

**FILED**

No. 364640

JUL 26 2019

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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

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RANDALL S. AMES, Appellant,

v.

STAN R. AMES and WESLEY B. AMES,

Respondents

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BRIEF OF APPELLANT

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RANDALL S. AMES – Pro se  
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509-936-3953

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**I. TABLE OF AUTHORITIES**

**Cases**

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*In Marriage of Wicklund*, 84 Wash.App 770 n. 1, 932 P.2d 652.....12, 14

*State v. Rundquist*, 79 Wash.App. 786, 793, 905 P.2d 922 (1995).....12, 14, 15

*Wash. State Phys. Ins. Exch. & Ass'n v. Ill Fisions Corp.*, 122 Wash.2d 299,  
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**Statutes**

- RCW 9.41.040
- RCW 59.18.290(1)
- RCW 59.12.010
- RCW 59.12.020
- RCW 59.12.030
- RCW 26.50.010(3)

## Rules

LCR 6(d)(2)(C)  
CR 5(b)(7)  
LCR 5(b)(2)(C)

## II. Introduction

Roy Ames and his wife Rubye Ames (parents of Randall Ames, Stanley Ames, and Wesley Ames) (hereinafter, "Parents") purchased a 160 acre farm located at 3885 Haverland Meadows Rd., Valley, WA 99181, (hereinafter, "Ames Farm" in 1966. To supplement their retirement income the Parents began selling the farm to their sons Stanley Ames and Wesley Ames in early 1997, while retaining a life-estate for themselves in the Ames Farm. Stanley Ames and Wesley Ames challenged the life-estate of their Parents claiming the Ames Farm was sold to them free of all encumbrances, but when the matter was litigated the trial court found, and the appellate court later affirmed, that the parents had reserved a life-estate in the Ames Farm in the oral Ames Farm sale agreement. The litigation split the Ames family, with the parents having two of their children (Arleta Parr and Randall Ames) supporting the Parents' life-estate rights, and three Ames children (Stanley Ames, Wesley Ames, and Merita Dysart) denying and opposing the Parents' life-estate rights. From shortly before litigation ensued in 2011 through the present Stanley Ames and Wesley Ames have been openly hostile toward their siblings who supported their Parents'. It is in this long-term context of open hostility that the domestic violence incident that is now before the appellate court occurred.

Randall Ames and his family were lawful residential tenants on the Ames Farm since 2010 as they provided increasing levels of care for Randall Ames' elderly Parents during their years of age related decline. The Parents exercised their right under their life-estate to live in their home on the Ames Farm until the Parents' life-estate terminated on June 16, 2018 when Rubye Ames passed away. Following Rubye Ames' death Randall Ames and his family promptly began moving off of the Ames Farm, but when Stanley Ames and Wesley Ames learned that the life-estate had ended, they immediately began entering the Ames Farm at will without the authority of a Writ of Restitution. Because of Stanley Ames' and Wesley Ames' long-term open hostilities toward Randall Ames and his family, Randall Ames and his family came to feel increasingly threatened as Wesley Ames and Stanley Ames became increasingly bold and aggressive in their hostile actions. Therefore Randall Ames and his family either left the Ames Farm or retreated into the

house whenever Stanley Ames or Wesley Ames arrived on the Ames Farm, which was typically several times per day. The continuous interruptions prevented Randall Ames from timely moving off of the Ames Farm, through Randall Ames still had to return to the Ames Farm about every other day to care for his family's animals, and attempt to remove their belongings if he could safely do so.

The Domestic Violence incident and resulting petition that is now before the Appellate Court occurred on September 2, 2018 on one of Randall Ames' visits with his children to the Farm to care for his animals and to attempt to remove some of his belongings. Randall Ames filed a Petition for Domestic Violence Protection Order (hereinafter, "DV Petition") on September 19, 2018 he trial court denied both of the petitions for domestic violence protection orders as to both Stanley Ames and as to Wesley Ames, and the present appeal ensued.

### **III. ASSIGNMENTS OF ERROR**

No. 1 The trial court erred in considering Wesley Ames' late filed responsive document over Randall Ames' objection.

