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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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

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**STACY R. CLIFFORD**  
Petitioner / Respondent

v.

**DOUGLAS CLIFFORD**  
Respondent / Appellant

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APPEAL FROM THE SUPERIOR COURT OF BENTON COUNTY  
HONORABLE VIC VANDERSCHOOR  
BENTON COUNTY CAUSE NO. 15-2-02849-6

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**REPLY BRIEF OF RESPONDENT**

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## **A. INTRODUCTION**

The trial court appropriately exercised jurisdiction over a non-resident domestic violence perpetrator because his actions led his wife and children to seek refuge in Washington, and he communicated with his wife while she was in Washington. Out-of-state service on him was valid because his affidavits conclusively established that he could not be served in Washington.

The trial court appropriately exercised temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act because it was necessary in an emergency to protect children from domestic violence, even though they had a home state elsewhere, when their home state had not acted to protect them. A trial court may not delay or deny a domestic violence protection order because other relief may be available.

## **B. STATEMENT OF THE CASE**

Douglas Clifford (“Douglas”<sup>1</sup> or “the father”) engaged in an escalating pattern of threats and physical violence against his wife Stacy Clifford (“Stacy” or “the mother”) while they lived in Florida. Before the events that precipitated this action, his violence against her included

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<sup>1</sup> The parties’ first names are used for convenience and clarity only. No disrespect is intended.

physically kicking her out of bed, “flicking” her head in a way that left knots and bruises, and trying to run her off the road with his car. Clerk’s Papers (CP) 107. He also made threats of physical abuse against the children. CP 108.

In the early morning hours of Friday, December 4, 2015, Douglas came home drunk and demanded that Stacy wake up and have sex with him. When she refused, he punched her in the head multiple times. She had contusions, bruises, and visible swelling on her head, and her jaw was sore and painful. CP 106. Douglas was charged in Pinellas County, Florida with Domestic Battery on December 5, 2015. CP 110-112. The Florida court entered a verbal no contact order, but did not issue a written order that could be registered and enforced in Washington. CP 111-112, Report of Proceedings (RP) 3-4. Stacy fled with the parties’ three children to be with her family in Benton County in Washington State.

On December 7, 2015, Douglas wrote an email to the parties’ joint email account, addressed to “Wife Stacy Clifford,” containing notes about the aftermath of the latest domestic violence incident. CP 40-43. Among other things, the email included these statements:

“Stacy could do a lot to stop the termination.”

“I need the proper guidance; determine collaboratively with my wife the future.”

“I found out this morning (Monday Dec 7) that if the children miss more than a week, unexcused, then they will lose their seats at Curtis Fundamental School.”

“If Stacy lifts the order we can communicate.”

“**I AM WILLING**-To stop drinking entirely and will agree to attend an SOS counseling program, an AA program, seek anger management counseling, grant a divorce (if this is what she wants). **I love my wife and would like to keep my family together**, with the agreement that both of us would seek support for alcohol abuse, and marriage counseling.” (Emphasis in original). CP 42-43.

The father later asserted that the email was directed to himself, as notes for managing his personal and house matters. CP 56.

On December 11, 2015, Benton County Superior Court entered an emergency domestic violence protection order, protecting the mother and the children. CP 8-11. On December 23, 2015, the father’s attorney entered a special Notice of Appearance in the Benton County case, objecting to the superior court’s jurisdiction over the father as a non-resident of Washington. CP 13. He filed the first of three limited briefs, dealing only with jurisdiction issues, along with the father’s first of three affidavits. CP 14-21.

The father's affidavits asserted that he is a resident of Florida with no intention to leave Florida, has not been in Washington State for at least the last five years, and has no intention to visit Washington. CP 19, 26-27. On January 7, 2016, Douglas filed an affidavit asserting that he had filed an action for dissolution of marriage in Florida on December 21, 2015. CP 27. He did not provide further documentation of the filing.

On January 15, 2016, the Benton County Superior Court conducted a protection order hearing, in which the father was represented by his attorney. Concluding that Washington had temporary emergency jurisdiction to protect the minors, (CP 67), the court entered a protection order effective through January 15, 2017, protecting the mother and the children. CP 65-70.

