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NO. 365603

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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THERESA CARSTENSEN,

Appellant,

v.

DAMON RUIZ,

Respondent.

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RESPONDENT'S BRIEF

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## I. INTRODUCTION

Victims of false accusation of sexual abuse suffer reported ruined careers, damage to their families, and experience of a mental trauma outlasting their sometimes brief encounters with the judicial system. Perpetrators who falsely accuse others of sexual abuse damage the real significance of true victims of sexual abuse. These types of true perpetrators should not be allowed to use the judicial system to enhance their twisted agenda. The Ruiz family claim that Ms. Carstensen's agenda is to retaliate against Mr. Ruiz and his family for pursuing criminal assault and malicious mischief charges against Ms. Carstensen who assaulted Mrs. Ruiz and their (4) four year old child. Ms. Carstensen subsequently was charged with (2) two counts of Fourth Degree Assault and Malicious Mischief Third Degree. After Ms. Carstensen assaulted Mrs. Ruiz and their young child at Mrs. Ruiz's work on July 6, 2018 and Ms. Carstensen realized that the Ruiz's were not cooperating with her hope that they not pursue the charges, Ms. Carstensen filed for this ex parte sexual assault protection order on December 11, 2018 which falsely accuses Mr. Ruiz of rape. As a result, Ms.

Carstensen is continuing the harassment by this appeal and her request to continually force Mr. Ruiz to be brought to court and to suffer under intense cross examination by her experienced legal barristers who will further attempt to damage Mr. Ruiz character, reputation and mental state of himself and his family who she was criminally charged with assaulting. Therefore, Mr. Ruiz alleges that Ms. Carstensen's goal is revenge for her charges for assault of his wife and small child and she only attempts to further her agenda by justifying rape with only her use of words such as "he raped me", "he is a rapist" and "his rapey eyes". This harassment must be stopped. The trial court saw through Ms. Carstensen's true agenda and stopped her further harassment and false allegations of sexual assault. Mr. Ruiz also asks this court to stop Ms. Carstensen's continued harassment and misuse of the judicial system to advance her agenda to retaliate against the Ruiz family for pursuing assault charges against Ms. Carstensen.

## **II. RESPONSE TO PETITIONER'S ASSIGNMENT OF ERRORS**

- (1) The Trial Court correctly interpreted and applied the current and correct law at the time of this incident as ruled in the Supreme Court decision of *Roake v. Delman* regarding interpretation of the SAPO Act in RCW 7.90.020(1).

- (2) The petitioner is incorrect in attempting to claim that this Court must apply the legislative amendment to the SAPO act retroactively.
- (3) Amendment of the SAPO Act in RCW 7.90.020(1) cannot be applied retroactively since the amendment affects a substantive vested right.
- (4) The petitioner's legal arguments that the trial court erred by considering evidence beyond the pleadings and applying the wrong legal standard to Mr. Ruiz's motion to reopen is also not supported by correct legal authority and not raised at the trial level.

### III. STATEMENT OF THE CASE

On September 23, 2017, Mr. and Mrs. Ruiz went to the Jason Aldean concert in Spokane with Ms. Carstensen and Ms. Carstensen's girlfriend. (CP at S22-55). After the concert they went "bar hopping" with Ms. Carstensen and her girlfriend. (CP at S22-55). Ms. Carstensen's husband was not present during this event. (CP at S22-55). Afterwards, the four of them went back to the hotel and had consensual foursome sexual encounters. (CP at S22-56). Nowhere in the record shows that the Petitioner ever reported any allegations of inappropriate sexual contact on anyone's part involving the September 23, 2017 incident and no police report was filed until after the July 2018 assault of Respondent's wife and child. CP at S22-76<sup>i</sup> and VRP 26, 29<sup>ii</sup>. On July 6, 2018, Ms.

