Scheib's petition, and having the opportunity to observe the demeanor of the witnesses while testifying and to weigh their conflicting testimony, found there was more than a preponderance of evidence to issue a protection order. (RP 42-44).

II. INTRODUCTION

This case concerns the procedures a court must follow in a domestic violence hearing to ensure procedural due process. Specifically, does a trial court abuse its discretion by denying a respondent's request for a continuance so that he can depose the petitioner.

The Domestic Violence Protection Act and other pertinent legal authority clearly supports the trial court judge's decisions in this case. The court followed the guidelines and procedures set forth in the statute and conducted a hearing that appropriately took into account the facts of the case and its procedural history. The respondent received a fair hearing, the petitioner's right to access to a protection order was protected, and the public's interest in providing Ms. Scheib protection from future abuse was served.

The trial court's decision in this case should therefore be affirmed.

III. ARGUMENT

Scope of review. The scope of review of a decision made by the trial court following a bench trial is to determine whether the findings of fact are supported by substantial evidence and whether those findings support the conclusions of law. *Dorsey v. King County*, 51 Wn.App. 664, 668-69, 754 P.2d 1255, *review denied*, 111 Wn.2d 1022 (1988).

Substantial evidence is evidence sufficient to persuade a rational and fair-minded person that a fact relevant to the elements of a cause of action is true. *In re Estate of Jones*, 152 Wn.2d 1,8, 93 P.3d 147 (2004).

In determining the sufficiency of evidence, the appellate court need only consider evidence favorable to the prevailing party. *Bland v. Mentor*, 63 Wn.2d 150, 155, 385 P.2d 727 (1963).

An appellate court must defer to the trial court in evaluating the persuasiveness of evidence and the credibility of witnesses. *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994). Credibility determinations are solely for the trier of fact and cannot be reviewed on appeal. *In re Estate of Jones*, 152 Wn.2d 1,8, 93 P.3d 147 (2004); RAP 10.3(g).

The standard of review for errors of law is *de novo*. *Robel v. Roundup Corp.*, 148 Wn.2d 35,43, 59 P.3d 611,615 (2002).

Assignment of error. Each trial court action the appellant claims is erroneous must be cited in a specific and separate assignment of error. RAP 10.3(a)(3). A separate assignment of error must also be included for each finding of fact that appellant is challenging. *Id.*

The finding of fact must be cited in full in the body of the brief or appendix. RAP 10.3(g). The failure to comply with these requirements may preclude review. See e.g.: *Stewart v. State*, 92 Wn.2d 285, 597 P.2d 101(1979).¹

The failure to assign error to a conclusion of law will also preclude review, as the unchallenged conclusion of law becomes the law of the case. *Energy Northwest v. Hartje*, 454 Wn.App. 454, 466, 199 P.3d 1043,1049 (Div. 3, 2009) citing, *King Aircraft Sales, Inc. v. Lane*, 68 Wn.App. 706, 716, 846 P.2d 550 (1993).

The point at which an appellant's failure to assign error to a trial court's findings of fact cannot be corrected is the filing of the respondent's brief. *Santos v. Mack*, 46 Wn.2d 743, 284 P.2d 290 (1955), citing, *Paulson v. Higgins*, 43 Wn.2d 81, 260 P.2d 318 (1953).

¹ However, an appellate court may choose to overlook an appellant's failure to assign error to a judgment if appellant's oversights are mere "technical flaws" and if the appellant has made detailed challenges in his brief to the trial court's factual findings. *State v. Olson*, 126 Wn.2d 315,323, 893 P.2d 629 (1995).

A. The appellant did not assign error to any of the proceedings in district court, the transfer of the case to superior court, or to the superior court's findings of fact and conclusions of law.

The trial court's decision is set forth in pages 42 to 45 of the Verbatim Report of Proceedings. The Court found by at least a preponderance of evidence that there were acts of domestic violence and issued a one-year protection order under RCW 26.50.060.

Mr. Crosby's opening brief does not challenge any of the Superior Court Judge's findings or conclusions; the order by the District Court Judge transferring the case from District or Superior Court; or any of the proceedings that occurred in District Court.

The trial court's findings of fact are therefore verities on appeal, *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994), and its conclusions of law are the law of the case, *Energy Northwest v. Hartje*, 454 Wn.App. 454, 466, 199 P.3d 1043,1049 (Div 3, 2009).

B. The sole issue raised by appellant is whether a respondent in domestic violence protection order case is entitled, as a matter of right, to take the deposition of the petitioner.

All of appellant's assignments of error relate to the Superior Court's denial of appellant's request for a continuance in order to take the deposition of the petitioner.

