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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III, No. 339815

SPOKANE COUNTY SUPERIOR COURT, Cause No. 15-2-03217-2

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

DANA M. CONDREY, Respondent/Petitioner

and

NEIL CONNOR FUCHS, Appellant/Respondent

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE SALVATORE F. COZZA

RESPONDING BRIEF

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II. SUMMARY OF ARGUMENT

Over an approximately five-year period, Connor Fuchs engaged in a pattern of behavior that caused emotional and physical detriment to Jackson Condrey. The course of conduct culminated on June 10, 2015, in an incident at Freeman High School, which left Jackson Condrey with a ruptured eardrum and a black eye. On behalf of her son, Dana Condrey filed a Petition for an Order of Protection in the Spokane County Superior Court, Juvenile Division. After presentation of substantial evidence and arguments, the Court appropriately used its discretion and awarded the Petitioner an Order for Protection. The court did not abuse its discretion when it entered an Order for Protection lasting until the parties' graduate high school, nor did it abuse its discretion when it denied Connor Fuchs' motion for reconsideration.

III. ISSUES PRESENTED

- i. **Whether or not the trial court appropriately granted discretionary relief to Jackson Condrey in the form of an Order for Protection based on a finding that Connor Fuchs had committed unlawful harassment, as defined in RCW 10.14.080.**
- ii. **Whether or not the trial court abused its discretion when it granted an Order for Protection – Harassment that would expire at the time the parties graduated high school.**
- iii. **Whether or not the trial court abused its discretion when it denied Connor Fuchs' Motion for Reconsideration.**

IV. STATEMENT OF THE CASE

Prior to June 10, 2015

Connor Fuchs began bullying Jackson Condrey approximately five years prior to June 10, 2015. (CP 1-8, 40-50, 109-115, 116-124.) Jackson and his parents made repeated and consistent reports of Connor's unwanted behavior. (CP 1-8, 15-34, 40-50, 109-115, 116-124.) In January 2011, the Condreys notified Freeman Elementary School teacher, Mrs. Brunk, and principal, Mrs. Phelan, that Connor Fuchs had been pushing and hitting Jackson at school as well as verbally harassing him. (CP 1-8.) In May 2011, Jackson notified the school principal and counselor that the harassment had increased. (CP 1-8.) In October 2012, Connor hit Jackson in the head with a book bag; Freeman Middle School Principal Mr. Straw was notified. (CP 1-8.) In January 2013, Richard Condrey contacted by email Connor's father, Neil Fuchs, as well as school officials regarding the bullying and notified Neil that Connor's behavior needed to stop. (Exhibits filed as attachments to Petition.) From the beginning of fall 2014, up through June 10, 2015, Connor Fuchs continued to make harassing comments to Jackson at school, including calling Jackson names like "Faggot", "Pussy", "Homo", and "Gay". (CP 1-8, 40-50.) Comments were often in reference to Jackson's participation in men's volleyball and as the manager for the women's volleyball team.

(CP 1-8, 40-50.) Connor continued to spit on and shove Jackson, as well as pour water on Jackson's head and pull his chair out from under him.

(CP 1-8, 40-50, 109-115.)

June 10, 2015

Early in the day, Connor Fuchs walked past Jackson Condrey at Freeman High School and said "What's up, faggot?". (CP 40-50.) At approximately 1:00pm, Jackson attended his gym class. (CP 1-8, 40-50.) Jackson and some friends were playfully wrestling in the gym without incident. (CP 1-8, 40-50.) Connor Fuchs entered the gym. While Jackson was wrestling with his friend, Jimmy, Connor approached Jackson from behind and restrained Jackson by holding his arm's behind his back. (CP 1-8, 40-50.) Jackson loudly said multiple times "Stop, let me go" and "let go of me". (CP 40-50.) Connor continued to restrain Jackson until both students fell to the floor. (CP 1-8, 40-50.) Jackson landed on the floor on the right side of his face, rupturing his eardrum and bruising his face. (CP 1-8, 15-19, 40-50, 109-115.) Connor told Jackson that the fall was Jackson's fault, and walked away without offering any assistance. (CP 1-8, 40-50.) Jackson "toughed it out" and finished class without reporting the assault or injury. (CP 40-50.) The incident was recorded on a security camera.

June 11, 2015

Dr. Sarah D'Hulst at Rockwood Pediatrics in Spokane, Washington saw Jackson Condrey. Medical records showed that Jackson has bruising and swelling to the right eye, and bloody crack in his right eardrum. (Exhibits filed as attachments to Petition.)

