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Division III  
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WASHINGTON STATE COURT OF APPEALS  
DIVISION III

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VIKKI VEGA,  
Appellant,

vs.

LAWRENCE MADSEN,  
Respondent.

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RESPONSE BRIEF

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This appeal is of a Vulnerable Adult Protection Order (VAPO) that prevents Ms. Vega from financially exploiting Lawrence Madsen, a vulnerable adult. If this court were to reverse the trial court decision, the result would be that the protection order, and prohibition on exploitation, would be lifted. Ms. Vega's Opening Brief focuses almost entirely on extrinsic issues and seeks the Court's assistance with remedies unavailable in this appeal. It provides no pertinent legal argument as to why the court erred in granting the VAPO. This is because the court did not err in its decision. The factual findings were supported by substantial evidence and those findings supported the legal conclusion. The decision was not arbitrary, unreasonable, or based on untenable grounds. The court afforded all appropriate due process protections to all parties and any errors now claimed by Ms. Vega were at her behest or with her informed consent. Accordingly, Respondent asks that the appeal be denied and that he be awarded attorney fees for the appeal under RAP 18.1 and RCW 74.34.130(7).

#### **I. STATEMENT OF THE CASE**

On August 3, 2018, Lawrence Madsen's son, Ted Madsen, filed a VAPO, seeking to protect Lawrence Madsen from neglect and financial

exploitation by his spouse Vikki Vega.<sup>1</sup> Clerk's Papers (CP) 1-7. The court held a hearing on August 16, 2018 where Ms. Vega appeared, declined the opportunity to continue the hearing, waived any defects in service, testified, cross examined the witnesses, and presented her evidence to the court and to opposing counsel. Verbatim Report of Proceedings (RP).

After this hearing, the court entered the VAPO. It found that Ms. Vega had "committed acts of abandonment, abuse, personal exploitation, improper use of restraints, neglect and/or financial exploitation of a vulnerable adult." CP 29-30. It also found that Ms. Vega "will only receive \$2400 per month until further order of the court." CP 30. Based on these findings, the court ordered the following:

- "Respondent is restrained from committing or threatening to commit acts of neglect or financial exploitation against the vulnerable adult." CP 30.
- "The Respondent is required to provide all Mr. Madsen's income to the facility except \$2400 until further order of the court." CP 31.

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<sup>1</sup> Lawrence Madsen and Vikki Vega were still legally married, but had legally separated in 2013. RP 35-36.

- “The Respondent is restrained from transferring the vulnerable adult’s property for her benefit without representation for Mr. Madsen.” CP 31.
- “The respondent is restrained from transferring respondent’s property for his Medicaid participation to herself.” CP 31.
- “Ms. Vega will surrender Mr. Madson’s income.” CP 31.  
(sic)
- “Mr. Madsen is not to be removed from his residence by Vikki Lee Vega or her agent(s).” CP 31.
- “Mr. Madsen will have a rep payee.” CP 31.
- “Both POAs are revoked.” CP 31.
- “A finding of financial exploitation is founded per RCW 74.34.” CP 31.
- “A finding of neglect is founded per RCW 74.34.” CP 31.

See also RP 55-57. Ms. Vega appealed the issuance of the VAPO to the Court of Appeals on September 14, 2018.

After various delays in completing steps in appellate review, Ms. Vega moved the court to supplement the record with additional information on October 22, 2019. This request was denied on December 12, 2019 because the court found that all the documentation she was trying

to add had been in her possession prior to the superior court proceeding, but she had voluntarily and knowingly decided to proceed with the hearing without said evidence.

The issue for this appeal is limited to whether the VAPO issued by the trial court was appropriate. Ms. Vega does not prove that the trial court findings were not supported by substantial evidence, nor does she prove that the legal conclusions were not supported by the findings. She also does not provide an appropriate legal justification for the appellate court to remand for a new hearing. The trial court hearing and decision were appropriate and we ask that the VAPO be upheld.