Carstensen and her husband went to Ms. Ruiz place of employment at the Wilbur Register Newspaper located in downtown Wilbur and began yelling and screaming causing the employer to call 911. (CP at S22-54-55). During this disturbance, Ms. Carstensen assaulted Ms. Ruiz and her child and damaged some of Ms. Ruiz's property. (CP at S22-53-58). Additionally, Ms. Ruiz alleged that Ms. Carstensen and her husband stalked and harassed her and her family. (CP at S22-65-66). On July 9, 2018, Ms. Ruiz filed for and on July 24, 2018 was granted an Anti-Harassment Order against Ms. Carstensen and her husband Justin Carstensen. (CP at S22-60-74). On August 1, 2018, the Lincoln County Prosecutor filed criminal charges against Ms. Carstensen of (2) two counts of Fourth Degree Assault and (1) one count of Malicious Mischief Third Degree. (CP at S22-50-51). On December 8, 2018, Mr. Ruiz and his minor son traveled to Mr. Wagoner's butcher business located just outside of Wilbur in order to pick up some pre-ordered pork. (CP at S22-28). Unknown to Mr. or Mrs. Ruiz, Ms. Carstensen and her husband had recently rented a house in the same compound and general location as the butcher shop. (CP at S22-27-47). Mr. and Mrs. Carstensen

observed Mr. Ruiz and minor son traveling in the area to pick up the pork and mistakenly concluded that Mr. Ruiz was stalking or harassing Ms. Carstensen. (CP at S22-27-47). However, Mr. and Mrs. Carstensen did not know or understand that Mr. Wagoner did operate and conduct butcher business at the same compound location. (CP at S22-4, S22-27-47) (VRP 42-43). Mrs. Carstensen filed her sworn written statement which the court considered in granting the temporary SAPO which she incorrectly states: "Damon stopped and talked with a neighbor business owner as if he had business there. (CP at S22-4, S22-27-47) (VRP 42-43). The business is not in a commercialized area and I had never seen anyone stop there before". (CP at S22-4, S22-27-47) (VRP 42-43). As a result, on December 11, 2018, Ms. Carstensen filed the Petition for a Sexual Assault Protection Order (SAPO) and was granted a Temporary SAPO without prior notice and opportunity for Mr. Ruiz to respond which is at issue in this appeal. (CP at S22-1-9). On December 18, 2018, Mr. Ruiz filed a response and motion to reopen temporary SAPO and dismiss the temporary SAPO (CP at S22-13-50) and on December 21, 2018, a hearing was held and all parties were present and represented by counsel before the

Honorable Superior Court Judge John F. Strohmier. VRP 1-52. During this hearing, the judge reopened the temporary SAPO and asked the parties for any additional information of “statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts” as stated in RCW 7.90.020(1). VRP 36, 39, 43. The trial court applied the law as the Washington Supreme Court required in Roake when the temporary SAPO is reopened by the respondent and contested. VRP 36, 39, 43. Mr. Ruiz motioned the court to do such (CP at S22-15-74) and Ms. Carstensen offered no additional information. VRP 36, 39, 43. The court gave all parties an opportunity to bring in additional information “if anyone had anything, so I left it (temporary hearing) open... No one brought anything new...” so the judge ruled that the temporary SAPO “will not continue” and is denied and dismissed. VRP 52. (CP at S22-122-124). The judge also found that the petitioner’s allegations that Mr. Ruiz has “rapey eyes” was subjective and a clear example of Mrs. Carstensen’s attitude and lack of factual basis for the temporary SAPO. VRP 44. The judge stated that “when you talk about the declaration that his (rapey) eyes or

something like that, ... you've got to step back and step back..."  
"I've never seen anybody come in here and I could tell by looking at them they're guilty of a crime". VRP 44.

#### IV. SUMMARY OF ARGUMENT

Respondent, Damon Ruiz, by and through his attorney, David R. Hearrean asks this court to affirm the trial court's decision to reopen the temporary order and deny the protection order based on the current law in effect at that time according to *State v. Roake*, 189 Wn.2d 775, 408 P.3d 658 (2018). Basically, petitioner, Carstensen, is attempting to circumvent the Washington Supreme Court authority as stated in *Roake* by quoting the dissent as the law in *Roake*. Additionally, petitioner Carstensen's attempt to circumvent the Washington Supreme Court authority as stated in *Roake* violates the Separation of Powers Doctrine<sup>iii</sup> by incorrectly claiming in this appeal that the legislative amendment of the statute (RCW 7.90.020(1)) dated and not in effect until a year after this incident is retroactive which clearly is not the law in this case.

