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Division III
State of Washington

No. 33668-9-III

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

Anna Juarez,

Petitioner/Appellant,

v.

Abdon Chavez Juarez II,

Defendant/Respondent.

OPENING BRIEF OF APPELLANT ANNA JUAREZ

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I. INTRODUCTION

On April 22, 2015 Anna Juarez petitioned the court in Yakima County for a domestic violence Order for Protection for herself and her children after the respondent Abdon Juarez abused her and the children and made death threats against Ms. Juarez. Instead of issuing a one-year Order for Protection, the trial court granted Ms. Juarez an Order for Protection which expired 65 days after it was entered and sent the parties to family court for further action. Ms. Juarez filed a Motion for Reconsideration which was denied by the trial court. Ms. Juarez was entitled to a full one-year Order for Protection under the Domestic Violence Prevention Act. It was an error of law to deny her this protection.

II. ASSIGNMENTS OF ERROR

1. The trial court erred, as a matter of law, when it entered a quickly expiring protection order in deference to restraints in a family law action.
2. The trial court erred, as a matter of law, when it failed to grant Ms. Juarez a one-year Order for Protection.

Issues Pertaining to Assignments of Error

1. Is it an error of law to deny a full one-year domestic violence Order for Protection in deference to restraints in a family law action when a court finds that a respondent committed domestic violence under the Domestic Violence Prevention Act? (Assignment of Error 1)
2. Is it an error of law to limit an Order for Protection to 65 days when a court finds that a respondent committed domestic violence under the Domestic Violence Prevention Act? (Assignment of Error 2)

III. STATEMENT OF THE CASE

Appellant Anna Juarez and Respondent Abdon Juarez are married and have three sons, ages 11, 4 and 3. CP 1. There is a long history of domestic violence committed by Mr. Juarez against Ms. Juarez. CP 4-8.

The most recent string of incidents began on or about April 16, 2015 when Mr. Juarez woke Ms. Juarez up in the middle of the night and angrily accused her of having an affair. CP 6. Ms. Juarez felt degraded and was emotionally and verbally abused by Mr. Juarez' behavior. CP 6. A few days later, on April 20, 2015, while Ms. Juarez was putting her son

down for a nap, Mr. Juarez grabbed their oldest son's face "angrily" and told him "I don't know who is downstairs with your mother, but it doesn't really matter." CP 4-5. Then Mr. Juarez left the house and drove off in the family's only working vehicle. CP 5. Ms. Juarez' son was upset and crying because he did not understand why his father talked to him that way. CP 4.

The next day, on April 21, 2015, Mr. Juarez waited in the car which was parked up the street from the family home. CP 6. Mr. Juarez' friend came by the house looking for Mr. Juarez and Ms. Juarez told him he was not there and the friend left. CP 6. A few minutes later Mr. Juarez came into the house and accused Ms. Juarez of having his friend stay the night. CP 6. The friend was sitting in Mr. Juarez' car during Mr. Juarez' outburst. CP 6. Mr. Juarez' behavior was unstable. CP 4. He told Ms. Juarez that he would hurt her if he found out she was lying about the affair. CP 4. He demanded that Ms. Juarez pack her and the children's belongings and leave the home. CP 4. He told Ms. Juarez he was going to sell the home. CP 7.

Prior to these most recent incidents, Mr. Juarez engaged in other disturbing behaviors. CP 6, 8. On April 20, 2014 Mr. Juarez threatened to kill his brother and Ms. Juarez because he

believed they were having an affair. CP 5. On that day Mr. Juarez damaged the family home so severely that Ms. Juarez filed a damage report. CP 5. On a separate occasion Mr. Juarez attempted to burn the house down while Ms. Juarez was gone with the children. RP 4:3-5. Mr. Juarez made multiple suicide attempts in the three months before the petition for an Order for Protection was filed. He burned himself and cut himself. CP 6. He cut his wrist, tried to hang himself and used a gun to try and kill himself but the gun misfired. CP 8. Mr. Juarez threatened to kill Ms. Juarez. CP 6. Mr. Juarez told the children that he would rather be in jail than lied to. CP 6. He asked the children to tell him who is in the house during the times that he is not home. CP 6. Mr. Juarez told the children that "maybe he should dissapear [sic] forever so they don't have to see him sick." CP 6.

Following the incidents on April 20 and 21, 2015, Ms. Juarez filed a Petition for Order of Protection (DVPO) in Yakima County Superior Court against her husband. CP 1-8. Ms. Juarez described Mr. Juarez' violent and erratic behavior in her statement supporting the Petition. CP 4-8. Ms. Juarez marked box #15 on page 3 of the Petition to request a DVPO which

would remain effective longer than one year because the respondent was likely to resume acts of domestic violence. CP 3. On page 6 of the Petition, she explained that she was “requesting that the protection order lasts longer than one year” because Mr. Juarez “has become mentally unstable with drug use and would need long term treatment cause he doesn’t feel he has a problem.” CP 8.

A Temporary Order for Protection was entered on April 22, 2015 and a hearing set for April 30, 2015. CP 11. The Temporary Order for Protection was reissued three times because Mr. Juarez was difficult to serve and to allow his attorney time to prepare. CP 15, 18, 20. The hearing on Ms. Juarez’ petition was held on June 11, 2015. RP 1-15:10. Ms. Juarez appeared *pro se* while Mr. Juarez was represented by his attorney. RP 2:3-8.

At the start of the hearing, the trial judge asked Ms. Juarez if she had anything to add. RP 3:24-25. Ms. Juarez responded that she wanted a “permanent restraining order.” RP 4:5-6. At the hearing, Mr. Juarez’ attorney served Ms. Juarez with dissolution pleadings, including a summons, petition, declaration in support of a parenting plan, parenting plan

worksheets and a motion for temporary orders. RP 5:4-8. Mr. Juarez' attorney stated that no hearing had been set for the motion for temporary orders in the family law matter. RP 5:20. Mr. Juarez' attorney stated that he would mail Ms. Juarez notice of the hearing on the motion for temporary orders to her home. RP 14:22-24. He stated that the parties would be in court before August. RP 12:21-25.

