

May 27, 2016, 8:18 am

Case No. 92631-0

RECEIVED ELECTRONICALLY

*g/s*  
\_\_\_\_\_  
IN THE SUPREME COURT OF THE STATE OF WASHINGTON  
\_\_\_\_\_

DAVID W. AIKEN,

Appellant,

vs.

CYNTHIA L. AIKEN,

Respondent.

\_\_\_\_\_  
*PETITIONER'S* ~~APPELLANT'S~~ SUPPLEMENTAL BRIEF  
\_\_\_\_\_

Aaron L. Shields  
The Shields Law Firm, PLLC  
Attorney for Appellant, David Aiken  
3301 Hoyt Avenue  
Everett, WA 98201  
T) 425-263-9798  
F) 425-263-9978

 ORIGINAL

## TABLE OF CONTENTS

I.	INTRODUCTION AND STATEMENT OF THE CASE	1
II.	ADDITIONAL FACTUAL BACKGROUND	3
III.	MAIN ISSUE PRESENTED FOR SUPPLEMENTAL BRIEF	5
IV.	SUMMARY OF ARGUMENT	5
V.	ARGUMENT	6
	A.) The Domestic Violence Prevention Act, and Protection Hearings Conducted Thereunder.	6
	B.) <u>Gourley v. Gourley</u> and Common Law Tradition Favors Courts Resolving Contested Issues of Fact By Hearing Live Testimony And Cross-Examination of Witnesses.	7
	C.) The DVPA And <u>Gourley v. Gourley</u> Honor The Common Law Tradition Favoring Live Testimony And Cross-Examination Of Witnesses In DVPA Protection Hearings.	9
VI.	CONCLUSION	13
	APPENDIX	

## TABLE OF AUTHORITIES

### CASES

<u>Anderson v. Lake</u> , 536 N.W.2d 909 (Mn.App. 1995)	11
<u>Balise v. Underwood</u> , 62 Wn.2d 195, 381 P.2d 966 (1963)	8
<u>Bush v. Bush</u> , 590 So.2d 531 (Fla.App. 1991)	9
<u>Deacon v. Landers</u> , 587 N.E.2d 395 (Oh.App. 1990)	11
<u>Felsman v. Kessler</u> , 2 Wn.App. 493, 468 P.2d 691, <i>review denied</i> , 78 Wn.2d 994 (1970)	8
<u>Goldberg v. Kelly</u> , 397 U.S. 254 (1970)	12
<u>Gourley v. Gourley</u> , 158 Wn.2d 480, 145 P.3d 1185 (2006)	passim
<u>Grist v. Grist</u> , 946 S.W.2d 780 (Mo.App. 1997)	11
<u>Marriage of Rideout</u> , 150 Wn.2d 337, 77 P.3d 1174 (2003)	1,7,9
<u>Mathews v. Eldridge</u> , 424 U.S. 319 (1976)	11,12
<u>Raney v. Raney</u> , 86 S.W.3d 484 (Mo.App. 2002)	11
<u>State v. Dahl</u> , 139 Wn.2d. 678,688-87, 990 P.2d 396 (1999)	13
<u>State v. Eddon</u> , 8 Wash. 292, 36 Pac. 139 (1894)	8

State v. Hahn,  
83 Wn.App. 825, 924 P.2d 392 (1996), *review denied*,  
131 Wn.2d 1020 (1997) 10

State v. Karas,  
18 Wn.App. 692, 32 P.3d 1016 (2001) 7,10,11

State v. Rohrich,  
132 Wn.2d 472, 939 P.2d 697 (1997) 7,11

#### STATUTES & RULES

Ch. 26.50 RCW passim

RCW 26.09.160 1,9

RCW 26.50.020 6,7,10

RCW 26.50.020(5) 9

RCW 26.50.030(1) 6

RCW 26.50.050 passim

RCW 26.50.070(1) 9,10

RCW 26.50.070(4) 6,9

Snohomish County Local Rule, SCLSPR 94.04(f)(6) 10

#### OTHER AUTHORITIES

John William Strong, McCormick on Evidence,  
§19 at 78 (4<sup>th</sup> ed. 1992) 7,8

## I. INTRODUCTION AND STATEMENT OF THE CASE

In Marriage of Rideout, this Court was asked whether a credibility issue could properly be resolved on a documentary record in a contempt proceeding governed by RCW 26.09.160. See 150 Wn.2d 337, 352 (2003). The Court did not reach this issue because the party asserting the right to present live testimony to resolve the credibility issue had failed to make the request to the trial court. Id. However, in declining to reach the question this Court said:

...trial judges and court commissioners routinely hear family law matters. In our view, they are better equipped to make credibility determinations. Having said that, we recognize that where an outcome determinative credibility issue is before the court in a contempt proceeding, it may often be preferable for the superior court judge or commissioner to hear live testimony of the parties or other witnesses, particularly where the presentation of live testimony is requested. In that respect, we agree with the amicus WSTLAF that issues of credibility are ordinarily better resolved in the “crucible of the courtroom, where a party or witness’ fact contentions are tested by cross-examination, and weighed by a court in light of its observations of demeanor and related factors.”