No. 2 The trial court erred in considering Wesley Ames' responsive document that was never served on petitioner over Randall Ames' objection.

No. 3. The trial court erred in denying the DV Petitions seeking protection from Stanley Ames and from Wesley Ames.

No. 4 The trial court erred in finding that Stanley Ames and Wesley Ames had a right to be on the Ames Farm at the time when the DV incident occurred on September 2, 2018.

No. 5 The trial court erred in denying Randall Ames' petition for possession of essential personal belongings.

No. 6 The trial court erred in finding that Stanley Ames and Wesley Ames had acted in self defense.

No. 7 The trial court erred in finding that there would be no conflict in the future.

No. 8 The trial court erred in drafting and signing a Denial Order before the hearing of the matter.

#### **IV. . ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

No. 1 Where Wesley Ames filed a responsive document just the day before the hearing, and where Randall Ames immediately objected to consideration of that late filed document, did the trial court err in considering Wesley Ames' late filed response at the hearing? (Assignment of Error No. 1)

No. 2 Where neither Stanley Ames nor Wesley Ames served their late-filed response on petitioner, and where Randall Ames immediately objected to consideration of the responsive documents that had not been served, did the trial court err in considering Wesley Ames' response that had not been served on the petitioner? (Assignment of Error No. 2)

No. 3 Where there were at least 5 first-hand witnesses of the DV incident, combined with photographic and video evidence depicting the DV incident, and where there was no rebuttal evidence properly before the Court, did the trial court err in denying the DV Petitions against Stanley Ames and Wesley Ames? (Assignment of Error No. 3)

No. 4 Where petitioner was a long-term tenant in the home and on the land of the Ames Farm when the DV incident occurred on September 2, 2018, and where no Writ of Restitution was entered until October 12, 2018 terminating Randall Ames' possession and control of the Ames Farm, and where Stanley Ames and Wesley Ames had not given notice of inspection of the Ames Farm, did the trial court err in finding that Stanley Ames and Wesley Ames were lawfully on the Ames Farm on September 2, 2018? (Assignment of Error No. 4)

No 5 Where Randall Ames petitioned the trial court for possession of essential personal belongings, and where there was no evidence before the trial court to rebut the asserted ownership, did the trial court err in denying the petition for possession? (Assignment of Error No. 5)

No 6. Where petitioner was a long-term tenant in the home and on the land of the Ames Farm when the DV incident occurred on September 2, 2018, and where no Writ of Restitution terminating Randall Ames' possession and control of the Ames Farm was entered until October 12, 2018 and where Stanley Ames and Wesley Ames had not given notice of inspection of the Ames Farm, and where Randall Ames had previously informed Stanley Ames and Wesley Ames that they were trespassing on the Ames Farm and demanded that they leave, did the trial court err in finding that Stanley Ames and Wesley Ames acted in self-defense on the Ames Farm during the DV

incident on September 2, 2018? (Assignment of Error No. 6)

No. 7 Where the record before the trial court demonstrated a multi-year history of violence by Stanley Ames and Wesley Ames toward Randall Ames and his family, and where Stanley Ames and Wesley Ames had recently engaged in multiple threats of lethal violence, did the trial court err in finding that Stanley Ames and Wesley Ames were not likely to engage in future acts of domestic violence against Randall Ames and his family? (Assignment of Error No. 7)

No. 8 Where Randall Ames' sworn statement together with supporting photographs, and offered video recordings and offered statements of multiple other witnesses provided evidence demonstrating that Stanley Ames and Wesley Ames had engaged in acts of domestic violence, and where there was no evidence properly before the trial court rebutting the evidence of acts of domestic violence, did the trial court err in drafting and signing an order denying the DV Petition prior to the October 18, 2018 hearing? (Assignment of Error 8)

#### **IV. STATEMENT OF THE CASE**

Randall Ames and his family had been long-time lawful tenants of the home and farm property where the DV incident occurred. CP 106