After briefly questioning each party, the trial judge stated that he was going to issue a "short term" protection order. RP 7:5-6. The trial judge stated this would "keep things status quo right now until you can get into court for a hearing on the divorce." RP 7:6-8. He also stated that "the divorce court has much — much more latitude than I have in terms of what they can do, the judge can do in terms of trying to solve the overall problem." RP 7:9-12.

The trial judge questioned the parties regarding a visitation schedule between Mr. Juarez and the children under the DVPO. RP 8:22-13:24. The trial judge stated "I'm only making this protection order good for slightly — to the 15th of August, because I'm assuming by then you can get into court. We're only talking about a short-term situation here." RP 10:10-

14. The trial court found Mr. Juarez “committed domestic violence as defined in RCW 26.50.010 and represents a credible threat to the physical safety of Petitioner...” CP 21. The trial court made the DVPO effective until August 15, 2015, 65 days after the hearing. RP 14:8.

Ms. Juarez filed a timely motion for reconsideration asking the trial court to extend the protection to a full year. CP 26-35. On June 29, the trial court denied the motion for reconsideration. CP 44. By way of explanation, the trial court wrote in the Order denying reconsideration: “The idea was that the parties would start a divorce and then this case would be consolidated with the divorce. The family court can renew and extend the protection order if appropriate.” CP 44.

Ms. Juarez filed a timely Notice of Appeal on July 28, 2015 seeking review of the June 11, 2015 Order for Protection and the June 29, 2015 Order for Motion for Reconsideration. She requests a protection order lasting a full year.¹

¹ While this appeal was pending, Ms. Juarez filed a Petition for Renewal of Order for Protection on August 6, 2015. CP 54. She checked the box on the Petition for Renewal asking that the order remain effective for longer than one year. CP 54. Mr. Juarez’ attorney withdrew from the case on August 6, 2015. CP 56. At a hearing on August 20, 2015, the trial court renewed the DVPO until December 28, 2015, 130 days, and did not grant Ms. Juarez a one year DVPO. CP 57.

IV. ARGUMENT

A. The trial court erred, as a matter of law, when it entered a quickly expiring protection order in deference to restraints in a family law action.

1. Pursuant to the Domestic Violence Prevention Act relief shall not be denied on the grounds that it is available in another action.

Domestic violence is a serious and pervasive problem affecting thousands of people each year with sometimes fatal results. One in four women experience severe physical violence by an intimate partner. Clare Fitzpatrick, Breaking Barriers To “Breaking the Cycle”, 13 SJSJ 603, 603 (Fall 2014). In America, three women die at the hands of a current or former intimate partner every day. Kelly Driscoll, Severing Ties: The Case for Indefinite Orders of Protection for Survivors of Domestic Violence, 75 Mont. L. Rev. 315, 316 (Summer 2014). In Washington State alone there were 775 domestic violence fatalities between 1997 and 2010. Fitzpatrick, Breaking Barriers to “Breaking the Cycle”, *supra*, at 604.

The government has a compelling interest in *preventing* domestic violence. *Gourley v. Gourley*, 158 Wn.2d 460, 468, 145 P.3d 1185, 1188 (2006). The Domestic Violence

*Prevention Act (DVPA) provides a domestic violence victim a tool to increase safety. RCW 26.50.030. In enacting the DVPA, the Legislature acknowledged that “[d]omestic violence is a problem of immense proportions affecting individuals as well as communities.” Laws of 1992, ch. 111, § 1 (restated in Laws of 1993, ch. 350, § 1). The Legislature recognized that domestic violence is 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.” *Id.* The Legislature intended that the DVPA provide domestic violence victims “easy, quick and effective access to the court system.” *Id.**

The DVPA does not require that a family law action be pursued in order to receive protections available under the Act. In fact, the DVPA specifically prohibits this practice. “Relief under this chapter *shall not* be denied or delayed on the grounds that the relief is available in another action.” RCW 26.50.025(2) (emphasis added). The Act provides that “[a] petition for relief may be made *regardless of whether or not there is a pending lawsuit*, complaint, petition, or other action between the parties...” RCW 26.50.030(2) (emphasis added).

The directive in RCW 26.50.025(2) is unambiguous: relief *shall not* be delayed or denied. An unambiguous statute is not subject to judicial interpretation; the statute's meaning is derived solely from its language. *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374, 1377 (1997).

Even when a family law action is already filed, as in this case, a victim is not prohibited from seeking a protection order under RCW 26.50, either as a separate cause of action or within the family law action. RCW 26.50.025(1); RCW 26.50.030(2).

A domestic violence protection order can be granted even when there is a final parenting plan in a family law action. *In re the Marriage of Stewart*, 133 Wn. App. 545, 554-555, 137 P.3d 25, 30 (2006), *rev. denied*, 160 Wn.2d 1011 (2007). In *Stewart*, Nichole Stewart petitioned for a protection order against her former husband. *Id.* at 549. The commissioner entered a one-year protection order prohibiting contact between Mr. Stewart and his wife and children. *Id.* On appeal, the court held that there were just grounds for the protection order. *Id.* at 552. The appellate court stated that “[a]uthorizing the domestic violence protection order court to restrict contact is thus entirely congruent with the Parenting Act.” *Id.* at 553-554.

Just as there was a family law case in *Stewart*, there was also a family law case filed by Mr. Juarez. Ms. Juarez was served with the dissolution pleadings at the hearing for the full Order for Protection. RP 5:3-8, 14:16-19. Ms. Juarez asked for a DVPO of one year or longer because she was in fear of Mr. Juarez. CP 8. The trial court declined Ms. Juarez' request for relief and instead entered a 65-day order and deferred to the family law case for further relief. RP 7:5-12, RP 10:11-14. Although Mr. Juarez' attorney informed the court there would be a hearing on a motion for temporary orders in the family law matter by August, he never filed a note for motion docket in the family law matter and he has now withdrawn. RP 12:23-24, App. p. 9.² No further action has been taken in the family law matter since his withdrawal. App. p. 9. The existence of a family law case should not have been a factor in determining the length of the DVPO.