Id.

Three years later, a substantially similar issue was addressed in Gourley v. Gourley, 158 Wn.2d 460 (2006), involving a protection order proceeding governed by RCW 26.50. In a per curiam decision, eight of the Justices in *Gourley* agreed due process requires a testimonial hearing

and the opportunity to cross-examine witnesses when there are disputed fact issues. Four justices signed the majority opinion holding:

. . . Thus, the need to cross-examine N. was obviated because Mr. Gourley himself confirmed N.'s declaration. . .

While the facts of this case did not require testimony or cross-examination, live testimony and cross-examination might be appropriate in other cases. Our analysis here is limited to the facts of this case.

Id. at 470.

Two Justices signed and one concurred with the following opinion:

. . . a “full hearing” under chapter 26.50 RCW includes the right to cross-examine adverse witnesses. Additionally, . . . under the *Mathews v. Eldridge*, balancing test, due process requires the opportunity to cross-examine in a full hearing for a one-year order of protection within the limitation of the applicable evidence rules.

Id. at 471. (citation omitted).

One Justice Pro Tempore signed a decision for “two reasons”, including the desire to “explore further the limits of the due process right to confrontation the dissent seeks to create.” Id. at 473. In that decision, the Justice found “chapter 26.50 RCW does not provide a right of cross-examination in these proceedings.” Id. at 472.

One Justice signed a dissent stating:

Because the legislature granted parties in domestic violence protective order proceedings the right to a “full hearing,” the trial court’s denial of the right to cross-examine constitutes a distinct due process violation.

Id. at 482.

In the case now before the Court, the facts and circumstances required the trial court to allow Mr. Aiken an opportunity to cross-examine all of the witnesses against him in a full hearing. A pro tem Commissioner denied the request for a testimonial hearing and denied the request to subpoena adverse witnesses. On appeal, the Court improperly found the facts of this case were similar to those in Gourley and therefore did not require either a testimonial hearing or an opportunity to subpoena or depose R.A. This appeal follows, requesting this Court clearly set forth in a unanimous opinion that a “full hearing” includes the right to cross-examine adverse witnesses.

## II. ADDITIONAL FACTUAL BACKGROUND

On November 24, 2014, Ms. Aiken filed a Petition for Order of Protection alleging that parties’ fourteen year old, R.A., had intentionally hurt herself on two occasions the week prior because of the father’s recent behavior. Ms. Aiken alleged that R.A. had told other people that her father “holds her down and ‘pretends’ to suffocate her and it makes her feel very uncomfortable and scared.” (CP 254). These new allegations of R.A. formed the underlying basis for Ms. Aiken’s request to have the court enter an immediate ex parte order without notice to Mr. Aiken or Ms. Heard, the GAL for the children in the dissolution case.<sup>1</sup>

---

<sup>1</sup> The parties had signed an agreement at the October 31, 2014 mediation to settle all of their disputes in the dissolution case and to enter a final Parenting Plan adopting the GAL’s recommendations. (CP 70-71).

Mr. Aiken filed a response denying that he ever held R.A. down pretending to suffocate her. (CP 215, line 21-25 and 216, line 1-3). Mr. Aiken also noted that the same week R.A. tried to hurt herself she and her boyfriend had broken up. (CP 2, line 22-25). Mr. Aiken declared that the children behaved and spoke much differently when Ms. Aiken was present than when they were with him. (CP 218-219). Mr. Aiken asserted that Ms. Aiken had been discussing the details of the divorce and placed undue stress and emotional burdens upon the children. Mr. Aiken cited to the counseling records, which included one of the children, M.A., conveying that when she told her mother, Ms. Aiken, that she liked spending time with dad, her mother responded by crying in front of her and her sisters. (CP 219, see also 78-80).

Mr. Aiken requested that he be granted a full hearing with testimony and cross-examination of the witnesses in order to determine what was actually being alleged and when it was alleged to have occurred. (CP 191-194). The court denied Mr. Aiken's request for a full hearing and further prohibited him from subpoenaing R.A. (CP 140-141).

In an effort to get to the bottom of the new allegations, Mr. Aiken's attorney scheduled Ms. Aiken's deposition.<sup>2</sup> During the deposition, Ms. Aiken advised that due to the new "findings" she no longer agreed with the parenting plan and was seeking supervised visits. (CP 71). Upon questioning about the new allegations from R.A., Ms.

Aiken was unable to provide any detailed information about the new allegations; she could not identify dates, times or how often any of the newly alleged behavior occurred. (CP 72-73).