Douglas timely moved to reconsider the January 15, 2016 order. CP 71-75. As of January 29, 2016, Stacy had not been served any documents from a Florida court action. CP 83. The Motion to Reconsider was denied on February 1, 2016. CP 88-89. Douglas timely appealed to this Court on February 12, 2016. CP 91.

On April 7, 2016, the Circuit Court for Pinellas County Florida entered an order establishing Florida as the home state of the children with exclusive, continuing jurisdiction for UCCJEA purposes. CP 99-100. On April 18, 2016, the Florida court found that the Benton County Superior

Court had exercised emergency temporary jurisdiction over the children in this case. CP 102. The Florida court ordered:

if the Superior Court of Washington for Benton County does not modify the Order for Protection to apply only to Respondent and not to the Minor Children, the parties may set a 15-minute telephone hearing with the Court to effectuate a conference call with the Washington court pursuant to the UCCJEA.

CP 103.

The Florida and Benton County courts conferred, and on July 20, 2016, the Benton County court modified its protection order to cover only the mother. CP 104-105.

### **C. STANDARD OF REVIEW**

The trial court holds discretion when entertaining petitions for domestic violence protection orders, and the discretion will not be disturbed on appeal, absent a clear showing of abuse. *Juarez v. Juarez*, 195 Wn.App. 880, 890, 382 P.3d 13 (Div. III 2016), citing *Hecker v. Cortinas*, 110 Wn.App. 865, 869, 43 P.3d 50 (Div. II 2002). When a trial judge's exercise of discretion is based on untenable grounds or for untenable reasons, the appellate court will find abuse of discretion. *Juarez*, 195 Wn.App. at 890, citing *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995); *Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999). A trial court abuses its discretion if its decision was based on

the wrong legal standard. *Juarez*, 195 Wn.App. at 890, citing *State v. Rafay*, 167 Wn.2d 644, 655, 222 P.3d 86 (2009).

The Court reviews questions of statutory interpretation de novo, and interprets statutes “to give effect to the legislature’s intentions.” *State v. Bunker*, 169 Wn.2d 571, 577-578, 238 P.3d 487 (2010) (en banc). The Court examines plain language of the statute, construing an act as a whole, and harmonizing all parts. *Id.* at 578, citations omitted.

“A statute should be construed in the light of the legislative purpose behind its enactment.” *State v. Day*, Wash. 2d 646, 648, 638 P.2d 546 (1981) (en banc). (The court must avoid a literal reading which leads to absurd results, and must construe statutes in light of their legislative purposes). “The fundamental purpose in construing statutes is to ascertain and carry out legislative intent.” *City of Seattle v. Fuller*, 177 Wn.2d 263, 269, 300 P.3d 340 (2013) (en banc) (citation omitted). To determine the legislature’s intent, the statute must be construed as a whole. *Arborwood Idaho v. City of Kennewick*, 151 Wn.2d 359, 367, 89 P.3d 217 (2004) (en banc). The court looks first to what the legislature said. *Estate of Kurtzman*, 65 Wn.2d 260, 263, 396 P.2d 786 (1964) (en banc). The court must consider the plain meaning of the words. *State v. Hodgins*, 190 Wn.App. 437, 443, 360 P.3d 850 (Div. III 2015).

## **D. ARGUMENT**

### **Summary of Argument**

Under the Domestic Violence Protection Act, the Washington court had and appropriately exercised jurisdiction to enter a domestic violence protection order, protecting a mother and children from the father's violent behavior. The Washington court had jurisdiction over the non-resident father because his actions caused the mother and children to flee to Washington and because the father communicated with the mother while she was in Washington. Out-of-state service was valid because the father's affidavits conclusively showed he could not be served in Washington.

Even though Washington is not the children's home state, the Washington court had temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to enter an order protecting the children, at least until their home state acted. The Washington court could not simply wait for the home state to act.