Ms. Juarez had the right to all the protections available under the DVPA, including a full one-year DVPO, regardless of whether a family law case was filed. This is unequivocally

² The Superior Court Case Summary docket sheet for the parties' dissolution case, Yakima Superior Court Case Number 14-3-01086-1, is attached as an appendix.

stated in the DVPA. RCW 26.50.025(2), RCW 26.50.030(2).

No Washington appellate court has confronted this issue, but an appellate court in Ohio squarely addressed the issue of whether the time frame of a protection order can or should be limited when there is an ongoing family law case. *Parker v. Parker*, No. C-130658, 2014 WL 7177914, 2014-Ohio-5516 (Ohio Ct. App. December 17, 2014), from the Court of Appeals, First Appellate District of Ohio in Hamilton County, Ohio, attached as Appendix p. 7-9.³

In *Parker*, the petitioner requested a five-year protection order, but the court limited the order to one year because she had instituted divorce proceedings. *Id.* at *1 ¶ 4. The appellate court reversed the lower court's ruling because divorce proceedings do not automatically limit the duration of a civil protection order. *Id.* at *3 ¶ 12. The appellate court found that the petitioner "should not be denied a civil protection order of sufficient duration simply because she had concurrently sought

³ GR 14.1(b) permits citations from unpublished decisions in other jurisdictions if they can be cited as authority in that jurisdiction. Ohio does not differentiate between published and unpublished opinions. Pursuant to Rep.Op.R. 3.4 Use of Opinions. All opinions of the courts of appeals issued after May 1, 2002 may be cited as legal authority and weighted as deemed appropriate by the courts without regard to whether the opinion was published or in what form it was published.

other legal remedies to remove herself from the danger of domestic violence.” *Id.* at *2 ¶ 9.

Ohio protection order statutes provide that the protection order remedies are in addition to, and not in lieu of, any other available civil or criminal remedies, including divorce proceedings. *Id.* This is very similar to the Washington State DVPA, RCW 26.50.030(2). The Ohio court adopted the reasoning of an earlier Ohio decision from *Sinclair v. Sinclair*, 182 Ohio App.3d 691, 2009-Ohio-3106, 914 N.E.2d 1084 (4th Dist.) and rejected the contention that the divorce proceedings automatically alleviate the need for a protection order. *Id.* at *3 ¶ 11. The court found that institution of divorce proceedings does not automatically limit the duration of a civil protection order and the record on appeal contained no “sound reasoning” supporting the trial court’s decision. *Id.* at *3 ¶ 12.

Ms. Juarez was under no legal obligation to move forward with the dissolution filed by her husband in order to obtain continued protection for herself and her children. She met her burden of proof for an Order for Protection. She asked for an Order for Protection of more than one year. The trial court found that Mr. Juarez had committed domestic violence

and was a credible threat to Ms. Juarez' safety. CP 21. The trial court erred when it entered a 65-day protection order and denied Mrs. Juarez the one-year (or longer) protection order she requested in deference to relief available in a family law action.

2. **Limiting the duration of a DVPO and deferring to a family law action can create uncertainty and continued conflict.**

The trial court's stated basis for denying Ms. Juarez' Motion for Reconsideration was that "the idea was that the parties would start a divorce and this case would be consolidated w/ the divorce. The family court can renew and extend the protection order if appropriate." CP 44. Although Mr. Juarez' attorney represented to the court that he would be noting a hearing on a motion for temporary orders in August 2015, that never happened. RP 12:21-25, 14:22-24, App. p. 9.

Ms. Juarez filed a response and proposed parenting plan in the family law matter, but neither Mr. Juarez nor his counsel noted a hearing. App. p. 9. Mr. Juarez had an attorney at the DVPO hearing who was also representing him in the family law matter, but the attorney filed a Notice of Intent to Withdraw on August 6, 2015 from both the DVPO case and the family law matter. RP 2:8, 5:2, CP 56, App. p. 9.

Now both parties are unrepresented in the family law matter. App. p. 9. To date, nothing has been done in the family law case since the withdrawal of Mr. Juarez' counsel. App. p. 9.

Ms. Juarez had to return to court on the DVPO several times since the Petition was filed. First there were service issues, then a continuance, then entry of a quickly expiring order, then a motion for reconsideration, then a motion to renew the quickly expiring order. CP 11, 15-21, 54, 57. This lengthy and time-consuming process was not the intent of the DVPA. Entry of short-term, quickly expiring orders in deference to a family law case has caused uncertainty for Ms. Juarez and her family in their search for protection from Mr. Juarez.

The constant requirement for Ms. Juarez to return to court for her DVPO also raises the potential for additional violence. Domestic violence courts are more dangerous than any other type of court proceeding. Jane K. Stoeber, Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders, 67 Vand. L. Rev. 1015, 1027 (2014). There is increased risk to the victim in repeatedly engaging the abuser in litigation about the violence that occurred. *Id.* at 1026. The DVPA was enacted to protect victims from the abuse, not create

a cycle for the abuse to continue. The court erred by both denying and delaying the relief she was entitled to under the DVPA. The court's failure to enter a one-year order, instead sending the parties to family court for relief, violates RCW 26.50.025(2).

3. **Requiring Ms. Juarez to proceed with a family law action is prejudicial and denied her the full protections of the DVPA.**

a. **A family law action may not be safe, desired or appropriate for a domestic violence victim.**

Requiring a petitioner to proceed with a family law action in order to receive protection from a respondent can put domestic violence victims at risk of harm. Leaving a domestic violence relationship is the most dangerous time for the victim and her family. *United States Department of Justice, National Crime Victimization Survey, 1995.* In at least 46% of domestic violence homicides, the victim had left, divorced or separated, or was attempting to leave or break-up with the abuser. Jake Fawcett, *Up to Us: Lessons Learned and Goals for Change After Thirteen Years of the Washington State Domestic Violence*

Fatality Review, Washington State Coalition Against Domestic Violence, (2010) at 17.