June 12, 2015

At approximately 7:42pm, Spokane County Sheriff's Deputy Ryan Truman responded to the Condrey home to investigate a report of an assault. (CP 15-19.) Deputy Truman arrived at the Condrey home and immediately observed bruising around Jackson's eye. (CP 15-19.) Dana reported to Deputy Truman a pattern of bullying by Connor Fuchs towards Jackson. (CP 15-19.) Jackson confirmed the pattern of bullying over several years and reported the events on June 10, 2015. (CP 15-19.)

August 7, 2015

Dana Condrey, on behalf of her minor son, Jackson Condrey, filed a *Petition for an Order for Protection (Respondent Under Age 18)* against Connor Fuchs. (CP 1-8.) Dana filed this petition in response to the incident, which occurred in the Freeman High School gym on June 10, 2015, and the repeated harassing behaviors of Connor towards Jackson. (CP 1-8.) The petition noted that Connor Fuchs was under investigation for Assault – 2nd Degree by the Spokane County Sheriff's Office for the

same incident. (CP 1-8, 15-34.) The Spokane County Superior Court issued a Temporary Protection Order and a Notice for Hearing. (CP 9-10.) The Court also entered an order appointing Teri and Neil Fuchs as Guardians ad Litem for Connor Fuchs. (CP 13-14.)

August 18, 2015 – September 15, 2015

Between August 18 and September 15, 2015, both parties retained counsel who filed Notices of Appearance, as well as declarations and exhibits. (Index to Clerks Papers.) The court continued the matter and reissued the Temporary Restraining Order on August 19 and September 2, 2015. (CP 37, 39.) The order dated August 19, 2016, modified the terms of the original temporary order slightly, allowing Connor to remain at Freeman High School, attend Football tryouts, and reducing the restricted proximity between the students to 20 feet, but continuing that there be no verbal communication. (CP 37.)

September 16, 2015

The Honorable Judge Cozza held a hearing in Spokane County. (CP 81.) The court considered the declarations and evidence submitted, and heard oral arguments from counsel. (Verbatim Report of Proceedings.) The hearing concluded with the Court's decision to issue a written ruling after further review of the evidence, which included the video of the gym incident. (Verbatim Report of Proceedings.)

September 21, 2015

The Honorable Judge Cozza delivered a written ruling, which was sent to the parties by mail. (CP 82.) (This letter was again sent to the parties and entered into the court record on October 26, 2015. (CP 83.)) The letter noted that while the incident on June 10, 2015 was not decisive, there was an “overall pattern of behavior that has been going on for several years”, as well as injuries that were noted by Deputy Truman on June 12, 2015. (CP 82.) The Honorable Judge Cozza concluded “the weight of the evidence in this case persuades me that the Petitioner is entitled to an order that should be in place until approximately June 15, 2017 when the parties graduate.” (CP 82.) (Jackson and Connor are actually expected to graduate in June 2018.) The letter also instructed the parties’ counsel to schedule a presentment date in the Juvenile Court. (CP 82.)

October 26, 2015

Connor Fuchs filed “Request for Reconsideration and/or Additional Evidentiary Proceedings.” (CP 98-103.)

October 27, 2015 – November 16, 2015

From October 27 through November 16, 2015, declarations and briefs were filed in support of and in opposition to Connor Fuchs’ motion for reconsideration. (Index to Clerks Papers.)

October 28, 2015

The Court held a presentment hearing for formally issuing an Order for Protection – Harassment based upon the Court’s written decision. (CP 105-107. Verbatim Report of Proceedings.) The Order was a standard form used in Washington State for an Order for Protection. (CP 105-107.) The Order contained the following restrictions:

- No-Contact: Respondent is restrained from making any attempts to contact Petitioner.
- Stay Away: Respondent is restrained from entering or being within 2 blocks (distance) of Petitioner’s residence. (The name Jackson Condrey is included after the options marked “other”; however, the “other” box in the Stay Away section is not checked.)
- Other: The Respondent is to be restrained from being within 20 feet of the Petitioner while at school which is located at Freeman High School. The Respondent is restrained from having verbal Communication with the Petitioner in any manner, including through 3rd party contact.

