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STATE OF WASHINGTON
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Court of Appeals No. 333051-III

Benton County Superior Court Case No. 15-2-00655-7

WASHINGTON STATE COURT OF APPEALS

DIVISION III

KIMBERLY MAY,

Appelle/Petitioner,

vs.

MARK SCOPA,

Appellant/Respondent,

BRIEF OF RESPONDENT

KIMBERLY MAY

414 Sanford Ave

Richland, Wa 99352

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I. INTRODUCTION

The Appellee/petitioner, Kimberly May ("Ms. May"), was granted a restraining order against the Appellant/Respondent, Mark Scopa ("Mr. Scopa") on April 3, 2015, for the duration of one year. It was awarded by the Honorable Commissioner Joseph Schneider. It is set to expire on April 3, 2016. On April 29, 2015, Mr. Scopa filed a Notice of Appeal to Court of Appeals Division III.

II. ISSUES

The Brief of Appellant by the Appellant/Respondent, Mr. Scopa claims that the Trial Court erred in granting the Appellee/Petitioner a Domestic Violence Protection Order (hereinafter "Petition"). Based on the arguments contained herein, The Appellee/Petitioner contends that the Restraining Order was fairly and reasonably awarded as required by RCW 26.50.010.

III. STATEMENT OF CASE

A. SUBSTANTIVE FACTS

1. The relationship between Mr. Scopa and Ms. May

Mr. Scopa and Ms. May (herein collectively referred to as "the Parties") were in a dating relationship between October 2012 and September 2014. The Parties lived together from March 2013 until September 2014. From September 2014 to November 2014, the Parties were in a platonic relationship; not a romantic one as alleged by the Appellant. While the Parties did take a weekend trip to the Oregon Coast at the end of October 2014, it was not in a romantic way. Ms. May paid for the whole trip and slept on the couch while allowing Mr. Scopa to accompany. In November 2014, the relationship came to a complete end.

During the course of the relationship, there were three incidences listed in Ms. May's testimony in the initial petition for the Protection Order where Mr. Scopa intentionally physically restrained Ms. May from leaving her residence. In the first incident, Mr. Scopa blocked Ms. May in the detached shop by positioning his body to prevent her from leaving the

building despite repeated and prolonged pleas to be allowed to leave. Mr. Scopa blocked Ms. May in the shop for over 20 minutes before Ms. May was eventually able to push her way past. The second and third occurrences were on August 28, 2014. During an argument, Mr. Scopa first blocked Ms. May in her walk-in closet for 30 minutes. Mr. Scopa had a loaded hand gun on his person. Ms. May was very afraid for her safety and well-being. Mr. Scopa would not move or leave no matter what Ms. May said. After 30 minutes, Ms. May was able to push her way past Mr. Scopa and make it to her truck, but Mr. Scopa would not let her leave the property. Mr. Scopa positioned his body so Ms. May would not be able to close the driver's door or to back out of the drive way. Mr. Scopa would not move and again held Ms. May against her will for 30 minutes. After multiple requests to be allowed to leave her property were denied by Mr. Scopa, Ms. May had to quickly put her truck in drive, pull the door shut, and back out of the driveway as fast as possible. She was very afraid and didn't know what to do. She felt her safety was at risk.

The Parties had continuing communication from November 2014 until March 2015. The text messages and emails and personal testimony of Ms. May were provided to the court in the initial court hearing for the restraining order. The majority of the communication was to inform Mr. Scopa to leave Ms. May alone. On September 19, 2014, Mr. Scopa let himself into Ms. May's residence at 1:30 in the morning highly intoxicated and with a loaded hand gun on his person. Ms. May was in bed sleeping at that time as she worked the next day. Mr. Scopa came into the room, turned on the lights, and refused to leave.