There are many other reasons a domestic violence victim may not want to go forward with a family law action. The victim may not want a dissolution. The victim may not have the emotional, psychological, physical and/or economic resources to go forward with a family law action. (If the victim is without resources she/he must proceed *pro se*. *King v. King*, 162 Wn.2d 378, 396, 174 P.3d 659, 668 (2007).) The victim may have language or literacy barriers. The victim may not have time to undertake complicated litigation. Or, the victim may simply be too afraid.

A victim escaping a domestic violence relationship is seeking physical safety, but is “also seeking emotional distance from the abuser in order to begin healing.” Mary Przekop, One More Battleground: Domestic Violence, Child Custody, and the Batterers’ Relentless Pursuit of Their Victims Through the Courts, 9 SJSJ. 1053, 1081 (Spring/Summer 2011). Being compelled to litigate before being emotionally ready can be devastating to a domestic violence victim. Abusive ex-spouses or former partners frequently use family court litigation as a new

forum to continue their coercive controlling behavior and to harass their former partner. Jaffe, et al., Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans, FAM. CT. REV., Vol. 46 No. 3, July 2008 500–522, 503. Repeated filings by a batterer and multiple in-person hearings in a family law action can place a significant emotional burden on the victim. They also place a heavy financial burden on her because she must pay for child care and transportation and will be absent from work when required to appear in court. Przekop, One More Battleground, *supra*, at 1083.

b. Relief available in a domestic violence Order for Protection differs from relief available in a family law action.

Entering a quickly expiring Order for Protection and conditioning further protections upon proceeding with a family law action denies a petitioner the protections available under the DVPA. A domestic violence survivor who meets her burden of proof is entitled to all the protections afforded under the DVPA. A restraining order in a family law action is a poor substitute. A domestic violence Order for Protection “can be a valuable tool to increase safety for victims and to hold batterers accountable...”

Laws of 1992, ch. 111, § 1 (restated Laws of 1993, ch. 350, § 1).

A domestic violence Order for Protection is unique in the protections available: (a) there is a finding that respondent committed domestic violence, RCW 26.50.050; (b) the respondent is restrained “from committing acts of domestic violence” (as compared to the relief in a family law restraining order: being restrained “from molesting or disturbing the peace of the other party”), RCW 26.50.060(1)(a), RCW 26.09.050(2); (c) restraints in a domestic violence Order for Protection are clear and specific, and more readily understood; (d) Order for Protection violations are more readily prosecuted than violations of family law restraining orders;⁴ (e) parties in a protection order hearing can quickly bring their case without concern about evidence rules, ER 1101(b)(4); (f) when a petitioner moves to renew a domestic violence Order for Protection the burden of proof is on the respondent to prove by a preponderance of the evidence that he/she will not resume acts of domestic violence

⁴ In the three years from 2010 to 2012, the King County Prosecutor's office documented the filing of two family law restraining order violations. Please see appendix: memorandums from King County Prosecutor's Office of domestic violence statistics from 2010 to 2012.

against the petitioner or the petitioner's children, RCW 26.50.060(3); (g) a petition for a domestic violence Order for Protection may be brought without fees or costs, RCW 26.50.030; (h) domestic violence Orders for Protection are special proceedings and discovery is limited, *Scheib v. Crosby*, 160 Wn. App. 345, 352-53, 249 P.3d 184, 187 (2011); (i) a petitioner may obtain a temporary domestic violence Order for Protection immediately and a full order in fourteen days, RCW 26.50.070, RCW 26.50.050; and (j) a domestic violence Order for Protection separate from a family law action denies the respondent/abuser an opportunity to coerce the petitioner/victim into dropping the protection order in exchange for concessions in the family law action, compromising the victim's and the victim's family's safety.

By entering a quickly expiring Order for Protection, the trial court left Ms. Juarez in a position she should not have been in: forced to obtain inferior restraining orders in a family law action. The family law action filed by Mr. Juarez has stalled since the withdrawal of Mr. Juarez' counsel and no orders have been entered. App. p. 9. The court erred when it denied Ms.

Juarez the superior protections to which she was entitled, and which she requested, pursuant to the DVPA.

c. **Residential provisions are available in an Order for Protection. A family law action is unnecessary.**

Under the DVPA, a trial court is required to make residential arrangements for children in an Order for Protection. A parenting plan is unnecessary. The court is to make residential provisions on the same basis as the dissolution statute. RCW 26.50.060(1)(d); *Stewart*, 133 Wn. App. at 553. “Clearly the Legislature intended RCW 26.50 to provide a process by which victims of domestic violence may obtain orders of protection more efficiently and easily than court orders are generally obtained.” *In re the Marriage of Barone*, 100 Wn. App. 241, 247, 996 P.2d 654, 657 (2000).

Safety for oneself and one’s children is the most urgent concern for a victim when she/he files for a protection order. A protection order effectively provides a great measure of safety and, once it is in place, the victim can take time to plan next steps. Holt, Kernic, Wolf, Rivara, Do Protection Orders Affect the Likelihood of Further Partner Violence and Injury, 24 Am. J. of Preventative Med. 1, 16-21 (2003),

[http://www.ajpmonline.org/article/S0749-3797\(02\)00576-7/fulltext](http://www.ajpmonline.org/article/S0749-3797(02)00576-7/fulltext) (Domestic violence protection orders are associated with decreased likelihood of subsequent physical and non-physical domestic violence.)

Next steps for a domestic violence victim may or may not include a family law action. A respondent is not harmed when a petitioner declines to file a family law action because the respondent can begin the family law action if he/she so chooses, as Mr. Juarez did in this matter.

Further, the Order for Protection included a visitation schedule for Mr. Juarez. CP 24. It was a reasonable schedule with provisions for safe, supervised visitation. This is one more factor abrogating the need for the parties to be rushed into a family court action they are unable to sustain.

The trial court committed an error of law when it limited Ms. Juarez' Order for Protection to 65 days and directed her to pursue the family law action for the restraints she needed to keep herself and her family safe.