## II. STANDARD OF REVIEW

The decision to grant or deny a protection order is reviewed by the appellate court to determine if the decision “is manifestly unreasonable or exercised on untenable grounds, or for untenable reasons.” *In re Knight*, 178 Wn. App. 929, 936, 317 P.3d 1068, 1072 (2014); *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002). Factual findings are reviewed for substantial evidence, which is “the quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.” *Endicott v. Saul*, 142 Wn. App. 899, 909, 176 P.3d 560, 566 (2008); *Knight*, 178 Wn. App. at 936; *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 707–08, 64 P.3d 1 (2003). In determining the sufficiency of evidence, an appellate court need

only consider evidence favorable to the prevailing party. *Endicott*, 142 Wn. App. at 909; *Bland v. Mentor*, 63 Wn.2d 150, 155, 385 P.2d 727 (1963). Credibility determinations, persuasiveness of evidence, and resolutions on conflicting testimony are for the trier of fact and cannot be reviewed on appeal. *Endicott*, 142 Wn. App. at 909; *Knight*, 178 Wn. App. at 936; *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003); *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994). Unchallenged findings of fact are also verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004); RAP 10.3(g). Questions of law are reviewed de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

### III. ARGUMENT

The Abuse of Vulnerable Adults Act (Act), Chapter 74.34. RCW, was enacted to protect vulnerable adults who “may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member.” See RCW 74.34.005(1) (legislative findings). One means of protection provided by the Act is a vulnerable adult protection order. RCW 74.34.110. Ted Madsen, as an interested individual, sought this protection order from the court on behalf of his father, Lawrence Madsen, whom he was concerned was being financially exploited and neglected by Vikki Vega.

This VAPO was entered by the court after an appropriate hearing and is the sole order which is the subject of this appeal. In her opening brief, Ms. Vega tries to relitigate evidentiary issues which were resolved at the trial level and in her motion to supplement the appellate record. Ms. Vega alleges she did not receive appropriate due process, although a review of the transcript shows that she made an informed choice to waive the aspects of the hearing that she now is claiming infringed her rights. And, Ms. Vega raises facts not in the record and issues not relevant to what is being appealed. Ms. Vega does not prove that the trial court findings were not supported by substantial evidence, nor does she prove that the legal conclusions were not supported by the findings. The trial court decision was appropriate and we ask that it be upheld.

**A. The VAPO Was Not Unreasonable or Based on Untenable Grounds; The Findings of Fact Were Based on Substantial Evidence and Support the Legal Conclusions.**

The appellate court reviews the trial court's decision for abuse of discretion, unreasonableness, or untenable grounds. *Knight*, 178 Wn. App. at 936; *Hecker*, 110 Wn. App. at 869. The trial court weighed all evidence, made credibility determinations, and found that Ms. Vega had "committed acts of abandonment, abuse, personal exploitation, improper use of restraints, neglect and/or financial exploitation of a vulnerable adult." CP 29-30. This finding is supported by the evidence and testimony presented

at the hearing. Based on this finding, the court restrained Ms. Vega from further exploiting or neglecting the vulnerable adult. The court did not abuse its discretion and the decision was not unreasonable or untenable; this Court should uphold the decision on appeal.

A VAPO Petition must allege specific facts and circumstances that demonstrate the need for the relief sought. RCW 74.34.110(2). The issue for a VAPO is whether “the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.” RCW 74.34.110(2). The VAPO is based on all the evidence, including the declaration that accompanies the petition that states the specific facts and circumstances which demonstrate the need for the relief sought. RCW 74.34.110(3). The superior court is authorized in the Act to “order relief as it deems necessary for the protection of the vulnerable adult.” RCW 74.34.130.

Petitioner submitted ample evidence with the petition and at the hearing that met the required criteria and justified the imposition of a VAPO. The declaration by Steven Madsen, Ms. Vega and Mr. Madsen’s son, discussed mistreatment by Ms. Vega of his sister, inaction regarding

necessary medical care of Mr. Madsen, incurrence of significant credit card debt on behalf of Mr. Madsen, and consistent focus on draining Mr. Madsen's assets during their relationship and upon legal separation. CP 22-23. Additional evidence at the hearing included information about nonpayment of participation to his residence resulting in threatened eviction, lack of diligence in resolving alleged insurance payment issues, retention of funds she was not legally entitled to, no evidence of funds being held for Lawrence Madsen's future benefit, and obtaining signatures of Lawrence Madsen on financial documents when he lacked capacity. RP 12-13, 54-57.

Ms. Vega was given the opportunity to present her side of the situation. She presented argument that she was not refusing to pay but that she believed the participation calculation was inaccurate. RP 46-48. She presented argument that the owner of Franklin Hills was an unreliable witness with a history of Medicaid fraud. RP 47, 49. And she presented argument contradicting Ted Madsen's declaration. RP 45-48, 51-52. The court considered all those arguments and still found the VAPO was proper.