(CP 105-107.) The order set an expiration date of June 15, 2018, or when both parties graduate from high school. (CP 105-107.) The order included a finding that the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory

authority. (CP 105-107.) The order also included another finding, which read: “If the duration of this order exceeds one year, the court finds that Respondent is likely to resume unlawful harassment of the petitioner when the order expires.” (CP 105-107.)

November 23, 2015

The Court issued an Order Denying Motion for Reconsideration without oral argument. (CP 159-160.) The Court based the decision to not have oral argument on CR 59(e)(3). (CP 159-160.) The analysis section of the order stated:

The position of the arguments and materials submitted by the parties on Reconsideration are essentially a restatement of the positions that were presented to the Court at the initial hearing and do not persuade this Court to make any alteration of its original determination.

(CP 159-160.) The Motion for Reconsideration was denied. (CP 159-160.)

December 23, 2015

Connor Fuchs filed a Notice of Appeal to Court of Appeals, Division III.

V. ARGUMENT

- A. The trial court considered the evidence presented and appropriately granted discretionary relief to Jackson Condrey in the form of an Order for Protection – Harassment, based upon a finding that Connor Fuchs committed unlawful harassment, as defined in RCW 10.14.080.

STANDARD OF REVIEW: When reviewing the issuance of a protective order, an appellate court reviews the matter for abuse of discretion. Hecker v. Cortinas, 110 Wn.App. 865, 43 P.3d 50 (Div. 2 2002). See also May v. Scopa, No. 33305-1-III (Div. 3, 2016) (unpublished). "A trial court abuses its discretion when it exercises it in a manifestly unreasonable manner or bases it upon untenable grounds or reasons." Wagner Dev. Inc. v. Fidelity & Deposit Co. of Maryland, 95 Wash.App. 896, 906 (Div. 2 1999) *review denied*, 139 Wn.2d 1005 (1999).

The substantial evidence standard is applied to a review of factual determinations made by a judge or jury. Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570 (1959). As long as the findings of fact are supported by substantial evidence, they will not be disturbed on appeal. Id. Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. Bering v. SHARE, 106 Wn.2d 212 (1986). Disputed evidence is deemed "substantial" if it presents "any reasonable

view [that] substantiates [the trial court's] findings, even though there may be other reasonable interpretations." Fred Hutchinson Cancer Research Center v. Holman, 107 Wn.2d 693, 713 (1987).

In Washington, antiharassment protection orders are codified under RCW 10.14. The statute defines unlawful harassment as "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose." RCW 10.14.020(2). See also Burchell v. Thibault, 74 Wn.App. 517, 521 (Div. 3, 1994). A course of conduct is defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." RCW 10.14.020(1). "The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child." RCW 10.14.020(2). This is both a subjective and objective test. Burchell at 521.

If the moving party can show by a preponderance of the evidence that unlawful harassment has occurred, the court shall issue a civil antiharassment order prohibiting such unlawful harassment. RCW

10.14.080(3). “Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true.” State v. Burton, 165 Wn.App. 866, (Div. 3, 2012), citing WPIC 18.05. Preponderance of the evidence has also been defined as:

“(t)he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to include a fair and impartial mind to one side of the issue rather than the other.”

Preponderance of the evidence, Black’s Law Dictionary, 9th edition (2011).

Even if there may still be a reasonable doubt, the Petitioner is entitled to a verdict “if the jury is satisfied nevertheless that the plaintiff has proved his case.” Charles Herman Kinnane, A First Book on Anglo-American Law, 562 (2d ed. 1952). This is simply a “more likely than not” burden of proof.

Substantial evidence showed that Connor Fuchs engaged in a pattern of behavior over a course of five years that included calling Jackson Condrey names, such as “gay”, “homo”, “faggot”, and “pussy”. (CP 40-50.) This pattern of behavior also included conduct such as shoving, pushing, pouring water on his head in the restroom, and pulling

out Jackson's chair, causing him to fall on the floor. (CP 40-50.) This course of conduct was knowing and willful, aimed at Jackson Condrey, did in fact alarm, annoy, and harass Jackson Condrey, caused Jackson Condrey actual detriment, caused Jackson Condrey's parents to fear for the well-being of their child, and served no legitimate or lawful purpose.

In the court's decision letter, the Honorable Judge Cozza stated that the gym incident alone was not decisive, but that the evidence and overall pattern of behavior over five years, in combination with the injuries sustained in the gym incident, persuaded the court that the Petitioner had met the required burden of proof. (CP 82.) Substantial evidence existed to support the finding of the Court that Connor Fuchs' had committed unlawful harassment. The trial court did not abuse its discretion when it issued an Order for Protection – Harassment.