B. The trial court erred, as a matter of law, when it failed to grant Ms. Juarez a one-year Order for Protection.

1. Statute, case law and mandatory forms require a full protection order be one year or longer.

An Order for Protection is a civil remedy and must be supported by a preponderance of the evidence. *City of Tacoma v. State*, 117 Wn.2d 348, 351-52, 816 P.2d 7, 9 (1991); *Reese v. Stroh*, 128 Wn.2d 300, 312, 907 P.2d 282, 288 (1995). The trial court made specific findings when it entered an Order for Protection for Ms. Juarez on June 11, 2015. CP 21-25. The trial court found that Mr. Juarez had “committed domestic violence as defined in RCW 26.50.010 and represents a *credible threat to the physical safety of petitioner...*” CP 21 (emphasis added). The court was correct in these findings. Among other things, Mr. Juarez constantly threatened Ms. Juarez with violence because he irrationally believed that she was having affairs. CP 4-8. He threatened to kill Ms. Juarez and his brother because he believed they were having an affair. CP 5. He grabbed their son while in the midst of these delusions and made him cry. CP 4. He tried to prove Ms. Juarez was having an affair by having his friend go to their house. CP 6. When that failed, he told Ms. Juarez that she needed to pack

her things and leave because he was going to sell the house. CP 6. He has threatened and attempted suicide. CP 6, 8. By any account, this is domestic violence. RCW 26.50.010(1).

A 65-day Order for Protection did not provide meaningful and adequate relief to Ms. Juarez and the children. Nor did it provide Mr. Juarez with a meaningful opportunity to make changes.⁵ Instead, it almost ensured the likelihood that the abuse would resume as soon as the order expired. Ms. Juarez met her burden of proving domestic violence and the trial court made a finding that Mr. Juarez had committed acts of domestic violence; she should have received the relief she requested in her petition without having to pursue a separate family law action. RCW 26.50.025(2).

The DVPA does not mandate a minimum duration for an order; the Act's mandate is to prevent domestic violence. But considering the goal is to prevent domestic violence and Orders for Protection of one year or longer are provided for in case law and statute, Orders for Protection for less than one year are clearly contrary to this goal. "Separation assault and recurrent

⁵ A batterers' intervention program requires participants to attend treatment and satisfy all treatment program requirements for *at least twelve consecutive months*. WAC 388-60-0255(2) (emphasis added).

violence often takes place over time as the batterer seeks to regain power over the survivor or punish the survivor for leaving, and our laws should respond to the reality that domestic violence is dangerous when the survivor is in the relationship, leaving or remaining apart. Brief protection orders lasting only three months to one year often will not provide sufficient protection from harm.” Stoeber, Enjoining Abuse, *supra*, at 1071.

RCW 26.50.060(2) provides that a protection order prohibiting a respondent’s contact with children cannot exceed one year but all other restraints may be longer, or even permanent, if the court finds it likely a respondent will resume acts of domestic violence. RCW 26.50.060(2). If the petitioner seeks relief on behalf of a respondent’s minor children, “the court *shall* advise the petitioner that if the petitioner wants to continue protection for a period *beyond one year* the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.” *Id.* (emphasis added). This provision underscores that a DVPO is intended to be a minimum of one

year and not the short, quickly expiring order that Ms. Juarez received.

If a petitioner wants to renew the Order for Protection, she/he must file for renewal anytime within the three months before the order expires. RCW 26.50.060(3). The trial court gave Ms. Juarez a two-month protection order, a length of time that is inconsistent with the DVPA's renewal provisions. Under this statute she would have had to file for renewal soon after receiving the original order. Such an outcome is contrary to the plain language of the DVPA.

Ms. Juarez did, in fact, file for renewal of her DVPO on August 6, 2015. CP 54. She again asked the court to enter an Order for Protection for longer than one year because of fears that Mr. Juarez was likely to resume acts of domestic violence if the order expired in one year. CP 54. At a hearing on August 20, 2015, the trial court declined to enter a full one-year protection order and instead entered a second short-term order expiring on December 28, 2015. CP 57.

The court in *Stewart* affirmed the issuance of a one-year protection order covering the children even when there was a final parenting plan in a separate family law action. *Stewart*,

133 Wn. App. at 555. Similarly, in *Muma*, the parties had a parenting plan in effect that provided for reunification between Mr. Muma and his children. *Muma v. Muma*, 115 Wn. App. 1, 4, 60 P.3d 592, 593-94 (2002). After the parenting plan was entered, Mrs. Muma petitioned for a new protection order. *Id.* The trial court entered a 50-year protection order that included the children and left the restraints in the parenting plan in effect. *Id.* at 4-5. The appellate court held that the protection order was valid with respect to the children for one year pursuant to RCW 26.50.060(2). *Id.* at 7. A one-year protection order is the norm when children are included on the order.

The protection order forms are mandatory forms drafted by the Administrative Office of the Courts. RCW 26.50.035(1). The petition only has options to request a “temporary” or “full” order; there is no place in the form for the petitioner to request a definite time period. CP 23. The temporary order is effective until the hearing on a full order, usually 14 days. CP 23; RCW 26.50.070(4). Unlike the duration of a temporary order, the duration of a “full” order is not stated on the petition but the default duration is one year. CP 23. In paragraph 12 of the petition, a petitioner can request an order longer than one year if

the petitioner believes the respondent is likely to resume acts of domestic violence. CP 24. The language of these mandatory forms is consistent with the language of the DVPA.

The language on the Order for Protection supports the conclusion that an order should be a minimum of one year. On page one of the order, the form states that the order will be effective for one year from the date the order is entered, unless stated otherwise. CP 36.

Despite making findings that Mr. Juarez committed domestic violence and represented a credible threat to Ms. Juarez' safety, the trial court entered only a 65-day protection order. This order denied Ms. Juarez the full relief she was requested and was entitled to under the DVPA; it does not provide adequate safeguards for her or her children, and it does not prevent further domestic violence. Considering the language of the forms, together with the statutes and case law, the court committed an error of law by entering a domestic violence Order for Protection which expired in 65 days.