1. RCW 26.50 does not contain any provisions for the deposition of a petitioner in a domestic violence protection order case.

The Domestic Violence Protection Act, RCW 26.50, sets forth the special procedures from filing a petition through the issuance of the final protection order.

That is, any person who has been a victim of domestic violence may file an ex-parte petition² on a standard form³ that contains an affidavit describing specific acts of acts of “domestic violence” as defined by RCW 26.50.010 (1) by a “family or household member” as defined by RCW 26.50.010 (2). If the petition contains the requisite information, the court shall order a hearing to be held not later than 14 days.⁴ The respondent must be personally served with the petition and temporary order at least 5 court days before the hearing, *Id*, and if the respondent was timely served, the court shall conduct a hearing to determine if the final protection order shall be granted⁵.

There is no provision for discovery in the Domestic Violence Protection Act.

² RCW 26.50.020 (1)(a)
³ RCW 26.50.020 (1)(a)
⁴ RCW 26.50.050
⁵ RCW 26.50.060

The legislative history of the Domestic Violence Protection Act indicates that the Legislature intended this process to be easy, quick, and pro-se friendly:

RCW 26.50 Laws 1992 c 111: “The legislature finds that:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required particularly if they have limited English proficiency; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. **Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.** Emphasis added.

RCW 26.50 has only one explicit reference to the civil rules. That is RCW 26.50.123(2) governing service by mail. That section provides that, “Proof of Service under this section shall be consistent with court rules for civil proceedings.”

We ask this Court to consider whether this provision reflects the Legislature’s intent that the civil rules generally do not apply to

proceedings under RCW 26.50. We also assert that it must, because the section would otherwise be superfluous.

The court rules are also mostly silent as to Domestic Violence Protection Order proceedings. The only explicit reference is ER 1101(c)(4) which provides that the rules of evidence need not be applied.

We urge this Court to consider whether fact that ER 1101 is the sole reference in the court rules to protection order proceedings is the implicit recognition by the drafters of the rules that these actions are not compatible with the rules applicable to ordinary civil and family law actions.

2. The trial court in domestic violence protection order proceedings has the inherent authority and flexibility to determine if discovery will be permitted.

It is well settled that an appellate court will not disturb a trial court's discretion to enter a final domestic violence protection order absent a clear showing of abuse. *Hecker v. Cortinas*, 110, Wn.App. 865, 869, 43 P.3d 50, 53 (2002). A superior court will be found to have abused its discretion only when its decision is manifestly unreasonable or based on untenable grounds, *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997), cert denied 523 U.S. 1008 (1998).

It is also well settled that the statutory procedures for Domestic Violence Protection Orders as set forth in RCW 26.50 satisfy “the

inherently flexible demands of procedural due process.” *Spence v. Kaminski*, 103 Wn.App. 325, 12 P.3d 1030 (2000); see also, *State v. Karas*, 108 Wn.App. 692, 700, 32 P.3d 1016 (2001); *Gourley v. Gourley*, 158 Wn.2d 460, 145 P.2d 1185 (2006); *Blackmon v. Blackmon*, 155 Wn.App 715, 230 P.2d 233(2010).

In *Karas*, the defendant pleaded guilty to violating a domestic violence protection order, then appealed, challenging the constitutionality of the Domestic Violence Protection Act, RCW 26.50.:

Karas contends that the application of the Act violated his Right to due process because the Act’s procedures do not comply with the Civil Rules. He claims that the risk of erroneous deprivation of rights under the Act are great because it provides for only 14 days’ notice and does not contain any provision for discovery. He further argues that it is difficult for a respondent to marshal witnesses on such short notice.

The State contends that cases under the Act are special proceedings that supersede the Civil Rules. CR 81(a). It also contends that given the emergency nature of these cases, 14 days’ notice is not unconstitutionally inadequate and nothing in the Act prevents a party from presenting witnesses. Further, we note that the Act does not preclude a party from seeking discovery. 108 Wn.App. at 698-699. (Emphasis added)

The *Karas* Court held that the Act’s provision for notice and hearing before a neutral magistrate satisfied the “inherently flexible demands of procedural due process” considering the minor curtailment of Karas’ liberty and the significant governmental interest in reducing the potential of irreparable injury. 108 Wn.App. at 700-701, citing, *Spence v.*

Kaminski, 103 Wn.App. 325, 332, 12 P.3d 1030 (2000).