#### **I. The Court's primary purpose is to give effect to the legislature's intent, which is to provide maximum protection from domestic violence.**

The legislature's purpose of domestic violence laws is "to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum

protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. The Washington Supreme Court recognizes the legislature’s “clear public policy to protect domestic violence victims.” *Marriage of Freeman*, 169 Wn.2d 664, 671-672, 239 P.3d 557 (2010) (en banc) (citing RCW 26.50 Domestic Violence Protection Act and RCW 10.99 Domestic Violence Official Response Act) (holding that when evidence shows domestic violence acts will not be resumed, the commissioner abused discretion by renewing it).

“The legislature has repeatedly and unequivocally declared that domestic violence is an immense problem that impacts entire communities.” *Danny v. Laidlaw Transit Services, Inc.*, 165 Wn.2d 200, 214, 193 P.3d 128 (2008) (en banc) (in wrongful discharge context, certification from U.S. Dist. Ct. of Western Dist. of Washington).

The legislature’s consistent pronouncements over the last 30 years evince a clear public policy to prevent domestic violence—a policy the legislature has sought to further by taking clear, 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.* . . .

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol

and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more. The crisis is growing. . . . Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

LAWS of 1992, ch. 111 §1.

To serve the legislature's stated purposes, the Domestic Violence Protection Act, RCW 26.50, contains extraordinary provisions designed to make the protection order process easy, quick, and effective for pro se parties. For example, a petition may be filed regardless of other actions pending between the parties, (RCW 26.50.030), all court clerk's offices must make available free petition forms and instructions and information about community resources, there is no filing fee for a petition, no bond is required (RCW 26.50.030), and the petitioner cannot be charged fees for certified copies or law enforcement agencies' service of process. RCW 26.50.040.

A protection order proceeding provides "a swift response to prevent further domestic abuse." *Marriage of Stewart*, 133 Wn.App. 545, 551, 137 P.3d 25 (Div. I 2006) (holding that an order temporarily suspending contact with children otherwise permitted by a parenting plan was valid, and a domestic violence protection order prohibiting contact with children is not an impermissible modification of a parenting plan, at

547) “Nothing in RCW 26.50.060(1) indicates a legislative intent to incorporate the full panoply of procedures and decision factors from the Parenting Act into the protection order proceeding.” *Id.* at 552. The requirement that the court in a protection order proceeding make its orders “on the same basis” as requirements in the family law statutes does not mean that the court must follow the same formal findings or procedures.” *Id.* at 553.

Washington courts have considered the Domestic Violence Protection Act’s constitutionality in a number of cases, recognizing the legislature’s clear indication of a public interest in domestic violence protection orders. *State v. Dejaklais*, 136 Wn.2d 939, 944, 969 P.2d 90 (1998)). When legislation has a purpose “to promote the health, safety and welfare of the public” and when it “bears a reasonable and substantial relationship to that purpose, every presumption must be indulged in favor of constitutionality.” *State v. Lee*, 135 Wn.2d 369, 390, 957 P.2d 741 (1998) (citations omitted) (analyzing the constitutionality of a stalking statute). Washington has a compelling interest in preventing domestic violence. *Gourley v. Gourley*, 158 Wn.2d 460, 468, 145 P.3d 1185 (2006) (en banc).

A domestic violence protection order hearing is a special proceeding, with a legislatively created, distinct form of action. *Scheib v.*

*Crosby*, 160 Wn.App. 345, 351-352, 249 P.3d 184 (Div. III 2011) (holding that the court had inherent authority to decide whether to permit discovery).

Chapter 26.50 RCW is silent on what procedural rules apply under the DVPA, but reading the DVPA as a whole and applying extrinsic aids, it is apparent that this is a special proceeding not governed by the civil rules.”

*Id.* at 350.

A domestic violence protection action differs from other civil actions in several respects. There is no requirement that the responding party file a written response. The responding party may simply attend the hearing to defend against the action. The mandatory forms for protection orders do not include a non-publication summons. (See Appendix for the list of mandatory forms for domestic violence protection orders).

The Domestic Violence Protection Act does not require a summons unless service will be accomplished by publication or mail; a notice of hearing serves the same purpose as a summons. The only reference to a summons in the Domestic Violence Protection Act is contained in the statute authorizing service by publication, RCW 26.50.085, which provides in part:

26.50.085 Hearing reset after ex parte order—Service by publication—Circumstances.

**(1) If the respondent was not personally served with the petition, notice of hearing, and ex parte order before the hearing,** the court shall reset the hearing for twenty-four days from the date of entry of the order and may order service by publication . . .