1. Connor Fuchs' course of conduct was knowing and willful.

On June 10, 2015, an incident occurred in the gym at Freeman High School during gym class. (CP 1-8, 40-50.) The incident was a culmination of conduct that had occurred over a span of five years. Connor Fuchs and his parents were on notice during that span of time that the conduct was occurring and unwanted. Connor continued to

cause Jackson emotional and physical distress through name calling and unwanted physical contact, despite steps taken by Mr. and Mrs. Condrey.

On the date of the incident in the gym, Connor Fuchs was fully aware and in control of his actions as he restrained Jackson and caused him to fall to the ground and become injured. Substantial evidence existed and it was reasonable for the Court to find that this behavior was knowing and willful, and that it was unwanted.

2. Connor Fuchs' course of conduct was directed at Jackson Condrey.

The pleadings and evidence reviewed by the trial court suggests that there existed a pattern of behavior from Connor Fuchs toward Jackson Condrey over a course of five years. The pattern of behavior included calling Jackson derogatory names and physical contact that caused Jackson's parents to notify school officials.

The incident on June 10, 2015 was an event in that course of conduct. When Connor approached the group of students in the gym, Connor approached Jackson and restrained him. (CP 3, 40-44.) Connor did not engage with the other students during the altercation. The name calling and injurious behavior over the course of five years was not a general act observed or collaterally received by Jackson Condrey.

Substantial evidence existed and it was reasonable for the Court to find that the course of conduct was directed at Jackson Condrey.

3. Connor Fuchs' course of conduct did in fact alarm, annoy, harass, and cause detriment to Jackson Condrey and his parents.

During the incident in the gym, Connor Fuchs tripped Jackson Condrey, and Jackson landed on the right side of his face. (CP 1-8, 40-50.) The fall caused Jackson to rupture his eardrum and sustain injuries to his face, including a black eye. (CP 1-8, 40-50.) The incident caused detriment to Jackson, requiring him to seek medical attention. (CP 1-8, 40-50.)

The incident in the gym was a final straw in a course of conduct that led Jackson Condrey and his parents to seek legal help through a Petition for and Order for Protection. Jackson had been subjected to verbal harassment for approximately five years immediately prior to the incident, being called names such as "gay", "homo", "faggot", and "pussy". Additionally, Jackson had been repeatedly subjected to physical harassment at the hands of Connor by being pushed, shoved, spat upon, having water poured over his head in the bathroom, and having his chair pulled out when sitting down. A reasonable person would suffer emotional distress from this half-decade course of conduct. Substantial

evidence existed showing that Jackson Condrey did in fact suffer emotional (and physical) distress by Connor Fuchs' course of conduct.

RCW 10.14.020(2) offers an alternative to a showing of emotional distress by the victim if the parent of the victim fears for the well-being of his or her child. This is also based on a reasonable person standard.

Jackson's parents had repeatedly emailed school officials, including Neil Fuchs, about the conduct of his son, Connor. Mr. Fuchs had been told that Connor needed to stop, and that they did not support Connor and Jackson having a friendship. Connor was on notice at school that he was not to engage in contact or teasing of Jackson.

Due to the course of conduct leading up to and including the gym incident, substantial evidence existed and it is reasonable to believe that Jackson Condrey was alarmed, annoyed, and harassed to the point of detriment, and that Mr. and Mrs. Condrey would be in fear for the well-being of their child.

4. Connor Fuchs' course of conduct served no legitimate or lawful purpose.

When Connor Fuchs joined Jackson Condrey and the other students in the gym, there was no legitimate or lawful purpose to his behavior. If Connor had simply meant to join in the horseplay that

Jackson and the other classmates were engaged in, Connor was immediately put on notice when Jackson asked him to stop, loudly stating "Stop, let me go" and "Let go of me." (CP 43-44.)

Prior to the gym incident, Connor Fuchs showed a pattern of behavior that included name-calling and unwanted and unnecessary physical contact. The pattern of behavior clearly lacked any legitimate or lawful purpose.