2. **Public policy of the DVPA is to make the protection order process easy, quick and efficient for petitioners.**

Issuing quickly expiring protection orders violates the DVPA. Protection orders that last only a few weeks, or a few months, are contrary to the legislative intent of the DVPA. *Danny v. Laidlaw Transit Serv., Inc.*, 165 Wn.2d 200, 209, 193 P.3d 128, 132 (2008). Throughout its thirty-year fight against domestic violence, the Legislature has furthered a public policy of domestic violence prevention by taking “concrete actions to encourage domestic violence victims to end abuse, leave their abusers, protect their children and cooperate with law enforcement and prosecution efforts to hold the abuser accountable.” *Id.* at 213.

The Legislature recognizes that protection orders are a “valuable tool to increase safety for victims and to hold batterers accountable.” *Id.* at 209, quoting Laws of 1992, Ch. 111, §1. The public policy supporting the DVPA requires that the process be “easy, quick, and efficient” for victims seeking safety for themselves and their family members. *Id.*

Petitioners in protection order proceedings are generally pro se. *Gourley*, 158 Wn.2d at 476, 145 P.3d at

1192. See also, *An Analysis of Pro Se Litigants in Washington State 1995-2000*, Administrative Office of the Courts, Table 1, available at https://www.courts.wa.gov/wsccl/docs/Final%20Report_Pro_Se_11_01.pdf (approximately 95% of domestic violence petitions are filed pro se). Victims face many hurdles just getting to the courtroom, let alone securing an Order for Protection. *Gourley*, 158 Wn.2d at 476, 145 P.3d at 1192.

The trial court's order in this case impedes the intent of the DVPA and creates additional hurdles for the victim. A process is not easy, quick or efficient if a petitioner must repeatedly return to court to renew a quickly expiring protection order or, worse, proceed with family law litigation. Nor does an order of less than one year provide sufficient safety to the domestic violence victim or a meaningful opportunity for the batterer to change. An Order for Protection which quickly expires in deference to restraints in a family law action does not prevent domestic violence; it only delays it.

V. CONCLUSION

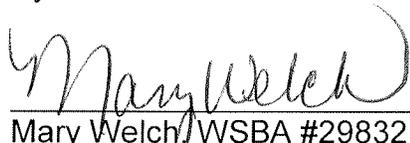
Ms. Juarez met her burden of proof and the trial court found that Mr. Juarez had committed acts of domestic violence and represented a credible threat to Ms. Juarez. She

respectfully requests this Court vacate the trial court's order granting her a 65-day Order for Protection, vacate the Order for Motion for Reconsideration and remand for entry of a full one-year domestic violence Order for Protection for Ms. Juarez and her children.

RESPECTFULLY SUBMITTED this 4th day of November, 2015.

NORTHWEST JUSTICE PROJECT

By:

A handwritten signature in cursive script that reads "Mary Welch". The signature is written in black ink and is positioned above a horizontal line.

Mary Welch WSBA #29832
Attorney for Appellant Anna Juarez

VI. APPENDIX

1. Memorandum of 2012 Domestic Violence Statistics
from King County Prosecutor 1-2
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PROSECUTING ATTORNEY



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September 2, 2014

MEMORANDUM

TO: David Martin
FROM: Rex Goulding
SUBJECT: 2012 Domestic Violence Statistics

Here are the filing statistics for 2012.

DOMESTIC VIOLENCE UNIT

	KNT
FLD	527
DIS	34
DMI	7
LOG	3
TOTAL	571

FILED BY MONTH

	KNT
JAN	32
FEB	51
MAR	41
APR	36
MAY	40
JUN	53
JUL	40
AUG	65
SEP	44
OCT	40
NOV	47
DEC	38

DOMESTIC VIOLENCE CASES FILED FOR SELECTED CRIME CODES:

	KNT
01037 DV Assault 4	281
02369 DV Criminal Trespass	0
00485A Interfering with DV Reporting	0
00496A DV Harassment	30

Prosecuting Attorney
King County

9/2/2014
Page 2

	KNT
02219A DV Tel. Harass. Threats	1
00495 DV Viol. of Anti-Harass. Order	2
00459A DV Viol. Of Protection Order	3
00459B DV Viol. of No Contact Order	3
00459C DV Viol. Of Restraining Order	0
02194B DV Malicious Mis. > \$50	0
02199B DV Malicious Mis. < \$50	3
00465 DV Reckless Endangerment	13
06017 Domestic Violence Misdemeanor Violation of a Court Order	0
00458C Domestic Violence Misdemeanor Violation of a Court Order	164
02232 Stalking	0
02234 Stalking	4

DANIEL T. SATTERBERG
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September 2, 2014

MEMORANDUM

TO: David Martin
FROM: Rex Goulding
SUBJECT: 2011 Domestic Violence Statistics

Here are the filing statistics for 2011.

DOMESTIC VIOLENCE UNIT

	KNT
FLD	489
DIS	165
DMI	6
LOG	6
TOTAL	666

FILED BY MONTH

	KNT
JAN	43
FEB	47
MAR	52
APR	46
MAY	29
JUN	43
JUL	36
AUG	43
SEP	54
OCT	37
NOV	30
DEC	29

DOMESTIC VIOLENCE CASES FILED FOR SELECTED CRIME CODES:

	KNT
01037 DV Assault 4	285
02369 DV Criminal Trespass	2
00485A Interfering with DV Reporting	0
00496A DV Harassment	22

	KNT
02219A DV Tel. Harass. Threats	0
00495 DV Viol. of Anti-Harass. Order	2
00459A DV Viol. Of Protection Order	0
00459B DV Viol. of No Contact Order	0
00459C DV Viol. Of Restraining Order	2
02194B DV Malicious Mis. > \$50	0
02199B DV Malicious Mis. < \$50	0
00465 DV Reckless Endangerment	2
06017 Domestic Violence Misdemeanor Violation of a Court Order	0
00458C Domestic Violence Misdemeanor Violation of a Court Order	120
02232 Stalking	0
02234 Stalking	4

DANIEL T. SATTERBERG
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September 2, 2014

MEMORANDUM

TO: David Martin
FROM: Rex Goulding
SUBJECT: 2010 Domestic Violence Statistics

Here are the filing statistics for 2010.