#### V. ARGUMENT

- (1) The Trial Court correctly interpreted and applied the current and correct law at the time of this incident as ruled in the Supreme Court decision of *Roake v. Delman* regarding

interpretation of the SAPO Act in RCW 7.90.020(1).

During this time period, the relevant law that had to be followed was RCW 7.90.020(1) which stated:

(1) A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.(emphasis added).

Additionally, RCW 7.90.130, stated:

(2) A sexual assault protection order shall further state the following:

... .

(e) For ex parte temporary sexual assault protection orders, that the respondent may petition the court, to reopen the order if he or she did not receive actual prior notice of the hearing and if the respondent alleges that he or she had a meritorious defense to the order or that the order or its remedy is not authorized by this chapter.

Additionally, the Washington State Supreme Court in *State v. Roake* ruled that under the SAPO Act, the trial court should first address the respondent's motion to reopen and dismiss when it is

alleged that the Petitioner failed to establish that she had any reasonable fear of future dangerous acts from the Respondent.

When a respondent to a petition for a sexual assault protection order challenges the sufficiency of the initial petition, either under RCW 7.90.130 or by way of a motion to dismiss, a trial court resolves that claim on the pleadings. *Roake at 775.*

The trial court, after reviewing the pleadings and perhaps considering the declarations to determine whether later incidents or facts were necessary to rule on the motion, dismissed the petition, providing in the denial order, "The petitioner failed to establish that she had any reasonable fear of future dangerous acts from the respondent and therefore the temporary order was invalid." That constitutes the basis of the trial court's decision.<sup>iv</sup> *Roake at p. 781*

However, the legislature on May 7, 2019 in Laws of 2019, ch. 258 & 2 under the guise of clarification, overruled the Supreme Court opinion by legislative enactment. This legislative enactment arguably struck the language in RCW 7.90.020(1) requiring "statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for". In place of this deleted language from the statute, the legislature added "facts and circumstances from" which amends the statute eliminating the statutory requirement and

overruled a prior Supreme Court ruling construing the statute. (See Appendix 1- 2019 Wa.HB 1149 which became effective July 28, 2019 after the filing of this appeal by petitioner). The Petitioner now files this appeal asking that this amendment to RCW 7.90.020(1) shall apply retroactively and remand back to the trial judge to apply the corrected rule and make and enter the necessary findings of fact and conclusions of law. See p. 17 of Appellant's Brief. Additionally, the petitioner incorrectly argues at p. 17 that *Nelson v. Duvall*, 197 Wn.App. 441, 387 p. 3d 1158 (2017) is controlling when that court involved a completely different issue than the issue in this case. In *Nelson*, the court misinterpreted the SAPO Act and the law on hearsay and denied the Petitioner to file declarations in support of her SAPO. The *Nelson* court stated:

We hold the trial court abused its discretion by repeatedly applying the wrong legal standard in determining the admissibility of hearsay, and its decision to completely disregard ER 1101(c)(4) and apply the Rules of Evidence across the board is a view "that no reasonable person would take." *Salas*, 168 Wn.2d at 669 (internal quotation marks omitted) (quoting *Duncan*, 167 Wn.2d at 403). *Nelson* at p. 460.

In the present case, the trial court did not misinterpret any statute as in *Nelson*. The Honorable Superior Court Judge John F.

Strohmier relied on the Washington Supreme Court ruling in *Roake* that was applicable to the RCW 7.90.020(1) statute at the time and never misinterpreted the law as in *Nelson*. Therefore, the trial court's December 23, 2018 decision (CP at S22-122-124) was a matter of judicial discretion and the decision was clearly within the discretion of the trial court as allowed by the Supreme Court and the law in effect at the time.