5. The incidents between the parties was more than a mere "schoolyard scuffle".

An antiharassment protection order may be sought by the parent or guardian of a child to protect that child from another. RCW 10.14.040(7). The Washington State legislature passed revisions to RCW 10.14 in 2001. Laws of 2001, ch. 260. The legislature stated findings specifically in regard to the application of RCW 10.14 to parties under the age of eighteen. Laws of 2001, Ch. 260 § 3. The findings of the legislature read:

The legislature finds that unlawful harassment directed at a child by a person under the age of eighteen is not acceptable and can have serious consequences. The legislature further finds that some interactions between minors, such as "schoolyard scuffles," though not to be condoned, may not rise to the level of unlawful harassment. It is the intent of the legislature that a protection order sought by the parent or guardian of a

child as provided for in this chapter be available only when the alleged behavior of the person under the age of eighteen to be restrained rises to the level set forth in chapter 10.14 RCW.

Id., § 1.

While “schoolyard scuffles” are not in themselves grounds for an order of protection, interactions and conduct occurring at school between students can rise to the level of unlawful harassment if the conduct at least meets the same elements of unlawful harassment as for adults. Washington State has created mandatory forms for use to petition for an order for protection when a respondent is under the age of eighteen, further demonstrating the intent of the legislature to provide a remedy for minors whose primary environment for social interaction is the schoolhouse.

In this case, the course of conduct by Connor Fuchs extended beyond that of an isolated “scuffle” between the boys. The course of conduct by Connor Fuchs was knowing and willful, aimed at Jackson Condrey, caused Jackson Condrey to be alarmed, annoyed, and harassed to his detriment, caused Jackson Condrey’s parents to fear for the safety of their child, and served no legitimate or lawful purpose. The course of conduct met the elements of unlawful harassment as set out in RCW

10.14.020. The fact that the final event in the course of the conduct occurred on school property between classmates does not reduce the overall course of conduct to the status of a mere “schoolyard scuffle” as discussed in legislative findings. The court properly considered the evidence presented and the overall context of this case, and did not abuse its discretion in finding that Connor Fuchs had committed unlawful harassment.

B. The trial court found that Connor Fuchs was likely to resume unlawful harassment of Jackson Condrey when the order expired, and did not abuse its discretion when it granted an Order for Protection that would expire on the date the parties graduated from high school.

STANDARD OF REVIEW: When reviewing the issuance of a protective order, an appellate court reviews the matter for abuse of discretion. Hecker v. Cortinas, 110 Wn.App. 865, 43 P.3d 50 (Div. 2 2002). *See also* May v. Scopa, No. 33305-1-III (Div. 3, 2016) (unpublished).

In Washington State, a court can issue an Order for Protection for a fixed period of time or permanently. RCW 10.14.080(4) and .080(6). If an order is to be entered for a fixed amount of time exceeding one year, the court must find that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. Id. The purpose of

the antiharassment statute is to prevent further unwanted contact, and the court has the authority to enter an order with conditions aimed at preventing such unwanted contact. RCW 10.14.010, .080(4), and .080(6). In the case of the victim and the Respondent both being under eighteen years of age, the court may order the person restrained to attend a different school. RCW 10.14.040(7).

In this case, the Court found that Connor Fuchs “had committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority.” (CP 105.) The Court found that the Respondent is likely to resume unlawful harassment when the order expires. (CP 107.) In the Court’s decision letter, the Honorable Judge Cozza ruled that it was appropriate to keep the Order for Protection in place until June 15, 2017 when the parties graduate high school. (CP 82.) This is also reflected in the Final Order for Protection, with the correct year the parties graduate (2018). (CP 107.)

The Court had the authority to order Connor Fuchs to no longer attend Freeman High School, but instead used its discretion to order conditions that allowed him to remain at the same school with restrictions regarding proximity and communication between Connor and Jackson. (CP 105-107.) The Court even order the proximity requirement

to be different when on or off campus. (CP 106.) The trial court clearly acted within its discretion by ordering a protection order tailored to the unique circumstances of this case.

C. The trial court did not abuse its discretion when it denied Connor Fuchs' Motion for Reconsideration.

STANDARD OF REVIEW: The denial of a motion for reconsideration is reviewed for manifest abuse of discretion. Lund v. Benham, 109 Wn.App. 263 (Div. 3 2001).