(Emphasis added).

The Domestic Violence Protection Act satisfies due process requirements. *Gourley*, 158 Wn.2d 460, 468 (holding that the plain language of ER 1101 (c) (4) provides that the rules of evidence need not be applied in protection order proceedings, at 467, and that the specific facts of the case did not warrant the right to cross-examine a minor victim, at 470). The court noted that the length of deprivation of an interest figures into the due process test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In *Gourley*, the duration of the protection order was one year, further subject to orders issued in a dissolution action. The domestic violence protection order process requires a petition and affidavit under oath, pre-hearing notice, a hearing by a judicial officer that may include testimony, a written order, the opportunity to move for revision, the opportunity for appeal, and a one-year limitation on restraints from contacting minor children. *Id.* at 468-469. The process used balances the parent's right to care, custody, and control of children against the government's compelling interest in preventing domestic violence.

The Washington Court of Appeals considered the constitutionality of a domestic violence protection order issued without recent acts of domestic violence in *Spence v. Kaminski*, 103 Wn.App. 325, 12 P.3d 1030 (Div. III 2000). Recognizing the Legislature’s “intent to intervene *before* injury occurs,” (emphasis in original) (citing *Dejklais*, 136 Wn.2d 939, 944), and contrasting the Domestic Violence Protection Act with the involuntary commitment statute, the court reasoned that “the protection order authorized by RCW 26.50 does not result in a massive curtailment of [the respondent’s] liberty.” *Spence*, 103 Wn.App. 325 at 332. “The immediacy of the threat to the victim justifies a temporary infringement on the constitutional rights of the alleged abuser.” *Id.* at 334. The court examined the Domestic Violence Protection Act’s effect on procedural due process, equal protection, and first amendment rights. It concluded that the permanent protection order based on findings that the petitioner was the victim of the respondent’s past violent acts would violate no constitutional rights. Balancing the private interest, the risk of erroneous deprivation of that interest, and the government’s interest, the court concluded that the hearing afforded results in minimal risk of erroneous deprivation of private rights, that the legitimate purpose of the Domestic Violence Protection Act is rationally related to issuing a protection order

based on past violence, and that a protection order does not interfere with legitimate freedom of movement. *Id.* at 335-336.

The procedure used in this case was adequate to provide due process and establish jurisdiction. The Domestic Violence Protection Act hearing process balances a minor curtailment of liberty with a significant public interest in preventing injury and great cost to Washington. *State v. Karas*, 108 Wn.App. 692, 700, 32 P.3d 1016 (Div. II 2001) (considering a challenge to constitutionality of the protection order process in a criminal conviction for domestic violence protection order violation).

In this case, the Benton County Superior Court acted to protect the mother and children. In a criminal case against the father, the Florida court issued a verbal no-contact order (CP 111), but that order was never reduced to writing in a way that could be registered and enforced in Washington. RP 3-4. In the dissolution of marriage case, the Florida court took no action until April 7, 2016, four months after the mother and children left Florida. CP 99, 101. The mother and children needed protection during those four months. The Washington court acted to provide that protection.

When there is a specific statute regarding subject matter of the case, Washington appellate courts apply the specific statute over a more general statute. *Wilson v. Grant*, 162 Wn. App. 731, 736, 258 P.3d 689,

691(Div. III 2011). Because the legislature specifically set out RCW 26.50 to apply to domestic violence, RCW 26.50.240 is the jurisdictional statute applicable to this domestic violence case. Under that statute, Douglas's actions subjected him to Washington jurisdiction for a domestic violence protection order against him.

**II. The Washington court had jurisdiction over the non-resident father because his actions caused the mother and children to flee to Washington and the father communicated with the mother while she was in Washington.**

Washington courts have jurisdiction to enter orders protecting people who flee to Washington to escape domestic violence. RCW 26.50.020. A Washington court may exercise personal jurisdiction over a nonresident if certain conditions are met. RCW 26.50.240 provides in pertinent part:

*Personal jurisdiction—Nonresident individuals.*

(1) In a proceeding in which a petition for an order for protection under this chapter is sought, **a court of this state may exercise personal jurisdiction over a nonresident individual if:**

...  
(d) . . .