(2). The petitioner is incorrect in attempting to claim that this Court must apply the legislative amendment to the SAPO act retroactively.

The Respondent, Mr. Ruiz, argues that the Petitioner is only arguing the dissent opinion in *Roake* and attempting to the incorrectly apply a legislative amendment (not in effect until July 28, 2019) retroactively in order to contravene a supreme court decision in *Roake* that clearly is a judicial construction of the statute. As a result, the legislature in 2019 Wa. HB 1149 (Laws of 2019, ch. 258 & 1) deleted the wording that "statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for" and replaced these words with "facts and circumstances from" which

amends the statute eliminating the statutory requirement and overruled a prior Supreme Court ruling construing the statute. Mr. Ruiz argues that this legislative amendment to the statute must be prospective in its effect and cannot be applied retroactively to his case as Petitioner requests at page 17 of the Appellant Brief and is the subject of this appeal. Mr. Ruiz's claim of this required prospective effect is especially true since the Washington Supreme Court and the law in effect at the time required the petitioner of a SAPO to bring forth evidence that shows actions or words at the same time as the sexual assault or subsequently thereafter which give rise to reasonable fear of future dangerousness. Petitioner was given the opportunity to present such evidence and could only mention Mr. Ruiz innocent actions which clearly do not equal future dangerousness as ruled by the Supreme Court in *Roake*. Petitioner admittedly did not realize that a butcher shop that was open to the public and catering to the public including the Ruiz family and this butcher shop was located in the same compound as she lives. Additionally, the trial court found that the Appellant's subjective attitude and attempt to justify "rapey eyes" as future dangerousness was not a basis to represent any future dangerous

act as required for an ex parte temporary SAPO. Thus, the Trial Court's decision was clearly based upon well-established settled law in effect at the time.

In regards to the Appellant's request for this court to apply retroactively the amended portion of RCW 7.90.020(1) and remand back to the trial court to apply the legislative amendment, Mr. Ruiz claims that the Appellant's request is incorrect and such legislative amendment effect must be prospective. Most important, the prospective effect of such legislative effect is clearly controlled by settled law. The Washington Supreme Court has held on numerous times that an amendment such as in this case may not be curative if it contravenes a previous Supreme Court interpretation of the statute. *Johnson v. Cont'l W., Inc.*, 99 Wn.2d 555, 562, 663 P.2d 482 (1983); *Overton v. Econ. Assistance Auth.*, 96 Wn.2d 552, 558, 637 P.2d 652 (1981). Although legislative clarifications, as opposed to amendments, are generally retroactive and effective from the original date of the statute, *Johnson v. Morris*, 87 Wn.2d 922, 925, 557 P.2d 1299 (1976), an exception to this rule is applicable here. The exception may be stated as follows:

The usual purpose of a special interpretive statute is to correct a judicial interpretation of a prior law which the legislature determines to be inaccurate. *Where such statutes are given any effect, the effect is prospective only.* Any other result would make the legislature a court of last resort.

(Footnote omitted. Italics ours.) 1A C. Sands, *Statutory Construction* § 27.04, at 313 (4th ed. 1973). *Marine Power & Equip. Co. v. Wash. State Human Rights Com. Hearing Tribunal*, 39 Wn. App. 609, 615, 694 P.2d 697 (1985). Mr. Ruiz claims that the subsequent legislative action did attempt to do exactly as the Washington Supreme Court in *Johnson* held was a clear exception to the retroactive requirement of a statute. The legislature stated that its intent in the Laws of 2019, ch. 258 & 1 as quoted in the Appellant's brief at p. 17 was to respond to the court's decision in *Roake* and find that it does not reflect the legislature's intent. The legislature further wrote that it intends to clarify that a petitioner who seeks a SAPO is not required to separately allege or prove that the petitioner has a reasonable fear of future dangerous acts by the respondent in addition to alleging and proving that the