Ms. May reprogrammed her locks on her door utilizing a quick set key that Mr. Scopa had never been given and should have never have had access to. On September 22, 2014, Mr. Scopa again let himself into Ms. May's residence and refused to leave. Ms. May was afraid for her safety and well being. Mr. Scopa had three loaded hand guns on his body and reported

having multiple loaded rifles in his car out front of the residence. Mr. Scopa attempted to hand Ms. May a loaded gun and stated "Why don't you just kill me, then." He was not rational and kept demanding to know who had been spying on him. Ms. May called Mr. Scopa's father to assist in getting Mr. Scopa off the property. Mr. Scopa's father promptly arrived, and after also being unable to reason with Mr. Scopa and get him to leave the property, told Ms. May to call the police. Ms. May called the police, and they promptly arrived and removed Mr. Scopa from the property and advised Ms. May to get a protection order against Mr. Scopa due to his erratic behavior.

Ms. May was severely afraid and suffered severe emotional distress as a direct result of Mr. Scopa's behavior. She had a personal item of Mr. Scopa's and attempted to return it, but was afraid to return it personally to Mr. Scopa. Mr. Scopa threatened Ms. May on December 5, 2014, that he would be waiting at her house to get the personal item when she got off work. Ms. May lived alone and was afraid to go home. Ms. May notified Mr. Scopa via text message to stop all communication and not step foot on her property.

"Don't stop by my house. You are blocked in my phone still so no messages get through. I'll give your stuff to your sister."

Mr. Scopa continued to harass Ms. May with emails she perceived as threatening. She notified Mr. Scopa in text message on December 5, 2014:

"I won't be there to meet you at my house tonight like you are demanding. Don't step foot on my property. I will mail your stuff to you. If you don't stop this threatening behavior, I will put a restraining order on you."

On December 12, 2014, Ms. May's parents went to the Appellant's house with his item and returned it. They talked to him and told him to leave Ms. May alone. The fact that all items were

returned was discussed during the initial hearing and Mr. Scopa verbally admitted to having received all items.

From December 24, 2014 to March 21, 2015, Mr. Scopa continued communication with Ms. May via emails, countless phone calls on her cell phone and land line, texting and calling her neighbors and friends, stopping by her property and leaving notes, and coming into her work. Ms. May grew more and more fearful of Mr. Scopa. She was forced to change her phone numbers, email address, and had her work security walk her to her truck at night after work. She grew more and more fearful and suffered profound emotional distress with each unwanted communication and contact.

2. Mr. Scopa's Mental and Physical Health Condition

Mr. Scopa is a disabled Iraq War Veteran, who was medically retired from the U.S. Navy FMF Corpsman. Mr. Scopa suffered injuries, including tinnitus, and Post Traumatic Stress Disorder. While Mr. Scopa does suffer from changes to his quality of life due to these conditions, Ms. May never once saw Mr. Scopa require the use of a walker as claimed in the Brief of Appellant. When he entered Ms. May's place of work, he was physically able to walk from the elevator 50 feet to the nurse's station, stand for a length of time, and walk back to the elevator without the use of a walker or any indication of being physically unable to do so. Even with the allegations of the Appellant of how physically restricted Mr. Scopa is due to his condition, one does not need to stand to fire a gun. Mr. Scopa is proficient in his use of firearms due to his time in the military, and as testified by Ms. May, on multiple occasions had a loaded firearm on his person during confrontations.

3. The Restraining Order

On March 21, 2015, the erratic behavior of Mr. Scopa reached its fullest and scariest extent for Ms. May. She awoke early in the morning to hear her fence being moved. She put her dog out who started barking violently. In the morning, while leaving for work, Ms. May noticed a note on her mail box from Mr. Scopa. She was very afraid and arranged for someone to pick her dog up since she was worried Mr. Scopa would take her dog while she was at work.