The Washington Supreme Court addressed the procedural due process issue in Gourley v. Gourley, 158 Wn.2d 460, 145 P.2d 1185 (2006). In that case, a respondent contended the trial court violated his right to due process by refusing to allow live testimony and cross examination of the victim. 158 Wn.2d at 467. The court found that the statutory procedures in RCW 26.50 and the trial court's handling of the hearing satisfied due process. The court stated:

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ Mathews v. Eldridge, 424 U.S. 319,333, 96 S.Ct 1187(1976) ... (cite omitted). **Due process is a flexible concept in which varying situations can demand differing levels of procedural protection.** (cite omitted).

...

While Mr. Gourley has an important interest in the care, custody, and control of his children, the government has a compelling interest in preventing domestic violence or abuse. RCW 26.50.035 Findings-1993 c 350 (“[D]omestic violence is a problem of immense proportions affecting individuals as well as communities ... [It costs] lives as well as millions of dollars each year ... for health care, absence from work, and services to children.”). To balance these two interests we must consider the procedures employed by the government and determine the risk that Mr. Gourley's interest was erroneously deprived.

The due process requirements of being heard at a meaningful time and in a meaningful manner are protected by the procedures outlined in chapter 26.50 RCW (which Mr. Gourley did not challenge as being unconstitutional). Chapter 26.50 RCW provides the following procedural protections: (1) a petition to the court, accompanied by an affidavit setting forth facts under oath, (2) notice to the respondent within five days of the hearing, (3) a

hearing before a judicial officer where the petitioner and respondent may testify, (4) a written order, (5) the opportunity to move for revision in superior court, (6) the opportunity to appeal, and (7) a one-year limitation on the protection order if it restrains the respondent from contacting minor children. See *State v. Karas*, 108 Wn.App. 692, 699-700, 32 P.3d 1016 (2001); chapter 26.50 RCW. Gourley, 158 Wn.2d at 468-469. (Emphasis added).

The supreme court held that the trial court in a domestic violence protection order case has the flexibility to permit or disallow live testimony and cross-examination - but also stated, “Our analysis here is limited to the facts of this case.” *Id* at 470. Finally, the court stated:

The legislature has carefully enacted protection order procedures in the hope of protecting the important interests implicated. **Judges and commissioners must exercise discretion** to determine whether cross-examination is necessary in a particular case to protect the rights involved; **their judgment is crucial in such delicate proceedings.** *Id* at 470-471. (Emphasis added)

Gourley was cited and followed in *Blackmon v. Blackmon*, 155 Wn.App 715, 230 P.2d 233(Div. II 2010). In *Blackmon*, the Court of Appeals affirmed the trial court’s denial of a jury trial in an RCW 26.50 domestic violence case.

These cases inform us that a trial court in an RCW 26.50 domestic violence protection order case has the authority in the exercise of its discretion to restrict a respondent’s access to Court Rules that would be available in ordinary civil or family law cases.

Therefore, although a trial court has the discretion to allow the deposition of a petitioner, the Domestic Violence Protection Act does not create a right for discovery.

3. Domestic Violence Protection Order Proceedings are Special Proceedings under CR 81 to which the rules of civil procedure need not be applied.

CR 1 states the general rule that the civil rules apply to all cases in law and equity. An exception to the general rule is CR 81 which states that the civil rules do not apply if they are inconsistent with statutes applicable to special proceedings.²

Special proceedings include only those proceedings created or transformed by the legislature, including actions unknown to common law as well as those where the legislature has exercised its police power and changed remedies under the law. *Putman v. Wenatchee Valley Medical Center*, 166 Wn.2d 974, 982, 216 P.3d 374 (2009) (holding that medical malpractice proceedings are not “special proceedings.”)

The Washington Legislature has established domestic violence protection order proceedings as a distinct form of action. See e.g., RCW 26.50.030 (“There shall exist an action known as a petition for an order for protection in cases of domestic violence.”).

² We note that the Court of Appeals in *State v. Karas*, supra, stopped short of holding that RCW 26.50 protection order proceedings are “special proceedings” under CR 81.

26.50.030 (“There shall exist an action known as a petition for an order for protection in cases of domestic violence.”).

As discussed earlier, the Washington Appellate Courts have repeatedly emphasized the transformative role of the Legislature in creating the statutory framework for the issuance of Domestic Violence Protection Orders. These orders are unknown to common law and a new remedy for the protection of domestic violence victims and the public at large who is impacted by acts of domestic violence.

Moreover, our courts have repeatedly approved and upheld the abbreviated, pro-se friendly procedures in RCW 26.50 against respondents’ claims that they should be entitled to use additional procedures available by Court Rule for ordinary civil proceedings.