petitioner was sexually assaulted by the respondent. Mr. Ruiz refers the court to the legislature's true actions which included amending the statute under the guise of clarification by actually deleting the language as stated above and changing the way courts for years have interpreted the law in effect at the time under the SAPO Act. Therefore, the effect must only be prospective regarding the legislative amendment (see Appendix 1) to RCW 7.90.020(1) since the amendment and deletion of a portion of the statute was clearly in response to *Roake* and the legislatures overrule of the *Roake* Supreme Court decision. Mr. Ruiz argues that this court should dismiss this appeal since the prospective effect<sup>v</sup> of such legislative amendment is clearly controlled by settled law. The Washington Supreme Court recognized this exception in *Johnson v. Morris, supra* at 925-26. The *Johnson* court did not decide whether the Legislature may retroactively clarify an existing statute when that clarification contravenes a prior state Supreme Court interpretation of the statute. However, citing the treatise quoted above, the court suggested that such legislative authority would create serious issues concerning the doctrine of

separation of powers.<sup>vi</sup> *Johnson*, at 926. As the court ruled in *Marine Power* at p. 615:

We find this dicta persuasive. The Legislature may not, under the guise of clarification, overrule by legislative enactment a prior authoritative Supreme Court opinion construing a statute. *Marine Power* at 615.

However, an amendment will be applied retroactively if, "(1) the legislature so intended; (2) it is 'curative'; or (3) it is remedial, provided, however, such retroactive application does not run afoul of any constitutional prohibition." *State v. Cruz*, 139 Wn.2d 186, 191, 985 P.2d 384 (1999) (citing *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 460, 832 P.2d 1303 (1992)). The Appellant court looks to both the statute's purpose and the language in analyzing the issue of retroactivity. *Howell v. Spokane & Inland Empire Blood Bank*, 114 Wn.2d 42, 47, 785 P.2d 815 (1990). The Supreme Court also looks to the legislative history in analyzing this question. *F.D. Processing*, 119 Wn.2d at 460. Final legislative bill reports are pertinent in this regard. *Young v. Snell*, 134 Wn.2d 267, 280, 948 P.2d 1291 (1997). However, it is well settled in Washington that

once a statute has been construed by the state's highest court, that construction operates as if it were originally written into the statute. *Johnson v. Morris*, 87 Wn.2d 922, 927-28, 557 P.2d 1299 (1976); *Fairley v. Department of Labor & Indus.*, 29 Wn. App. 477, 482, 627 P.2d 961, review denied, 95 Wn.2d 1032 (1981). In other words, the judicial construction relates back to the time of the original statutory enactment.

In this case, Mr. Ruiz claims that the Legislature did not and cannot apply its amendments retroactively to RCW 7.90.020(1) of the SAPO Act. First, the 2019 amendment was not "curative" in nature. "An amendment is curative only if it clarifies or technically corrects an ambiguous statute." *F.D. Processing*, 119 Wn.2d at 461. Ambiguity exists when a law "can be reasonably interpreted in more than one way." *Vashon Island Comm. for Self-Gov't v. State Boundary Review Bd.*, 127 Wn.2d 759, 771, 903 P.2d 953 (1995), *Spokane v. Port*, 43 Wn. App. 273, 278, 716 P.2d 945 (1986); see also *McGary v. Westlake Investors*, 99 Wn.2d 280, 285, 661 P.2d 971 (1983). An ambiguous term is one that is susceptible to more than one meaning. *Adams v. Department of Social & Health Servs.*, 38 Wn. App. 13, 16, 683 P.2d 1133 (1984); *Harding v. Warren*, 30