(ii) **As a result of acts of domestic violence or stalking, the petitioner or a member of the petitioner's family or household has sought safety or protection in this state and currently resides in this state; . . .**

(2) **For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner** or a member of the petitioner's family, **directly or indirectly,** or made known a

threat to the safety of the petitioner or member of the petitioner's family **while the petitioner** or family member **resides in this state**. For the purposes of subsection (1)(d)(i) or (ii) of this section, "**communicated or made known**" **includes, but is not limited to**, through the mail, telephonically, or a **posting on an electronic communication site or medium**. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written statement made or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. **Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state."**

(Emphasis added).

Children are harmed by exposure to domestic violence. Children's fear that one parent would harm another is psychological harm and domestic violence. *Stewart*, 133 Wn.App. 545, 547. The father's violence against the mother and its harmful effects on the children caused the mother and children to flee to Washington.

As a result of domestic violence, the mother and children sought protection and safety in Washington. While they were in Washington, the father sent an email message to an account that he describes as a "family account." CP at 56. The e-mail "TO:" field read "To Wife Stacy." CP at 42. The father claims the "TO:" field was auto-filled with the words, "To Wife Stacy." CP 57. He offers proof that this is a common occurrence by

giving examples of how the “From:” field is auto-filled in emails between his attorney and him. *Id.* at 57-58. Douglas claims that he did not intend for this email to be seen as a communication to Stacy, but to serve as a reminder to himself.

Parts of the email make no sense as reminders to himself; they are more credibly messages intended for Stacy, hoping she will take certain actions. CP 58. They include: “Stacy could do a lot to stop the termination” (of his employment, based on his criminal charge of Domestic Battery); “If Stacy lifts the order we can communicate;” and “**I AM WILLING**-To stop drinking entirely and will agree to attend an SOS counseling program, an AA program, seek anger management counseling, grant a divorce (if this is what she wants). **I love my wife and would like to keep my family together**, with the agreement that both of us would seek support for alcohol abuse, and marriage counseling.” (Emphasis in original). CP 42-43. It would be an unusual person who would need a written reminder that he loves his wife and would like to keep his family together. The bold language catches the eye, and appears to be designed to catch Stacy’s eye.

Even if the father did not intend to send the message to the mother, he did send it to her. The statute does not require the communication be made with intent only that it occur. RCW 26.50.240(2).

By subjecting the mother to domestic violence and therefore subjecting his children to its harmful effects, and by communicating with the mother in Washington, the father became subject to Washington's jurisdiction adequate to enter a domestic violence protection order against him.

**III. By conclusively establishing the impossibility of serving him within the state, the father's affidavits met the statutory requirement for an affidavit proving inability to serve in state.**

In addition to due process considerations, statutory service requirements must be met before a court can exercise jurisdiction. *Veradale Valley, Etc. v. Board of Cty. Com'rs*, 22 Wn.App. 229, 236, 588 P.2d 750 (Div. III 1978) (considering joinder questions in a zoning controversy when parties received actual informal notice). Statutory service requirements were met here.

Washington's long arm statute, RCW 4.28.185, is patterned after the Illinois statute, which reflects the legislature's intent to exercise jurisdiction over non-residents to the full extent permitted by due process. *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 766-767, 783 P.2d 78 (1989) (en banc). In addition to the general jurisdiction requirements RCW 4.28.185 (4) provides "Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service

cannot be made within the state.” Washington law requires such an affidavit. *Sharebuilder Securities, Corp. v. Hoang*, 137 Wn.App. 330, 153 P.3d 222 (Div. I 2007). Stacy’s Petition for Order for Protection contains the allegation “Personal service cannot be made upon respondent within the state of Washington.” CP 7. *Sharebuilder* and other cases considering default judgments seem to require that the plaintiff be the one to file the required affidavit. In default cases, logic demands that the plaintiff (or petitioner) be the one filing the affidavit, since the defendant (or respondent) has not appeared.