The Washington Supreme Court has recently looked to the New Jersey appellate courts to resolve an issue of first impression involving domestic violence protection orders. In *Freeman v. Freeman*, ___ P.3d ___, 2010 WL 3432593 (decided 9-2-2010), the supreme court addressed the procedures to follow and burden of proof to apply in a respondent’s motion to terminate a permanent domestic violence protection order. The court noted:

Such permanent protection orders, however can be modified or terminated, “Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection.” RCW 26.50.130(1).

The modification statute fails to spell out grounds, factors, or standards authorizing modification of a permanent protection order, *See id.* It also fails to mention which party bears the burden of modifying or maintaining the permanent protection order. *Id.* In this vacuum, we read the DVPA as a whole. Paragraph 15 – 17.

After reviewing RCW 26.50, the Supreme Court determined that the burden of proof would be by a preponderance of evidence. Paragraph 17. The court then looked out-of-state to determine what factors should be used to decide if a permanent protection should be modified or terminated. The Court stated, “In this matter of first impression it is not necessary to reinvent the wheel.” Paragraph 18. The court then went on to approve the 11 factor test used by the New Jersey Superior Court in *Carfagno v. Carfagno*, 288 N.J. Super. 424, 672 A.2d 751 (1995).⁷

Another New Jersey appellate court in *Depos v. Depos*, 307 N.J. Super. 396, 704 A.2d 1049 (1997) addressed the issue whether a respondent in a domestic violence protection order case has the right to depose the petitioner.

In *Depos*, the petitioner filed for a protection order against her brother in law, alleging that the respondent made terroristic threats and

⁷ It is notable that the Supreme Court chose not to use CR 60 to decide whether the permanent order should be terminated. The decision of the court not to use Washington court rules and case law is discussed in the dissent by Justice Fairhurst. See Dissent at Paragraphs 34 – 35.

threatened to shoot her. A temporary order was entered and a hearing date was set. Both the petitioner and respondent were represented by attorneys. Respondent served a notice of intent to take the deposition of Petitioner which was objected to by petitioner's attorney. Respondent filed a motion to compel the deposition, which was denied by the trial court. 704 A.2d at 1051-1052. That decision was affirmed:

The Legislature found that **“it is the responsibility of the courts to protect victims of domestic violence** that occurs in the family or family like setting by providing sanctions, and by ordering those remedies and sanctions that are available **to assure the safety of victims and the public**” (cite omitted emphasis in original). The objective of protecting victims pervades the statute not only in these passages but throughout. “The Legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the judicial system...”

... To allow a deposition in this case would not effectuate the legislative intent and purpose. First, to allow the taking of a deposition would prevent compliance with the mandate that the hearing be held within 10 days Second, domestic violence is a cycle of power and control. ... The victim comes to court to change that dynamic and to receive protection. ... [V]ictims often must proceed without representation and without an advocate protecting their interests. ... Thus, allowing the represented alleged perpetrator to depose a victim, represented or un-represented, perpetuates the cycle of power and control whereby the perpetrator remains the one with the power and the victim remains powerless.

Therefore, the questioning of victims must be done in the presence of the judge at trial or a pretrial hearing in order to insure that the questioning is done fairly and in order to insure that victims are not revictimized by the very process they turn to for protection. 704 A.2d at 1052. (emphasis added)

The cases cited above inform us that a court should look first to the Domestic Violence Protection Act and public policy for the procedures and guidelines to use throughout the entire course of proceedings from petition to the motion for termination of a permanent protection order. The cases also tell us that the Civil Rules although instructive are largely superfluous in domestic violence protection order cases.

Finally, the *Depos* case also reminds us of the potential of the deposition process to intimidate or re-victimize a pro-se domestic violence victim.⁸

C. The trial court's denial of counsel's request for a continuance to complete discovery was not an abuse of discretion.

An appellate court reviews a trial court's decision to grant or deny a continuance for abuse of discretion, and the trial court's decision will not be disturbed unless its decision is manifestly unreasonable or is based on untenable grounds, *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004).

The trial court may consider a number of factors including the necessity of prompt disposition, the needs of the moving party, the possible prejudice of the non-moving party, whether there were prior continuances,

⁸ See e.g.; Mr. Stenzel's 12-3-09 letter to Kourtney Scheib. The letter begins, "You have called our office and asked, no, demanded that your deposition that was duly noted and scheduled for tomorrow at 3:00 pm be moved to 9:00 am Friday." CP 2.

or other matters of importance given the nature of the case at hand.