*Wn. App. 848, 850, 639 P.2d 750 (1982)*. However, an unambiguous statute is not subject to construction; there is no need to resort to dictionary definitions. *Vita Food Prods., Inc. v. State*, 91 *Wn.2d* 132, 134, 587 *P.2d* 535 (1978); *Adams*, at 16. In the present case, the deleted language does not appear to have more than one interpretation; the deleted language clearly states the petitioner must state under oath specific statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for which relief is sought. This deleted portion of the statute was not ambiguous and the legislature only amended that portion of the SAPO in order to contravene the Supreme Court authority in the *Roake* decision. Thus, although the legislature may act generally to clarify its statutes, even retroactively, such clarification cannot have a retroactive effect where the statutory amendment directly contravenes a prior Supreme Court decision interpreting an ambiguous provision in the original statute. See *McGee Guest Home, Inc. v. Dep't of Soc. & Health Servs.*, 142 *Wn.2d* 316, 324-325, 12 *P.3d* 144 (2000). This was clearly the case in this appeal and the legislative attempt to apply such legislative amendment or

partial deletion of RCW 7.90.020(1) as stated above is clearly controlled by settled law and must be applied prospectively and not retroactively as the Appellant asks in this appeal. Thus, the Respondent asks this court to dismiss this appeal since the trial court's decision to reopen the ex parte order and dismiss the temporary SAPO was clearly controlled by settled law and based upon facts and supported by the evidence.

(3). Amendment of the SAPO Act in RCW 7.90.020(1) cannot be applied retroactively since the amendment affects a substantive vested right.

Mr. Ruiz additionally claims that the 2019 amendment to the statute will not be applied retroactively if it affects a substantive or vested right. *State v. Douty*, 92 Wn.2d 930, 935-36, 603 P.2d 373 (1979) (holding amendment to RCW 26.26, the Washington Uniform Parentage Act prospective only, thus barring State's action seeking determination of paternity of child born before effective date of amendment); *Johnston v. Beneficial Management Corp.*, 85 Wn.2d 637, 642, 538 P.2d 510 (1975) (amendment to Consumer Protection Act, RCW 19.86, creating new right of action will not be construed to apply retroactively); *Anderson v. City of Seattle*, 78

*Wn.2d 201, 202-03, 471 P.2d 87 (1970)* (1961 statutory amendments increasing pensions for retired police officers applied prospectively, inapplicable to preexisting pensioners); *Poston v. Clinton*, *66 Wn.2d 911, 915-16, 406 P.2d 623 (1965)* (statute barring evidence of alcohol blood tests unless person being tested has been advised of his or her rights and consent intended by Legislature to apply prospectively); *Hammack v. Monroe St. Lumber Co.*, *54 Wn.2d 224, 228-30, 339 P.2d 684 (1959)* (statutory amendment to industrial insurance act providing for third party liability dealt exclusively with substantive rights and applied prospectively); *In re Dissolution of Cascade Fixture Co.*, *8 Wn.2d 263, 270-72, 111 P.2d 991 (1941)* (holding that like statutes relating to tax lien priorities, amendment to unemployment compensation act providing for tax lien priorities due the Department of Unemployment Compensation will be construed as applying prospectively); *Pierce v. Pierce*, *107 Wash. 125, 128, 181 P. 24 (1919)* (amendment to divorce statute providing that divorces may be granted by the superior court for certain causes not retroactive). *State v. T. K.*, *139 Wn.2d 320, 987 P.2d 63 (1999)*(held that the defendants' statutory right to have records

sealed had accrued prior to the amendment and no later-enacted statute could divest them of the right. In the present case, Mr. Ruiz claims that a SAPO clearly places restraints on his liberty and property rights; therefore, any such restraint requires procedural due process.<sup>vii</sup> As a result, Mr. Ruiz correctly and procedurally petitioned the trial court to reopen the temporary order under CR 12(c) and RCW 7.90.130 pursuant to *Roake V. Delman*, 189 Wn.2d 775, 408 P.3d 658 (2018). Finally, the former statute gave Mr. Ruiz the substantive right to be notified of a petitioner's request for a temporary SAPO. However, if the respondent does not receive notice of the Ex Parte hearing, the respondent has a substantive right to motion the court to reopen the temporary order hearing. At this hearing which occurred in this case, the Respondent contested that the petitioner failed to show at the ex parte hearing that she had any reasonable fear of future dangerous acts from the respondent. Therefore, the trial court's decision must be followed in this case since it is based upon clearly controlled settled law and based on factual and supported by the evidence. The Appellant appeals this court to take away the Respondent's substantive right to due process and the right to contest ex parte

rulings based upon misunderstandings or subjective attitudes that are only considered by the way a person looks. Appellant also attempts to only justify her argument based upon the dissent opinion instead of the majority in *Roake*. Therefore, Mr. Ruiz respectfully argues that this appeal incorrectly and without legal authority requests that the legislative amendment that was just recently put in effect be applied retroactively. Thus, this appeal should be dismissed according to well established law.