A non-resident’s affidavit showing that service within the state is impossible meets the statute’s requirements for an affidavit. *Barr v. Interbay Citizens Bank of Tampa, Fla.*, 96 Wn.2d 692, 635 P.2d 441 (1981) amended on other grounds 96 Wn.2d 692, 649 P.2d 827 (1982). In *Barr*, the defendant submitted affidavits establishing that it was not licensed to do business in Washington, had no agents or employees in Washington, and transacts no business in Washington.

The logical conclusion from the language in the affidavits is that there were no authorized personnel in Washington for plaintiff to serve. The affidavits are thus, in the language of the statute, “to the effect that service cannot be made within the state.” . . . **There is no requirement in the statute that the affidavits must be filed by the plaintiff.** There has been substantial compliance with RCW 4.28.185(4).

*Barr*, 96 Wn.2d 692, 635 P.2d 441 (1981) and order amending opinion, 96 Wn.2d 692, 696 (emphasis added). In this case, the father filed two affidavits, each alleging facts that lead to the inescapable conclusion that he cannot be served in Washington. Both affidavits asserted that he is a Florida resident who has not been to Washington for five years and has no plans to return to Washington. The father's affidavits conclusively show that he could not be served in Washington, thereby satisfying the statutory requirement of an affidavit establishing that the nonresident cannot be served in Washington.

**IV. Even though Washington is not the children's home state, the Washington court had, and appropriately exercised, temporary emergency jurisdiction to enter a protection order protecting the children.**

The Superior Court of Benton County acted appropriately to protect the children when it issued the immediate December 11, 2015 order, reissued it on January 8, 2016, and entered the protection order after hearing on January 15, 2016.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified in Washington at RCW 26.27, guides the court in analyzing child custody and protection issues across state lines. Although the UCCJEA contains a preference for the children's home state, it contemplates situations such as this one and makes provision for

protecting children until the child's home state takes action. RCW 26.27.231. Where a superior court is not authorized to exercise final jurisdiction over custody determinations, it may exercise temporary emergency jurisdiction. *Marriage of McDermott*, 175 Wn.App. 467, 307 P.3d 717 (Div. I 2013).

Under the UCCJEA, when the home state has not acted to protect children, and the children are in Washington in need of protection, Washington has temporary emergency jurisdiction until the other court exercises its jurisdiction. Temporary emergency jurisdiction may ripen into full jurisdiction if the home state declines to exercise its jurisdiction. RCW 26.27.231(2).

Washington's codification of the UCCJEA at RCW 26.27.231 provides:

**Temporary emergency jurisdiction.**

(1) **A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with abuse.**

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. If a

child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(3) **If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under RCW 26.27.201 through 26.27.221. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.**

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to RCW 26.27.201 through 26.27.221, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(Emphasis added).

The Florida court took no action until April 7, 2016. In the meantime, in December 2015 and January 2016, the Benton County court

appropriately issued the protection orders, since the Florida court had not acted to protect the children.

The final order for protection entered January 15, 2016 was based on Washington's temporary emergency jurisdiction. The Benton County Superior Court acted in accordance with the UCCJEA to protect the Clifford children until the home state exercised or declined to exercise its jurisdiction.

The Order for Protection entered January 15, 2016 contains the conclusion that "This state has temporary emergency jurisdiction that may become final jurisdiction under RCW 26.27.231(2)." CP 67.

To acquire general jurisdiction, a court with temporary emergency jurisdiction must communicate with the other state involved. *Parentage of Ruff*, 168 Wn.App. 109, 275 P.3d 1175 (Div. III 2012), citing RCW 26.27.231 (holding that the trial court lacked general jurisdiction because it did not communicate with the court that had initial jurisdiction and because its temporary emergency order had no expiration date).

In contrast with the situation in *Ruff*, the Florida and Washington courts communicated about the case, and the Benton County Superior Court modified its protection order to remove coverage for the children.

The existence of a home state elsewhere does not bar Washington's exercise of emergency jurisdiction. The home state's

ultimate exercise of jurisdiction is to be anticipated and does not change whether Washington has jurisdiction to enter a domestic violence order in an emergency.

In this case, the Benton County court entered an order effective for one year, until January 15, 2017. The Florida court entered its first order addressing the children on April 7, 2016, nearly four months later.