The trier of fact weighed the evidence presented, the testimony of the witnesses, and the arguments of the parties. RP 54-58. She made credibility determinations and resolved conflicts in the testimony in favor

of Mr. Madsen. These credibility determinations are not reviewed or changed on appeal. The trier of fact then found that Ms. Vega had financially exploited or neglected a vulnerable adult. Substantial evidence in the record supports this finding, so it should be upheld on appeal. Based on that finding, the court issued various restraints on Ms. Vega, each of which was directly related to the finding that she had committed neglect or exploitation and each of which was directly related to protecting the vulnerable adult from this going forward.

Mr. Madsen met his burden at the hearing to prove that a VAPO was necessary to protect a vulnerable individual from financial exploitation and neglect. The evidence in the record is substantial and supports the findings, which support the legal conclusions. This court should find that the trial court's decision was reasonable and based on the evidence and deny this appeal.

**B. The VAPO Hearing Afforded All Parties Appropriate Due Process and Followed Hearing Procedures.**

Many of Ms. Vega's "assignments of error" involve the substance of the VAPO hearing and alleged due process deficiencies. Review of the trial record shows that all parties were afforded appropriate due process during the hearing and this basis for appeal or justification for a new trial should be denied.

*a. Improper Service*

The first Assignment of Error contends that due process was not followed because she was “served by nursing home staff, four days prior to the hearing, when I arrived in Washington from California.” Appellant’s Amended Opening Brief, p. 7. The court recognized this service issue and gave Ms. Vega the opportunity to contest or continue the proceedings based on service. RP 3-7. She declined. *Id.* She was fully informed of the consequences, but elected to waive this defect. This was not a due process violation and not a basis for reversal.

*b. Evidence*

In much of this brief, including various assignments of errors, Ms. Vega takes issue with the evidence that was admitted and not admitted in the hearing. These are the same fundamental arguments made by Ms. Vega in her Motion For Additional Facts On Review, which was denied by this court on December 12, 2019.

Ms. Vega brought additional evidence the day of the hearing, which Mr. Madsen’s counsel had not seen before. Ms. Vega was served notice of the hearing on August 11, 2018, giving her an opportunity to provide any documents she intended to present at the hearing to the other parties before the hearing itself, but instead she chose to bring them to the hearing. CP 19-20. Counsel for Ted Madsen, the undersigned requested a

continuance of at least two weeks to allow her time to review these documents and prepare her defense, which is common practice. RP 3-7. Ms. Vega chose not to accept the offers to continue the hearing. RP 5. The judge thoroughly explained to Ms. Vega she would not be able to submit them if the hearing moved forward, and she chose to proceed with the hearing without the documents. RP 3-7. Consistent with RCW 74.34.135, she was given opportunity to present the facts and provide a defense at the time of the hearing.

The same day, the undersigned sought to admit a declaration (RP 6) and provided Ms. Vega with a copy of the declaration. The court again gave Ms. Vega the opportunity to continue the hearing to present evidence to counter the declaration. RP 6-7. She declined and instructed that she would verbally refute the allegations. RP 7. She then added that she would provide proof later, and the court reminded her that that was not an option if she chose to proceed that day, and she said that was fine. RP 7-8. Each procedural step was done within the court rules and with approval of Ms. Vega. It was not procedural error or a denial of due process that she elected to proceed with the hearing without her evidence and with the declaration submitted by Mr. Madsen. This basis for appeal should be rejected.

*c. New Trial*

Ms. Vega contends she deserves a new trial because of the procedural deficiencies in the previous trial. But, in order for a court to remand a case for a new trial, the requesting party must prove reasons justifying such an action. Here, the evidentiary and procedural aspects of the hearing that Ms. Vega alleges were unfair were with her consent. The trial court took additional time to explain the consequences of her decisions and she agreed to move forward anyway. RP 3-7. Hindsight is not justification for a new trial and this request should be denied.

**C. Ms. Vega Cannot Submit Additional Facts or Evidence On Review.**

Much of Ms. Vega's brief, including parts of the assignments of error, issues pertaining to assignments of error, and the argument, are actually factual statements that are attempting to relitigate the facts that were already decided at the trial court.<sup>2</sup> Ms. Vega assigns error to the investigation and substantive testimony of the APS investigator, Pamalynn Brault. And Ms. Vega claims that Ms. Brault's testimony unfairly impeached her own credibility. But, Ms. Vega had the opportunity to cross-examine Ms. Brault at the hearing and raise any of these issues in front of the trier of fact. RP 21-33. Additionally, Ms. Vega lists facts that

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<sup>2</sup> Furthermore, Ms. Vega provides no citations to the record to support any of her factual statements, as required by RAP 10.3(a)(4).

she does not agree with, which are not assignments of error. See Appellant's Amended Opening Brief at 7-10.