#### **Evidence of Domestic Violence**

By way of sworn statements Randall Ames described for the court some of Stanley Ames' and Wesley Ames' acts of domestic violence toward Randall Ames and toward his family, and potential harm to pets, and potential loss of property, including;

- a. Wesley Ames threatened to use his firearm against Randall Ames and against his children. CP 4
- b. Pet chickens could be harmed and/or suffer loss of care. CP 4
- c. Randall Ames is unable to protect pets or property due to Wesley Ames' repeated threats of lethal violence. CP 4
- d. On 7-27-2018 Wesley Ames threatened Randall Ames' life by quickly reaching behind him as if to draw a concealed weapon. (Correction – By inadvertent photocopying error this statement was made to

- incorrectly appear as if it applied also to Stanley Ames.) CP 6, CP 106,
- e. On 9-14-2018 Stanley Ames Wesley Ames threatened Randall Ames' life by hiding in ambush beside Randall Ames' driveway and then quickly drawing his rifle from its scabbard at a range of about 15 feet when Randall Ames discovered his ambush. (Correction – By inadvertent photocopying error this statement was made to incorrectly appear as if it applied also to Stanley Ames.) CP 6, CP 106, CP 119, CP 126,
  - f. Wesley Ames and Stanley Ames routinely engage in actions that would make them ineligible to possess a firearm under RCW 9.41.040. CP 7, CP 103
  - g. Wesley Ames used his vehicle to block Randall Ames vehicle in a barnyard for approximately 40 minutes. CP 165-166, CP 112
  - h. On or about August 23, 2015; CP 110 - 110
    - a. Stanley Ames threw a firewood block and hit Randall Ames in the arm. CP 139
    - b. Wesley Ames picked up a steel pipe and raised it menacingly while approaching Randall Ames from about 5 steps away. CP 142
    - c. Wesley Ames shoved Randall Ames to the ground. CP 144 - 146
    - d. Stanley Ames swung a spiked wooden club over his head and down at Randall Ames who had been knocked to the ground. CP 147
    - e. Stanley Ames struck Randall Ames with his hand. CP 148
    - f. Stanley Ames threatened Randall Ames with a sudden and violent head-butt. CP 149
    - g. Stanley Ames threw a spiked wooden club over a car at Randall Ames who was looking underneath the car. CP 150
  - i. Wesley Ames trespassed on the Ames Farm (sometimes surreptitiously by parking nearby and walking onto the farm) while engaging in surveillance of, and engaged in a pattern of stalking Randall Ames while he was not on the farm. CP 111, CP 152-155
  - j. Threatening the use of lethal force on September 2, 2018. CP 107 – 110, CP 120 – 137
    - a. Stanley Ames ran across a field to intercept Randall Ames' children as they were driving away, and shouldered his rifle and raised it toward them. The rifle was taken into evidence with a round in the chamber and the hammer cocked back. CP 109 – 110, CP 113, CP 134
    - b. Stanley Ames saw Randall Ames on the porch of the house and raised his rifle and pointed it at Randall, who then retreated into the house. CP 121 – 122
    - c. For an extended period Stanley Ames and Wesley Ames with their rifles circled the house where they had trapped Randall

- Ames and Nathan Ames. CP 123 – 124,
- k. Many other incidents and additional details of Stanley Ames' and Wesley Ames' threats and actual violence toward Randall Ames and his family were before the trial court in the DECLARATION OF RANDALL S. AMES IN SUPPORT OF PETITION FOR DOMESTIC VIOLENCE PROTECTION ORDER dated Sept. 19, 2018. CP 105 – 181

### **Processing of DV Petition**

On September 19, 2018 Randall Ames delivered to the Stevens County Superior Court clerk a DV Petition against each of Stanley Ames and Wesley Ames, together with a supporting declaration. CP 16, CP 113

On October 8, 2018 the Stevens County Superior Court clerk entered the DV Petition and supporting declaration against Stanley Ames in the clerk's records. On the same day Commissioner Nielson entered the Temporary Order of Protection and Notice of Hearing and the Order to Surrender Weapons Issued without Notice. Stanley Ames failed to comply with the Order to Surrender Weapons. Filing stamps on CP 1, CP 8, CP 86, CP 90