DOMESTIC VIOLENCE UNIT

	KNT
FLD	655
DIS	224
DMI	4
LOG	4
TOTAL	887

FILED BY MONTH

	KNT
JAN	62
FEB	46
MAR	72
APR	51
MAY	45
JUN	66
JUL	45
AUG	56
SEP	53
OCT	56
NOV	56
DEC	47

DOMESTIC VIOLENCE CASES FILED FOR SELECTED CRIME CODES:

	KNT
01037 DV Assault 4	352
02369 DV Criminal Trespass	1
00485A Interfering with DV Reporting	0
00496A DV Harassment	30

	KNT
02219A DV Tel. Harass. Threats	5
00495 DV Viol. of Anti-Harass. Order	10
00459A DV Viol. Of Protection Order	0
00459B DV Viol. of No Contact Order	1
00459C DV Viol. Of Restraining Order	0
02194B DV Malicious Mis. > \$50	6
02199B DV Malicious Mis. < \$50	3
00465 DV Reckless Endangerment	13
06017 Domestic Violence Misdemeanor Violation of a Court Order	0
00458C Domestic Violence Misdemeanor Violation of a Court Order	196
02232 Stalking	0
02234 Stalking	2

2014 WL 7177914

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF LEGAL
AUTHORITY.

Court of Appeals of Ohio,
First District, Hamilton County.

Cherilyn Brandee PARKER, Petitioner–Appellant,

v.

Darrick PARKER, Respondent–Appellee.

No. C–130658. | Decided Dec. 17, 2014.

Appeal from Hamilton County Court of Common Pleas,
Domestic Relations Division.

Attorneys and Law Firms

Kenyatta Mickles, for Petitioner–Appellant.

Darrick Parker, pro se.

Opinion

CUNNINGHAM, Presiding Judge.

*1 ¶ 1 Petitioner-appellant Cherilyn Brandee Parker appeals the Hamilton County Court of Common Pleas, Domestic Relations Division's adoption of a magistrate's order limiting the duration of the civil protection order issued against her husband, respondent-appellee Darrick Parker. Brandee had requested a five-year protection order, but the court limited the order to a one-year period because Brandee had instituted divorce proceedings. Because the institution of divorce proceedings does not automatically limit the duration of a civil protection order, we reverse.

¶ 2 Brandee and Darrick married in 1996. The couple had four children. In 2013, Darrick attacked Brandee, striking her in the face and eye. He then hit her with a vacuum cleaner three or four times. Darrick was arrested and charged with criminal domestic violence. The charge was ultimately dismissed at Brandee's request. Following this attack, the parties separated. Two months later, Darrick entered the marital home at 2:30 a.m. while Brandee was sleeping. He attempted to rape her by grabbing her arms and legs and trying to disrobe her. Following a struggle, Brandee was able to free herself and summon the police.

¶ 3 Four days later, Brandee filed this petition for a civil protection order, in the case numbered DV1300326. A magistrate issued an ex parte civil protection order and set the matter for a full hearing. Due to difficulties in obtaining service on Darrick, a full hearing was not held until five months later. During that time, Brandee had filed for divorce, in the case numbered DV1301718.

¶ 4 At the full hearing on the civil protection petition, Brandee requested an order of five years' duration. After the hearing, the magistrate found that Brandee was in danger of further violence by Darrick. But the magistrate issued a protection order effective only for one year, concluding that “[a]s the parties are divorcing, [Brandee's] request for a five year CPO is denied.” The trial court adopted the magistrate's civil protection order, and Brandee filed a timely notice of appeal from that entry.

¶ 5 In her assignment of error, Brandee argues that the trial court abused its discretion by limiting the duration of the civil protection order to a one-year period based solely on the fact that she was seeking a divorce. She asserts that the magistrate and trial court erred in concluding that a divorce decree, presumed to be in place one year hence, would stop the threat of domestic violence, and would be an effective substitute for the protections afforded by a civil protection order.

¶ 6 Civ.R. 65.1 and R.C. 3113.31 provide a special statutory proceeding to expedite the issuance of orders to protect the victims of domestic violence. The trial court's adoption of a magistrate's order is a final, appealable order. *See* Civ.R. 65.1(G); *see also Heimann v. Heekin*, 1st Dist. Hamilton No. C–130613, 2014–Ohio–4276, ¶ 8.

*2 ¶ 7 Because R.C. 3113.31 expressly authorizes a trial court to tailor civil protection orders to the particular circumstances of each case, a trial court is to be afforded discretion in establishing the scope of a protection order. *See Abuhamda Sliman v. Sliman*, 161 Ohio App.3d 541, 2005–Ohio–2836, 831 N.E.2d 453, ¶ 9 (8th Dist.). Therefore, when, as here, an appellant challenges the scope of a civil protection order, an appellate court reviews the order under an abuse-of-discretion standard. *See Walters v. Walters*, 150 Ohio App.3d 287, 2002–Ohio–6455, 780 N.E.2d 1032, ¶ 1 (4th Dist.); *compare Klecky v. Klecky*, 1st Dist. Hamilton No. C–110116, 2011 Ohio App. LEXIS 3473, *1 (Aug. 19, 2011) (when the issue on appeal is whether a protection order should have been issued at all, however, an appellate court must

determine whether sufficient, credible evidence supports the trial court's decision). An abuse of discretion is shown when a decision is unreasonable, arbitrary, or unconscionable; that is, when the trial court issues a ruling that is not supported by a "sound reasoning process." *AAAA Ents., Inc. v. River Place Community Urban Rede v. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990); see *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14.