When Mr. Scopa walked on to Ms. May's nursing unit at Kadlec Regional Medical Center, without the aid of a walker, Ms. May was so afraid that she hid in the locked medication room and called security. Mr. Scopa talked to a coworker of Ms. May, who informed Mr. Scopa while he was standing at the nurse's station that Ms. May didn't want to talk to him. Mr. Scopa stood at the nurse's station without any indication of being physically unable to stand. Prior to the arrival of security to escort him off the property, Mr. Scopa left the floor. Ms. May and the head of security had a lengthy discussion regarding Mr. Scopa. Ms. May provided a picture of Mr. Scopa to security. The head of security discussed with Ms. May if a restraining order between Kadlec Regional Medical Center and Mr. Scopa was warranted.

Ms. May was too afraid to go home and spent two weeks staying at friend's house with her dog. On March 24th, Ms. May filed for the Protection Order against Mr. Scopa.

B. PROCEDURAL FACTS

On April 3, 2015, this matter came up for hearing in front of the Honorable Commissioner Joseph Schneider. Ms. May focused primarily on the erratic behavior of Mr.

Scopa during the relationship and afterwards. Ms. May stated to the court that she was afraid of Mr. Scopa and his behavior. Mr. Scopa was notified via text message several times after the end of the relationship to stop all communication with Ms. May. Mr. Scopa was notified via text messages and emails that Ms. May was afraid of Mr. Scopa. Mr. Scopa was notified to not step foot on Ms. May's property. Yet, Mr. Scopa repeatedly harassed Ms. May with phone calls, text messages, emails, and physically coming to her property and place of work. These text messages and emails and personal testimony of Ms. May were provided for the court hearing.

On April 3, 2015, after hearing oral argument and considering the evidence submitted by the parties, the Honorable Commissioner Schneider granted Ms. May's petition:

It does appear to the Court that by Mr. Scopa's behaviors those both when the parties live together and after they separated, um, causes Ms. May some serious concerns for her own safety and well-being. Um, his intentions may be different than what she perceived them to be but when he went to the nursing floor seeking to see her it scared her to death. Now he doesn't understand that. He says I'm there to seek forgiveness but because of the interactions between these two and the fact that she wants to be left alone and he won't leave her alone, she gets fearful. *Um, irrational or otherwise it's still fear that she has and its harm to her.* I am going to grant the order in this matter for a period of one year that the parties to have no contact with each other during that time period. (RP 8:22-9:13)¹ (Italics added for emphasis).

IV. ARGUMENT

A. Standard of Review

A trial court's decision to grant or deny a Domestic Violence Protection Order is reviewed by an Appellate Court for clear abuse of discretion. An appeal can be brought only after a final decision in the action has been entered. In making its decision, the Appellate Court

¹"RP" refers to Verbatim Report of Proceedings

may affirm the Trial Court, or may reverse it, thus agreeing with the Appellant's contention that the Trial Court's decision was erroneous.

B. The Domestic Violence Protection Act

RCW 26.50.010, The Domestic Violence Protection Act, creates a right of action known as a petition for an order of protection in cases of Domestic Violence. RCW 26.50.030, any person may seek a Petition for Order of Protection by filing a petition with the court alleging that the person has been the victim of Domestic Violence. RCW 26.50.020(1)(a) A petition must be accompanied by a sworn affidavit, setting forth the specific facts supporting the request for a Protective Order. This affidavit was provided.

In Washington State, stalking is included in the statutory definition of Domestic Violence. In fact, the State Law on Stalking in Washington State is extensive.

Domestic Violence is defined, in part, in RCW 26.50.010 as:

- (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or house hold members;
- (b) Sexual assault of one family or household member by another, or
- (c) *Stalking as defined by RCW 9A.46.110.* of one family or household member by another family or household member. RCW 26.50.010 (Italics added for emphasis).

Stalking is defined, in part, in RCW 9A.46.110 as:

- (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
 - a. He or she intentionally and repeatedly harasses or repeatedly follows another person; and
 - b. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances, and
 - c. The stalker either:
 - i. Intends to frighten, intimidate, or harass the person, or

- ii. *Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.*

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person. RCW 9A.46.110 (Italics added for emphasis).