(4). The petitioner's legal arguments that trial court erred by considering evidence beyond the pleadings and applying the wrong legal standard to Mr. Ruiz's motion to reopen is also not supported by correct legal authority and not raised at the trial level.

Finally, the respondent argues that the petitioner's continued arguments that the trial court erred by considering evidence beyond the pleadings according to the SAPO act and applied the wrong legal standard are not supported by required legal authority.

Petitioner cites no authority and offers no argument to support this claim. The supreme court has held that when a party cites no authority, the court "may assume that counsel, after diligent search, has found none." *State v. Young*, 89 Wn.2d 613, 625, 574

*P.2d 1171 (1978) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). The court also held that “[t]he Supreme Court will not consider an assignment of error where there is no argument in the brief” to support it, “unless it is apparent without further research that the assignments of error presented are well taken.” DeHeer, 60 Wn.2d at 126; see also In re Disciplinary Proceeding Against Cottingham, 191 Wn.2d 450, 465 n.1, 423 P.3d 818 (2018). The petitioner continuously argues without supporting legal authority that the trial court misinterpreted the law and erroneously dismissed without citing any legal authority. Finally, the petitioner claims that the trial court entered findings not supported by the facts. However, the petitioner never offered any findings in dispute at the trial court. Therefore, when the defendant does not challenge any of the trial court's findings of fact, the courts consider them verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Additionally, the petitioner raises legal argument for the first time on appeal.<sup>viii</sup> “Matters not urged at the trial level may not be urged on appeal.” Lewis v. City of Mercer Island, 63 Wn. App. 29, 31, 817 P.2d 408 (1991); see also RAP 2.5.*

#### **D. CONCLUSION**

Respondent respectfully requests this court dismiss this appeal on the basis as stated in this brief.

DATED this 14th\_day of September, 2020.

Respectfully submitted:

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<sup>1</sup> The Petitioner admits at CP at S22-76 that she did not report the incident to the police. It states "While she did not report the incident to the police immediately, she eventually reported it to the Spokane police in June of 2018".

ii The transcript at page 26 is record of the petitioner not doing anything or reporting anything involving the September 23, 2017 incident until after she assaulted Ms. Ruiz. The court stated on the record that "It's too long past, and so we're dealing with something in September, then we went to June, and now we're back another year, 14 months later, whatever, to today. So that's where I'm kind of looking at. Okay, what has she been doing..."

At page 29 of the transcript, the court also spoke about the delay and nothing was reported. The court stated "had she shown up within a month or two of that incident----But when you have so much time going by----. Respondent also points to further portions of the record which he moves to amend and add; specifically, "She then reported it to the Spokane Police Department in June o

f 2018. CP S22-4." See also page 4 of Petitioner's Appellant brief.

iii *Wash. Const. Art. IV, § 1; Wash. Const. Art. II, § 1; Art I and II of US Const; Separation of Powers Doctrine*

iv Because the trial court dismissed on this basis, it did not reach or resolve the issue raised concerning the claim of sexual assault, which the Court of Appeals remanded for resolution. See *Roake* at Note 5

v See also *Magula v. Benton Franklin Title Co.*, 131 Wn.2d 171, 181, 930 P.2d 307 (1997) Generally, statutory amendments apply prospectively.