**V. The Washington court did not have the option to wait for the Florida court to act.**

When a domestic violence protection order is needed, a trial court may not deny or delay protection or enter a short-term domestic violence protection order in deference to other judicial proceedings. *Juarez*, 195 Wn.App. 880. In that case, at a protection order hearing, the respondent's attorney informed the court about a pending dissolution of the parties' marriage and anticipated a preliminary hearing within a couple of months. The trial court issued a 65-day protection order "to maintain the status quo" until a hearing could be held in the dissolution action. *Id.* at 885. The respondent never scheduled a hearing in the dissolution case. The Court of Appeals applied RCW 26.50.025(2), which provides that "[r]elief under this chapter shall not be denied or delayed on the grounds that the relief is available in another action."

The tenor of RCW 26.50.025(2) directs the trial court to reject other available proceedings and remedies as an influence on

the remedy granted in a Domestic Violence Prevention Act petition. Therefore, we hold that denying lengthy protection, because of the availability of other relief or the pendency of another court proceeding, runs contrary to RCW 26.50.025(2).

*Juarez*, 195 Wn.App. 880, at 887. “The policy behind the Domestic Violence Prevention Act bolsters a conclusion that limiting the duration of the protection order in deference to a separate marital dissolution proceeding contradicts RCW 26.50.025(2).” *Id.* at 888.

In this case, the father notified the Benton County court that he had filed an action in Florida, but no documentation of that filing was provided to the court or to the mother before the Benton County court ruled on the protection order petition. When the Florida court acted four months later, its order provided that, if the Washington court did not modify its protection order to cover Stacy only, the parties could set up a telephone conference between the courts. CP 103. The Florida and Washington courts then communicated, and the Washington court modified its protection order to remove the provisions regarding the children. CP 104-105.

#### **E. REQUEST FOR COSTS AND FEES**

Stacy requests costs and fees. Obtaining protection from Douglas’s violence has been expensive. She has had to retain attorneys in both Washington and Florida.

“[W]hen the issue is only jurisdiction, fees are only proper when the party seeking to invoke jurisdiction has ‘engaged in unjustifiable conduct.’” *Ruff*, 168 Wn.App. 109. Under the Domestic Violence Protection Act, no fees are available to a respondent for defending against a protection order action. *Hecker*, 110 Wn.App. 865.

An award of fees against Stacy under RCW 26.27.511 would be inappropriate, in that she appropriately used the court system to gain protection from further abuse, and she has had to pay attorney fees in both Washington and Florida. An award of fees against Stacy under RCW 26.27.271 would be inappropriate, since the Washington court did not decline jurisdiction by reason of conduct.

#### **F. CONCLUSION**

The trial court appropriately exercised jurisdiction over a nonresident domestic violence perpetrator whose actions caused a mother and children to flee their home state and seek refuge in Washington, and the trial court appropriately exercised temporary emergency jurisdiction because it was necessary in an emergency to protect children from domestic violence, even though they had a home state elsewhere.

With the father’s reasoning, a parent fleeing the children’s home state to escape domestic violence would be unable to obtain protection for the children in Washington, if the other parent filed a different action in

the home state, even if the case in the home state proceeded no further.

This cannot be the legislature's intent.

Respectfully submitted this 24<sup>th</sup> day of May, 2017.

UNIVERSITY LEGAL ASSISTANCE

A handwritten signature in cursive script that reads "Gail Hammer".

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GAIL HAMMER, WSBA #20222  
Attorney for Petitioner/ Respondent

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 24<sup>th</sup> day of May, 2017, a true and correct copy of the foregoing was delivered to the following person in the manner indicated:

Scott E. Rodgers Rodriguez Interiano Hanson & Rodgers 7502 West Deschutes Place Kennewick, WA 99336-7719	<input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Facsimile to: 509-736-1151 <input checked="" type="checkbox"/> Via E-mail to: <a href="mailto:Scott@RIHR-Law.com">Scott@RIHR-Law.com</a>
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EXECUTED this 24<sup>th</sup> day of May, 2017, at Spokane, Washington.

  
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GAIL HAMMER