Ms. Vega presented her argument about these issues at the trial. See RP 35-52. The trial court clearly found Mr. Madsen's evidence, including Ms. Brault's testimony, more credible since it found that Ms. Vega financially exploited or neglected a vulnerable adult. This is evident in the court's oral ruling. RP 54-58. On appeal, the court does not reweigh testimony or analyze credibility determinations. Substantial evidence supports the factual findings and this appeal should be denied.

**D. Ms. Vega Conflates the Various Actions And Assigns Error Beyond the Scope of This Appeal.**

The appeal before the court is limited. It is an appeal of the Vulnerable Adult Protection Order (VAPO) that was entered against Vikki Vega to protect Lawrence Madsen. It is not an appeal of the subsequent guardianship proceeding appointing Ted Madsen as guardian for Lawrence Madsen. It is not an appeal of findings made by Adult Protective Services. It is not an appeal of Vikki Vega and Lawrence Madsen's legal separation or maintenance award. Ms. Vega's appeal takes issue with these ancillary actions, but none are at issue herein.

The lifetime ban and prohibition from volunteering with certain groups of individuals is not a result of this proceeding; it is the

consequence of the substantiated Adult Protective Services (APS) finding, which is a separate administrative action by DSHS. *See* Chapter 388-71 WAC. Complaints about APS not following appropriate procedures in its investigation should be directed to APS. Difficulties visiting her husband after the hearing are not reviewable as part of the appeal, they should be pursued with those that were not abiding by the order. Any alleged failings by the guardian to pay court ordered spousal maintenance is not relevant to this VAPO.<sup>3</sup>

Relief is not available to her for any of these alleged wrongdoings as part of this appeal. This appeal is limited to a determination by the court whether the imposition of the protection order was appropriate. This protection order just prevented Ms. Vega from financially exploiting Mr. Madsen, so all that would result from a reversal in this appeal would be that she could again take all Lawrence Madsen's money and property and exploit and neglect him.

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<sup>3</sup> One of the findings of facts in this VAPO is that Ms. Vega "will only receive \$2400 per month until further order of the court." This finding was based on the testimony that the court in the legal separation proceeding had set maintenance at this amount. RP 12-13, 37, 41-42, 55-56. The VAPO reiterated the amount that she was currently receiving and indicated that amount should remain the same until it is changed in the legal separation proceeding that had ordered that maintenance. *See* RP 55-56. The factual finding regarding the amount of maintenance does make whether that is an appropriate maintenance amount or whether it is being paid fully an issue in the VAPO appeal.

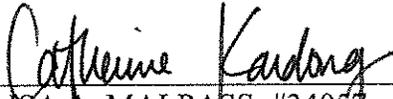
### E. Attorney Fees

The Guardian for Lawrence Madsen requests guardian and attorney fees and costs from Ms. Vega as the court deems proper and just. RAP 18.1 allows a prevailing party to recovery fees on appeal if those fees are allowable at trial. Under RCW 74.34.130(7), a court may order the respondent “to reimburse the petitioner for costs incurred in bringing the [protection order] action, including a reasonable attorney’s fee.” This appeal was of a protection order, so the respondent is entitled to an award of fees. *Endicott v. Saul*, 142 Wn.App. 899, 929, 176 P.3d 560 (2008).

### IV. CONCLUSION

For the foregoing reasons, the guardian for Lawrence Madsen requests that Appellant’s Motion for Additional Facts on Appeal should be denied, no new trial should be granted, and Respondent should be awarded attorney fees.

DATED this 18<sup>th</sup> day of June, 2020.

  
\_\_\_\_\_  
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DECLARATION OF SERVICE

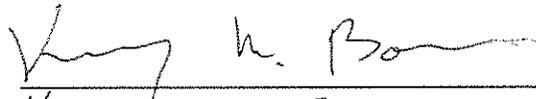
The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on June 17<sup>th</sup>, 2020, I caused a true and correct copy of the foregoing document to be served on the following party in the manners indicated:

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5400 Robin St.  
Weldon, CA 93283

Email: vikkileevega@gmail.com

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VIA EMAIL	<input checked="" type="checkbox"/>
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BY FACSIMILE	<input type="checkbox"/>
VIA FEDERAL EXPRESS	<input type="checkbox"/>

DATED this 17<sup>th</sup> day of June, 2020 at Spokane, Washington.

  
\_\_\_\_\_  
Kerry M. Bowers

**WINSTON & CASHATT, LAWYERS**

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