A Motion for some form of relief following entry of an order is not to be used as a "second bite at the apple." ML Park Place Corp. v. Hedreen, 71 Wn.App. 727, 745 (Div. 1 1993). *See also* Thomas v. University of Washington, No. 62904-2-1 (Div. 1 2010) (unpublished):

"We review the denial of a motion for reconsideration for a manifest abuse of discretion. A trial court abuses its discretion when it is exercised on untenable grounds or for untenable reasons. The litigant must "identify the specific reasons in fact and law as to each ground on which the motion is based." This motion, however, does not provide litigants with a "second bite at the apple." The motion may be granted if, among other reasons, the litigant produces newly discovered material evidence, or if material evidence was available but not produced before the motion was granted, that the litigant made diligent though unsuccessful attempts to obtain it."

The court issued a letter opinion on September 21, 2015, and an Order for Protection on October 28, 2015. (CP 82, 105-107.) Connor

Fuchs filed a Motion for Reconsideration (captioned as Request for Reconsideration and/or Additional Evidentiary Proceedings) on October 26, 2015, based on the letter opinion, and prior entry of the order. (CP 98-103.) Dana Condrey filed an Objection to the Motion for Reconsideration with supporting declarations on November 4, 2015. (CP 125-131.) The Appellant filed a Reply Brief with more new declarations on November 14, 2016. (CP 153-158.) On November 23, 2015, the Court issued an Order Denying Motion for Reconsideration. (CP 159-160.)

The Court determined in the Order Denying Motion for Reconsideration that the motion would be considered without oral argument per CR 59(e)(3), which reads:

- (e) Hearing on Motion. When a motion for reconsideration or for a new trial is filed, the judge by whom it is to be heard may on the judge's own motion or on application determine:
 - (3) Nature of Hearing. Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

(CP 159-160.) The Court's analysis stated that the Court found the arguments and materials to be mere restatements of positions presented to the court prior to its original ruling, and that the new materials did not

give rise to the need for any alteration of that ruling. (CP 159-160.) Based on that analysis, the Court denied the Motion for Reconsideration.

Appellant argues that the issues raised in the Motion for Reconsideration were matters of evidence. Under CR 59, two grounds for reconsideration are listed that relate to evidence:

(a)(4): Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at trial;

and

(a)(7): That there is no evidence or reasonable inference from the evidence to justify the verdict or decision, or that is contrary to law.

In the Motion for Reconsideration, the Appellants did not present any newly discovered evidence. Any “new” evidence before the court was only new because it had not been stated in that particular phrasing, or was presented **by a different declarant**. Local rules or procedures may allow the Court to limit testimony to written declarations and may limit the volume of testimony, but the Court *may* on its own discretion allow oral testimony or allow an increased volume of written declarations. (*See* CR 59 and Spokane County LSPR 94.04(a)(8-10) for example.) If Appellant had believed such statements or the need for live testimony to be critical

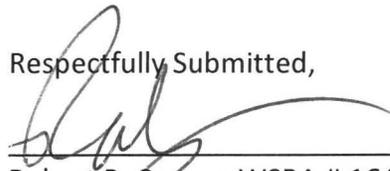
to his defense, Appellant could have included such declarations prior to the initial hearing or could have motioned the court to allow oral testimony. The Appellant in this case simply did not agree with the ruling, and desired to provide more testimony and a new opportunity to sway the Court to a different conclusion. The Appellant was appropriately denied a “second bite at the apple.”

By denying the Appellant’s Motion for Reconsideration and not allowing an opportunity to present oral testimony, the Court acted wholly within its discretion based on tenable grounds. The Court did not manifestly abuse its discretion.

VI. CONCLUSION

Substantial evidence was presented and reviewed by the court, which led to formal findings and conclusion that Connor Fuchs unlawfully harassed Jackson Condrey. The court did not err when it granted an Order for Protection with a duration of more than one year. The court did not err when it denied Connor Fuchs' Motion for Reconsideration. It is therefore respectfully requested that this Court of Appeals affirm the ruling of the trial court.

Respectfully Submitted,



Robert R. Cossey WSBA # 16481
Attorney for Appellant

FILED

AUG 25 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

In re:

NEIL FUCHS,

Appellant/Respondent,

and

DANA CONDREY,

Respondent/Petitioner.

No. 339815

AFFIDAVIT OF MAILING

I, Patricia Story, under penalty of perjury under the laws of the State of Washington, declare that on August 25, 2016, I deposited in the United States Mail, first class postage affixed, by regular mail the following document to the individual listed in this Affidavit at the below last known addresses: **RESPONDENT'S BRIEF**

Julie Watts
Attorney at Law
422 W. Riverside, Ste. 1407
Spokane, WA 99201

Dated this 25th day of August, 2016.



PATRICIA STORY