<sup>vi</sup> Separation of powers problems arise when the Legislature attempts to perform a judicial function. The function of a legislature is to make laws, not to construe them. Nor can the Legislature construe the intent of other legislatures. The latter functions are primarily judicial. Thus, legislative clarifications construing or interpreting existing statutes are unconstitutional when they contravene prior judicial interpretations of a statute. However, the Legislature is empowered to change or amend existing laws and may, in certain situations, apply such amendments retroactively. See *Marine Power* at 615 and footnote 2. <sup>vi</sup> *Wash. Const. Art. IV, § 1; Wash. Const. Art. II, § 1; Art I and II of US Const; Separation of Powers Doctrine*

<sup>vii</sup> Procedural due process imposes constraints on governmental decisions that deprive individuals of “liberty” or “property.” *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)). “Due process is a flexible concept in which varying situations can demand differing levels of procedural protection.” *Gourley v. Gourley*, 158 Wn.2d 460, 467, 145 P.3d 1185 (2006) (plurality opinion) (citing *Mathews*, 424 U.S. at 334). In evaluating the process due in a particular situation, we consider (1) the private interest impacted by the government action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the government interest, including the additional burden that added procedural safeguards would entail. *Mathews*, 424 U.S. at 335. See *Roake* at Note 6; *Wash. Const. Art. I, § 3, Personal rights; Wash. Const. Art. I, § 22, Rights of the Accused;*

<sup>viii</sup> Mr. Ruiz argues that the petitioner never raised any of the issues at the trial level concerning petitioner’s assignments of error A (2)-(3),B,C and D.

# Appendix 1

## 2019 Wa. HB 1149

Enacted, May 7, 2019

### Reporter

2019 Wa. ALS 258; 2019 Wa. Ch. 258; 2019 Wa. HB 1149

WASHINGTON ADVANCE LEGISLATIVE SERVICE > STATE OF WASHINGTON— 66TH LEGISLATURE —  
2019 REGULAR SESSION > CHAPTER 258, LAWS OF 2019 > HOUSE BILL 1149

## Notice

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Added: Text highlighted in green

Deleted: Red text with a strikethrough

## Synopsis

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AN ACT Relating to clarifying requirements to obtain a sexual assault protection order; amending [RCW 7.90.020](#); and creating a new section.

## Text

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*BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:*

### NEW SECTION. Sec. 1.

The legislature finds that the Washington supreme court's decision in *Roake v. Delman*, 189 Wn.2d 775 (2018), does not reflect the legislature's intent regarding requirements for obtaining a civil sexual assault protection order pursuant to chapter 7.90 RCW. The legislature intends to respond to this decision by clarifying that a petitioner who seeks a sexual assault protection order is not required to separately allege or prove that the petitioner has a reasonable fear of future dangerous acts by the respondent, in addition to alleging and proving that the petitioner was sexually assaulted by the respondent. The legislature agrees with the dissenting opinion's view in *Roake v. Delman* that "experiencing a sexual assault is itself a reasonable basis for ongoing fear."

**Sec. 2.** RCW [7.90.020](#) and [2007 c 55](#) s 1 are each amended to read as follows:

There shall exist an action known as a petition for a sexual assault protection order.

- (1) A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific ~~statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts,~~ **for facts and circumstances from** which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.
- (2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

- (3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by [RCW 7.90.180](#) and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.
- (4) Forms and instructional brochures and the necessary number of certified copies shall be provided free of charge.
- (5) A person is not required to post a bond to obtain relief in any proceeding under this section.
- (6) If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any motions.

## History

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Approved by the Governor May 7, 2019

Effective date: July 28, 2019

## Sponsor

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By Representatives Jenkins, Griffey, Doglio, Kilduff, Macri, Valdez, Irwin, Dolan, Appleton, Tarleton, Goodman, Orwall, Stanford, and Walen

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**LAW OFFICE OF DAVID R HEARREAN PS**

**September 14, 2020 - 6:00 PM**

**Transmittal Information**

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**Appellate Court Case Title:** Theresa Carstensen v. Damon Ruiz  
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This is the same respondent's brief with the exception of a table of contents and corrected table of authorities that are included

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