On October 11, 2018 the Stevens County Superior Court clerk entered the DV Petition and supporting declaration against Wesley Ames in the clerk's records. On the same day Commissioner Nielson entered the Temporary Order of Protection and Notice of Hearing and Order to Surrender Weapons Issued without Notice. Wesley Ames failed to comply with the Order to Surrender Weapons. Filing stamps on CP 97, CP 105, CP 182, CP 186

### **October 11, 2018 Hearing**

The two DV Petitions were joined together for trial which was held on October 18, 2018. All parties appeared for the October 18, 2018 hearing, and no parties objected to insufficient notice of the hearing. No parties were sworn in at any time during the hearing. RP 1-27

Commissioner Nielson looked outside of the evidence presented to him to learn what other judges had done, or were planning on doing. RP 5 lines 11-16, RP 4 lines 6-10

Stanley Ames told the trial court that a computer blip on the morning of the hearing had prevented him from providing his response to the trial court in

advance of the hearing. RP 6 line 20 – p. 7 line 1

Randall Ames objected to consideration of the not-served documents. Commissioner Nielson upheld the objection and refused to consider the not-served materials, and then reaffirmed his ruling on the objection after hearing Stanley Ames' argument. RP 7 lines 5 – 12, RP 8 lines 7 – 8

It was noted during the hearing that the DV Petitions and supporting declaration had been served on both Stanley Ames and on Wesley Ames on October 11, 2018. No objections regarding service of the petitions and notices of hearing were raised. RP 8 line 18 – p. 9 line 6

Randall Ames informed the trial court and Stanley Ames and Wesley Ames that Randall Ames had inadvertently failed to sign one of the two identical declarations that was before the trial court at the hearing. The trial court invited objection from Stanley Ames and Wesley Ames, which Stanley Ames and Wesley Ames then provided. Neither the trial court nor Stanley Ames nor Wesley Ames had previously noticed that one of the two identical declarations was unsigned, and no objections were raised prior to Randall Ames' attempt to correct the omission. Commissioner Nielson ultimately ruled that Randall Ames could refer to the declaration because Stanley Ames had responded to the petition and declaration as if it had been signed so there was no prejudice. Also, the identical facts were presented to the trial court in the identical declaration that had been served on Wesley Ames and was signed under penalty of perjury. RP 9 line 7 – p. 11 line 5, CP 113

Randall Ames objected to consideration of the untimely responses on the grounds that they had not been served on Randall Ames. Randall Ames had kept his residence address confidential, but had provided an address to both Stanley Ames and Wesley Ames where service of documents could be made. Randall Ames did not provide an email address to Stanley Ames or to Wesley Ames, and did not consent to receive documents by electronic service. Commissioner Nielson overruled Randall Ames' objection to consideration of the non-served responses on the basis that the documents had not been served on Randall Ames. Wesley Ames argued that the responsive documents had been sent to Randall Ames by email one day before the hearing. Commissioner Nielson overruled Randall Ames' objection and ruled that he would consider Wesley Ames' filing. CP 7, CP 103, RP 7 lines 5 – 8, RP 11 line 18 – p. 12 line 18

Randall Ames informed the trial court that Stanley Ames and Wesley Ames had been trespassing on the Ames Farm on October 2, 2018 when one of the most serious instances of Domestic Violence had occurred, because Randall Ames was still in possession of the Ames Farm on that date, as the

Writ of Restitution was not issued until October 11, 2018. Randall Ames described feeling threatened and trapped with his son Nathan Ames as Stanley Ames and Wesley Ames trespassed in circling Randall Ames' house with their rifles in hand. RP 12 line 23 – p. 15 line 13

Commissioner Nielson referred to issues being litigated in cases not before Commissioner Nielson, and of which there was no evidence in the record in the DV Petition case. RP 14 line 23 – 15 line 2