{¶ 8} Civil protection orders issued under R.C. 3113.31 are an "appropriate and efficacious method to prevent future domestic violence * * *," *Felton v. Felton*, 79 Ohio St.3d 34, 41, 679 N.E.2d 672 (1997). Therefore, magistrates and trial courts "have an obligation [to issue orders that] carry out the legislative goals to protect the victims of domestic violence." *Id.* at 44-45, 679 N.E.2d 672. Because violence against a former spouse may not stop with a separation, and because that violence often escalates once a battered woman attempts to end the relationship, the Ohio Supreme Court has recognized "strong policy reasons" for courts to issue, when necessary, protection orders extending even after a divorce has become final. *Id.* at 40-41, 679 N.E.2d 672, citing Klein and Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L.Rev. 801, 816 (1993).

{¶ 9} Brandee correctly argues that she should not be denied a civil protection order of sufficient duration simply because she had concurrently sought other legal remedies to remove herself from the danger of domestic violence. R.C. 3113.31(G) expressly provides that "[t]he remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies," including divorce proceedings. See *Felton* at 41, 679 N.E.2d 672.

{¶ 10} In *Sinclair v. Sinclair*, 182 Ohio App.3d 691, 2009-Ohio-3106, 914 N.E.2d 1084 (4th Dist.), the appeals court faced a nearly identical situation. After reporting various acts of domestic violence, the petitioner-wife had sought a five-year civil protection order. The magistrate, however, issued only a six-month protection order. The magistrate posited that since the wife had "vacated the marital residence, and the parties intend to terminate their marriage, there [would] be little future contact and no need to continue a civil protection order beyond the time of the divorce proceedings." *Id.* at ¶ 3, 914 N.E.2d 1084. The appeals court concluded that the

trial court's adoption, in part, of the magistrate's decision was error. The trial court's reliance on the pending divorce did not alleviate the need for a longer-duration protection order to stop the threat of domestic violence by the husband. See *id.* at ¶ 8, 914 N.E.2d 1084.

*3 {¶ 11} We adopt the sound reasoning of the *Sinclair* court and reject the contention that divorce proceedings automatically alleviate the need for a protection order. Here the magistrate and trial court found that Darrick presented a threat of domestic violence to Brandee sufficient to justify issuing a protection order. The record does not demonstrate that any part of the divorce proceeding, in the case numbered DV1301718, was reviewed in this proceeding. We cannot determine if the magistrate or the trial court considered whether the protections, if any, crafted in the divorce proceedings were sufficient to protect Brandee from Darrick.

{¶ 12} Thus the sole basis in the record for the trial court to limit the requested five-year protection period to a single year was Brandee's institution of divorce proceedings. Because the institution of divorce proceedings does not automatically limit the duration of a civil protection order, there is no "sound reasoning process" in this limited record supporting the trial court's decision. We hold that the trial court abused its discretion in adopting the magistrate's order limiting the duration of the requested civil protection order. See *Sinclair* at ¶ 12; see also *AAAA Ents.*, 50 Ohio St.3d at 161, 553 N.E.2d 597. The assignment of error is sustained.

{¶ 13} Accordingly, we reverse the judgment of the trial court and remand the cause to the trial court for it to fashion a protection order consistent with its authority under Civ.R. 65.1 and R.C. 3113.31, and with this opinion.

Judgment reversed and cause remanded.

Please note:

The court has recorded its own entry on the date of the release of this opinion.

HILDEBRANDT and FISCHER, JJ., concur.

All Citations

Slip Copy, 2014 WL 7177914, 2014 -Ohio- 5516



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Superior Court Case Summary

About Dockets

Court: Yakima Superior
Case Number: 14-3-01086-1

Sub	Docket Date	Docket Code	Docket Description	Misc Info
	10-29-2014	FILING FEE RECEIVED	Filing Fee Received	290.00
1	10-29-2014	SUMMONS & PET FOR DISSOLUTION	Summons & Pet For Dissolution	
2	10-29-2014	CHILD SUPPORT WORKSHEET	Child Support Worksheet	
3	10-29-2014	PROPOSED PARENTING PLAN	Proposed Parenting Plan	
4	10-29-2014	DECLARATN IN SUPP OF PARENTING PLAN	Declaratn In Supp Of Parenting Plan	
5	10-29-2014	MOTION AND AFFIDAVIT/DECLARATION	Motion And Dclr For Tmo	
6	10-29-2014	TEMP RESTRAINING ORDER	Temp Restraining Order	
	10-29-2014	CONFIDENTIAL INFORMATION FORM	Confidential Information Form	
7	06-22-2015	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
8	06-30-2015	RESPONSE	Response	
9	06-30-2015	PROPOSED PARENTING PLAN	Proposed Parenting Plan	
10	06-30-2015	DECLARATN IN SUPP OF PARENTING PLAN	Declaratn In Supp Of Parenting Plan	
11	06-30-2015	MOTION	Motion / Dclr For Temp Order	
12	08-06-2015	NOTICE OF INTENT TO WITHDRAW WTP0001	Notice Of Intent To Withdraw Connaughton, Blaine Thomas	
13	08-20-2015	ORD FOR PROTECTION	Copy Of Order For Protection	
14	08-20-2015	ORDER FOR PROTECTION-RENEWAL/REISSU	Copy Of Ord For Protection-renewal	
15	08-20-2015	ORD MOD/TRM TERMS OF PROT ORD	Copy Of Ord Mod Terms Of Prot Ord	

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IN THE COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

ANNA SHAMAYA JUAREZ,

Petitioner/Appellant,

vs.

ABDON CHAVEZ JUAREZ II,

Defendant/Respondent.

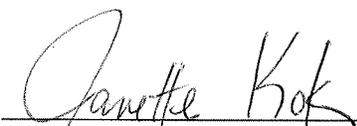
No. 33668-9-III

DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on this 5 day of November, 2015, I deposited with the United States Postal Service a properly stamped and addressed envelope by first-class mail, postage prepaid, containing a true and correct copy of the OPENING BRIEF OF APPELLANT ANNA JUAREZ and this DECLARATION OF MAILING addressed to following:

Abdon Chavez Juarez II
115 W. Elizabeth St.
Wapato, WA 98951

SIGNED at Bellingham, Washington, this 5 day of November, 2015.



Janette Kok, Legal Assistant
NORTHWEST JUSTICE PROJECT