Balandich v. Demoroto, 10 Wn.App. 718, 720, 519 P.2d 994, *review denied*, 84 Wn.2d 1001 (1974); *accord Downing*, 151 Wn.2d at 273, 87 P.3d 1169.

In the instant case, the first hearing on the protection order petition was scheduled in district court on November 25, 2009. (CP 8-10). The hearing was continued to December 8, 2009. (CP 1) On that date the case was transferred without objection to the superior court. (CP 15 and RP at 6). Ms. Scheib was still pro-se (RP 2). Respondent's attorney requested a continuance for a couple of weeks so that he could depose Ms. Scheib. (RP 6). The Superior Court Judge denied the request for a continuance, stating:

THE COURT: Well, what I am going to tell you is this has already been continued. So we are going to go to hearing today. So I'm not going to grant you another continuance. If you want to talk to her and ask her questions I'll put her on the witness stand. But we're going to move forward with this protection order hearing. (RP 7)

The appellant asserts that the Superior Court Judge misinterpreted CRLJ 26 when denying his request for a continuance to complete discovery pursuant to the District Court Civil Rules. Brief of Respondent at 5-6.⁹

⁹ We note at the outset that the Superior Court Rules, not the District Court Rules are applicable to proceedings in Superior Court.

He correctly cites part of CRLJ 26, “(1) A party may take the deposition of any other party, unless the court orders otherwise.” CRLJ 26(c)(1). However, he overlooks provisions in CRLJ 26 regarding the waiting period before a deposition can be noted.

CRLJ 26(g) governs the timing of discovery for civil cases in District Court. It provides:

(g) Time for Discovery. Twenty-one days after the service of the summons and complaint, or counterclaim, or cross-complaint, the served party may demand the discovery set forth in sections (a)-(d) of this rule [depositions are in (c)], or request additional discovery pursuant to section (e) of this rule. Unless agreed by the parties, and with the permission of the court, all discovery shall be completed within 60 days of the demand, or 90 days of service of the summons and complaint, or counterclaim, or cross claim. (Emphasis added).

In the instant case, the petition was filed on November 16, 2009. (CP 11-14). The appellant was served with the petition on November 23, 2009 (CP 7). He mailed his Notice of Deposition to petitioner, **two days later**, on 11-25-09. (CP 3), setting the deposition for December 4, 2009. (CP 4).

Again the appellant did not file a discovery motion in district court requesting the court to waive the requirement for a hearing within 14 days per RCW 26.50.050, or request a deposition prior to the 21 day waiting period in CRLJ 26(g). (RP 9)

Therefore, the notice of deposition he mailed to petitioner (CP 3) was in clear violation of CRLJ 26 and is not enforceable. Consequently, the decision not to grant a continuance for purposes of discovery was clearly not an abuse of discretion. The trial court's other reasons for denying the continuance were also clearly consistent with the policies of the Domestic Violence Protection Act mandating the quick and efficient resolution of protection order cases.

D. Respondent should be awarded reasonable attorney's fees if the trial court's decision is affirmed. RAP 18.1(b).

Ms. Scheib submits her request herein for an award of reasonable attorney's fees for responding to this appeal pursuant to RAP 18.1(b).

The statutory basis for an award of fees and costs is RCW 26.50.060(1)(g) which provides: "[T]he court may provide relief as follows: Require the respondent to pay the administrative costs and service fees ... and to reimburse the petitioner for the costs incurred in bringing the action, including reasonable attorney's fees." The grant of attorney fees is discretionary. *Freeman v. Freeman*, supra at paragraph 29.

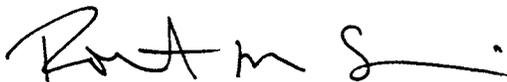
However, the statute only permits attorney's fees and costs to be awarded to the Petitioner, and not to a Respondent who successfully defends a domestic violence protection order action. See *Hecker v. Cortinas*, 110 Wn.App 865, 871, 43 P.3d 50 (2002).

IV. CONCLUSION

Kourtney Scheib respectfully requests this Court to affirm the decision of the trial court to deny the appellant's request for a continuance and conduct a hearing on December 8, 2009 - and to affirm the protection order that was granted by the court. The protection order process worked in this case as the Legislature intended. It gave Ms. Scheib a quick and accessible means to obtain an order for protection from domestic violence. The procedures followed by the Superior Court adequately protected Mr. Crosby's right to due process. He was given notice, the opportunity to obtain an attorney, and to be heard before an impartial judge, and to appeal that judge's decision. Finally, the process served the interests of society by protecting Ms. Scheib from future abuse.

DATED this 8TH day of September, 2010

Respectfully submitted,



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Attorney for Kourtney Scheib