In his sworn declaration Randall Ames had referenced the fear and trembling his daughter had experienced as a result of seeing Stanley Ames run across the field to intercept the van that Randall Ames' daughter was riding in when Stanley Ames shouldered his rifle and raised it toward the van. CP 109 - 110 In summary rebuttal Randall Ames made a formal offer of proof of his daughter's handwritten sworn statement that she wrote immediately following Stanley Ames' action of shouldering and raising his rifle toward the van and its passengers at a range of about 15 feet. RP 22 lines 2 – 12

Randall Ames reminded the trial court, and Commissioner Nielson in particular, of multiple prior warnings of Stanley Ames' and Wesley Ames' malice toward their family members, and how Commissioner Nielson had disregarded those prior pleas for protection from the court based on false assurances from Stanley Ames, Wesley Ames, and Merita Dysart, that Stanley Ames and Wesley Ames had no ill intent. Randall Ames reminded commissioner Nielson of Stanley Ames' and Wesley Ames' subsequent malicious actions when the trial court had previously given them freedom to act maliciously, and asked the trial court to take action now to protect Randall Ames and his family from the lethal threats of Stanley Ames and Wesley Ames. RP 22 line 21 – 24 line 2, CP 112 par. 11 – 113, CP 169 - 181

### **Commissioner Nielson's Ruling**

Commissioner Nielson denied both DV Petitions citing;

1. A Writ of Restitution had issued which prevented Randall Ames from going to the Ames Farm, RP 24 lines 5 - 18
2. Randall Ames and his family were not in fear, RP 24 lines 23 - 25
3. Stanley Ames and Wesley Ames were acting in self-defense, RP 25 lines 1 – 9, RP 25 line 25 – 26 line 3
4. Commissioner Nielson hoped that even without a DV Order of Protection there would be no future contact between Stanley and Wesley Ames, and Randall Ames, RP 25 lines 15 – 18

Commissioner Nielson acknowledged that if there was going to be future contact outside of “all this” that any judge would be real quick to grant a protection order and not allow that. Commissioner Nielson genuinely hoped that there would not be any further contact, so he ruled that there was no basis for the Petitions for DV Protection Order. RP 25 lines 10 - 18

During the hearing there had been continuous argument by various parties and by Commissioner Nielson, with no breaks during the course of the hearing during which Commissioner Nielson could have engaged in any substantial handwriting. As Commissioner Nielson was stating his oral ruling he referenced and distributed for parties’ signatures the Denial Orders that he had previously filled out and signed as providing the rationale behind the denial. RP 26 lines 3 – 6 The denial orders contained substantial handwritten commentary. RP 94 – 96, RP 190 – 192.

Commissioner Nielson expressed his belief that Randall Ames could recover his personal property through the unlawful detainer action instead of as requested through the DV Petition, but Stanley Ames asserted that there was no such remedy available to Randall Ames through the unlawful detainer action. RP 26 line 18 – 27 line 6

## **V. ARGUMENT**

### **Error No. 1**

LCR 6(d)(2)(C) provides that documents opposing a motion must be served and filed no later than noon two court days prior to the hearing. Wesley Ames filed, and purported to serve, his opposition to the petition one day before the hearing, making it untimely. Commissioner Nielson’s decision to consider such a voluminous filing filed just the day before the hearing was prejudicial to the petitioner, and was an abuse of discretion.

### **Error No. 2**

CR 5(b)(7) and LCR 5(b)(2)(C) allow parties to agree to accept service of documents by fax or electronic means if consented to in writing by the person served, and prohibit service by electronic means if not so

consented. Randall Ames did not consent to accept service by electronic means, and did not provide an email address for service. Wesley Ames purported to serve his responsive documents one day before the hearing by email. Service of Wesley Ames' responsive documents never occurred because service by email was prohibited by controlling CR and LCR in the absence of written consent. The lack of service was clearly prejudicial and the court lacked legal basis for its decision to prejudice the petitioner by considering the unserved documents. This decision should be reviewed de novo.

### **Error No. 3**

There was an abundance of irrefutable documentary evidence demonstrating that both Stanley Ames and Wesley Ames had engaged in multiple acts of domestic violence. Because no opposing documents were served on the petitioner the record before the trial court was entirely devoid of evidence properly before the court that might rebut the petitioner's evidence showing that domestic violence had occurred.