Additionally, per RCW 9A.26.020, the definition of harassment is, in part:

(1) A person is guilty of harassment if:

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication. (Italics added for emphasis).

In a related case, in *State v Ainslie*, 103 Wn. App. 1 (2000), Washington State Court of Appeals, Division 1 upheld the issuance of a Domestic Violence Protection Order because the evidence was sufficient to convict Ainslie of stalking. Ainslie initially contested the protective order claiming that: (1) there was insufficient evidence to convict him of stalking; (2) that the fear was not objectively reasonable; (3) that the evidence does not establish that he knew or reasonably should have known that his conduct was frightening, and; (4) that the definition of stalking is vague. *Id.* The trial court found that sufficient evidence was provided to prove stalking sufficient to elicit fear that is objectively reasonable. The trial court found that Ainslie should have reasonably known that his conduct created fear. The trial court found that, given the evidence, a person of ordinary understanding would be capable of determining that Ainslie's conduct constituted stalking within the definition of the statute. *Id.*

The present case relates to that of State v Ainslie in that the Domestic Violence Protection Order was granted and upheld after being appealed. State v Ainslie was granted and upheld solely based on the stalking that Ainslie did against the victim and that this stalking elicited fear that is objectively reasonable. Mr. Scopa's behavior toward Ms. May fulfills the definition of Stalking as defined by RCW 9A.46.110, and thus fulfills a statute of Domestic Violence as defined by RCW 26.50.010. Mr. Scopa was notified several times that his action elicited fear in Ms. May and yet Mr. Scopa continued the behavior putting Ms. May through profound fear and emotional trauma.

The Appellant, Mr. Scopa, argues that Ms. May's fear was not objectively reasonable and that Ms. May did not provide sufficient evidence to satisfy her burden under RCW 26.50.010. However, Ms. May did provide ample proof of stalking and harassment that resulted in fear and emotional trauma. The trial court found there was infliction of fear of imminent physical harm and granted the Order of Protection.

C. The Trial Court Did Not Err In Finding Ms. May Provided Sufficient Evidence to Establish Infliction of Fear of Imminent Physical Harm, Bodily Injury, or Assault by the Appellant.

Issuance of a domestic violence protection order is predicated upon a finding that a party engaged in conduct that inflicted fear of physical harm, bodily injury, or assault. RCW 26.050.010(1) states "The facts supporting a protection order must reasonably relate to physical harm, bodily injury assault, or *the fear of imminent harm.*" *Freeman*, 169 Wn.2d at 674 (Italics added). Ms. May provided the facts to support the requirements that her fear is reasonably related based on Mr. Scopa's stalking and harassment.

V. Conclusion

Based on the foregoing analysis, The Appelle/Petitioner requests to keep the Protection Order in place, as ordered, set to expire April 3, 2016, and to deny the Appellant's request to have the Protection Order reversed.

SUBMITTED THIS 20th OF NOVEMBER, 2015.

By: 

Kimberly May, Appelle/Petitioner

I, Kimberly May, am over the age of eighteen and am competent to testify as to the facts contained in this Declaration.

1. On November 20, 2015, I send via U.S. Mail to the Washington State Court of Appeals, Division III a Table of Contents, Table of Authorities, Brief of Respondent, and this Declaration of Filing and Mailing.

2. On November 20, 2015, I sent via U.S. Mail to Richard D. Whaley at Telquist Ziobro McMillen, PLLC, 1321 Columbia Park Trail, Richland, WA 99352-4770, a true and correct copy of the Brief of Respondent, Table of Contents, Table of Authorities, and this Declaration of Filing and Mailing.

Respectfully submitted this 20th day of November, 2015

By: _____

Kimberly May

Appelle/Petitioner