"A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds." *Wash. State Phys. Ins. Exch. & Ass'n v. Ill Fisions Corp.*, 122 Wash.2d 299, 339, 858, P.2d 1054 (1993). In looking to other cases we find this principle echoed with a slightly broader scope, "A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Kovacs*, 121 Wash. 2d at 801, 854 P.2d 629; *In Marriage of Wicklund*, 84 Wash.App 770 n. 1, 932 P.2d 652.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *State v. Rundquist*, 79 Wash.App. 786, 793, 905 P.2d 922 (1995) (citing WASHINGTON STATE BAR ASS'N, WASHINGTON APPELLATE PRACTICE DESKBOOK §18.5 (2d ed. 1993)), review denied, 129 Wash.2d 1003, 914 P.2d 66 (1966).

Since the record before the trial court was devoid of evidence properly before the court that might rebut the evidence supporting the evidence in support of granting the DV Petition, it was an abuse of discretion for the court to deny said petition. The decision should be reviewed for an abuse of discretion.

#### **Error No. 4**

Randall Ames was a long-term residential tenant on the Ames Farm. CP 105 par. 2. The Residential Landlord-Tenant Act governed Randall Ames' tenancy on the Ames Farm. RCW 59.18 Stanley Ames and Wesley Ames unlawfully excluded Randall Ames and his family from their residence on the Ames Farm. CP 105 par. 1, RCW 59.18.290(1), Stanley Ames and Wesley Ames engaged in forcible entry and forcible and unlawful detainer. RCW 59.12.010, RCW 59.12.020, RCW 59.12.030

Wesley Ames confirmed that he and Stanley Ames took control of the Ames Farm prior to the issuance of the Writ of Restitution. RP 17 lines 5 – 13 The Writ of Restitution did not issue until October 12, 2018, therefore, Stanley Ames and Wesley Ames were trespassing on the Ames Farm on October 2, 2018 when some of the more serious domestic violence incidents occurred. The action of Stanley Ames and Wesley Ames fall squarely within the definition of Domestic Violence. RCW 26.50.010(3) There was no lawful basis for the trial court to find that Stanley Ames and Wesley Ames were lawfully on the Ames Farm on October 2, 2018. The decision should be reviewed de novo.

#### **Error No. 5**

Randall Ames included in his DV Petition a request for the court to grant him possession of specified essential personal belongings and also to grant exclusive custody and control of the specified pets. CP 3 par 7, CP 4 par 16, CP 99 par. 7, CP 100 par. 16

No evidence was before the court to challenge Randall Ames' claim of ownership. Stanley Ames notified the trial court that Randall Ames had no remedy through the unlawful detainer action to recover his personal property from the Ames Farm. RP 26 line 25 – 27 line 6 The trial court abused its discretion in denying Randall Ames' petition for possession of his personal property, and the decision should be reviewed for abuse of discretion.

#### **Error No. 6**

There was no evidence before the trial court showing that Stanley Ames and/or Wesley Ames were under threat of harm from Randall Ames or any of

his family.

“A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” *Wash. State Phys. Ins. Exch. & Ass’n v. Ill Fisions Corp.*, 122 Wash.2d 299, 339, 858, P.2d 1054 (1993). In looking to other cases we find this principle echoed with a slightly broader scope, “A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Kovacs*, 121 Wash. 2d at 801, 854 P.2d 629; *In Marriage of Wicklund*, 84 Wash.App 770 n. 1, 932 P.2d 652.

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The trial court’s finding that Stanley Ames and Wesley Ames were acting in self defense during their domestic violence actions was unsupported by the record, and was therefore an abuse of discretion. This decision should be reviewed for an abuse of discretion.

### **Error No. 7**

The record is full of well substantiated and unopposed instances over a period of years in which Stanley Ames and Wesley Ames engaged in acts of domestic violence. *See supra, IV, Statement of the Case, Evidence of Domestic Violence.* The record is devoid of any evidence that would support a finding that Stanley Ames and Wesley Ames are not likely to engage in future acts of domestic violence.

“A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” *Wash. State Phys. Ins. Exch. & Ass’n v. Ill Fisions Corp.*, 122 Wash.2d 299, 339, 858, P.2d 1054 (1993). In looking to other cases we find this principle echoed with a slightly broader scope, “A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Kovacs*, 121 Wash. 2d at 801, 854 P.2d 629; *In Marriage of Wicklund*, 84 Wash.App 770 n. 1, 932 P.2d 652.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *State v. Rundquist*, 79 Wash.App. 786, 793, 905 P.2d 922 (1995) (citing WASHINGTON STATE BAR ASS'N, WASHINGTON APPELLATE PRACTICE DESKBOOK §18.5 (2d ed. 1993)), review denied, 129 Wash.2d 1003, 914 P.2d 66 (1966).

The trial court's finding that Stanley Ames and Wesley Ames are not likely to engage in future acts of domestic violence against Randall Ames and against his family was an abuse of discretion because it was unsupported by the record. The decision should be reviewed for an abuse of discretion.

### **Error No. 8**

The trial court record is replete with evidence that Stanley Ames and Wesley Ames engaged in acts of domestic violence. *See supra, IV, Statement of the Case, Evidence of Domestic Violence*. The trial court record was devoid of evidence to support a finding that Stanley Ames' and Wesley Ames' threatening actions were reasonable acts of self-defense.

Commissioner Nielson was fully occupied during the short and fast-paced hearing on October 18, 2018, and did not have reasonable opportunity during the hearing to have handwritten the extensive notes found on the two Denial Orders. CP 94 – 96, CP 190 – 192.

As Commissioner Nielson was giving his oral ruling he seamlessly mentioned that he had already signed the denial orders which contained his rationale behind the denials, with not so much as a pause sufficient for him to have merely signed his name. RP 26 lines 3-6

Especially in view of the complete absence of evidence properly in the record to oppose the DV Petitions and supporting declarations it was an abuse of discretion for the trial court to pre-judge the matter and prepare the denial orders in advance of the hearing of the matter. That decision was unsupported by the record and so constituted an abuse of discretion. The decision should be reviewed for an abuse of discretion.

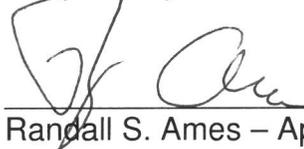
## VI. CONCLUSION

As described above, the trial court erred in considering filings that indisputably had not been served on the petitioner. No good cause was shown for the failure to serve, as a valid service address had been provided to Stanley Ames and Wesley Ames. This decision constituted an abuse of discretion which wrongfully prejudiced Randall Ames' ability to present his case. When this decision is corrected and the non-served documents disregarded, this leaves the record devoid of any facts that might rebut or oppose the evidence presented in support of the DV Petition, making the remaining challenged decisions manifestly unreasonable and/or based on untenable grounds.

Petitioner Randall S. Ames respectfully requests that the decisions in the court below that have been shown to be errors reversed, that a multi-year Domestic Violence Protection Order be issued against Stanley Ames and against Wesley Ames, and that statutory fees and costs both in the underlying case and on appeal be awarded to him.

Dated July 22, 2019.

Respectfully submitted,



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Randall S. Ames – Appellant

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**WASHINGTON STATE COURT OF APPEALS, DIV. III**

Petitioner: Randall S. Ames	Case No. 364640 No. 2018-2-00484-33  CERTIFICATE OF SERVICE
v.	
Respondents: Stanley R. Ames, and Wesley B. Ames	

**Certificate of Service**

I hereby certify that on the date shown below I mailed with postage prepaid a copy of the following documents;

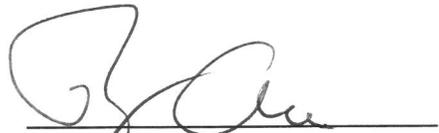
- 1) BRIEF OF APPELLANT

to the following parties:

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Dated July 22, 2019.

  
\_\_\_\_\_  
Randall S. Ames