There were other allegations included in Ms. Aiken's petition, all of which had already been raised in the dissolution action and investigated by the GAL prior to the October 31, 2014 agreement. Accordingly, the protection order case hinged on R.A.'s recent actions and her statements to third parties between November 19<sup>th</sup> and the 21<sup>st</sup> of 2014. (CP 129-130).

The court went forward with a hearing based only upon the documents filed and did not allow testimony of any witness or any cross-examination.

### **III. MAIN ISSUE PRESENTED FOR SUPPLEMENTAL BRIEF**

In a contested hearing under the Domestic Violence Prevention Act, Ch. 26.50 RCW, may a court deny the request for live testimony and cross-examination of the witnesses without violating due process?

### **IV. SUMMARY OF ARGUMENT**

In a contested hearing for a protection order under the Domestic Violence Prevention Act, Ch. 26.50 RCW, a court must require live testimony and allow for cross-examination upon the request of a party. These entitlements are grounded in the common law tradition, the proper interpretation of the Domestic Violence Prevention Act, and Gourley v.

---

<sup>2</sup> Ms. Aiken intentionally failed to appear for the first deposition date at her counsel's direction. However, Ms. Aiken did appear after being sent a second deposition notice.

Gourley, 158 Wn.2d 460, 145 P.3d 1185 (2006). Only in extraordinary circumstances may a court proceed upon documentary evidence over the objection of a Respondent. No such circumstances exist in this case.

## V. ARGUMENT

### A.) **The Domestic Violence Prevention Act, and Protection Hearings Conducted Thereunder.**

The DVPA provides that a person subjected to domestic violence may seek ex parte a temporary order of protection to immediately restrain a respondent from abusing the petitioner, or other family members. See RCW 26.50.020; .070. A petitioner requesting a temporary order of protection must establish by affidavit made under oath that an act of domestic violence has occurred and irreparable injury could result if a court order is not issued immediately. RCW 26.50.030(1); .070. The temporary order is subject to review at a full, contested hearing. RCW 26.50.050; .070. This hearing is usually scheduled within 14 days of the temporary order of protection. See RCW 26.50.070(4). Under the DVPA a full, contested hearing is set as a matter of right. See RCW 26.50.050; .070.

The procedures for setting the contested hearing and the hearing itself necessarily provide the respondent with notice and an opportunity to be heard before any final determination of the allegation of domestic violence. After the superior court conducts a contested hearing under RCW 26.50.050, it enters what amounts to a final determination on the

merits. See State v. Karas, 108 Wn.App. 692, 699-700, 32 P.3d 1016 (2001). Although this hearing is referenced elsewhere in the act as a “full hearing,” the exact nature and extent of the hearing is not specified in RCW 26.50.050. See RCW 26.50.020; .070. However, this Court has previously considered and opined what is contemplated by a “full hearing.” Gourley v. Gourley, 158 Wn.2d 460, 145 P.3d 1185 (2006).

**B.) Gourley v. Gourley and Common Law Tradition Favors Courts Resolving Ultimate Issues Of Fact By Hearing Live Testimony And Cross-Examination of Witnesses.**

This Court was correct in Gourley v. Gourley and Marriage of Rideout, in establishing that fact questions and credibility issues are best resolved by a court hearing live testimony with cross-examination of witnesses. These decisions are consistent with the common law tradition in properly resolving issues of fact under the civil justice system.

The right to present live testimony and the right of cross-examination go hand in glove, assuring judges and juries the fullest opportunity to assess the weight of testimony in order to resolve issues of fact. See State v. Rohrich, 132 Wn.2d 472, 477 n. 10, 939 P.2d 697 (1997) (criminal appeal discussing core attributes of the American adversary system, live testimony and cross-examination). Regarding the right of cross-examination, McCormick on Evidence notes:

For two centuries, common law judges and lawyers have regarded the opportunity of cross-examination as an essential safeguard of the accuracy and completeness of testimony, and they have insisted that the opportunity is a right, and not a mere privilege.

John William Strong, McCormick on Evidence, §19 at 78 (4<sup>th</sup> ed. 1992) (Footnotes omitted); see also State v. Eddon, 8 Wash. 292, 301, 36 Pac. 139 (1894) (recognizing that “cross-examination is the most powerful instrument known to the law in eliciting truth or in discovering error in statements made in chief”).

Even in the simplest civil case, credibility issues should not be resolved on a documentary record. For example, this principle is reflected in case law regarding summary judgment motions. See e.g. Balise v. Underwood, 62 Wn.2d 195, 200, 381 P.2d 966 (1963) (holding that triable issue of fact exists when opposing party in summary judgment proceeding presents contradictory or impeaching evidence that “is not too incredible to be believed by reasonable minds”); see also Felsman v. Kessler, 2 Wn.App. 493, 496-97, 468 P.2d 691 (noting summary judgment inappropriate where facts are particularly within knowledge of moving party, and opposing party should have opportunity to disprove them by cross-examination at trial), *review denied*, 78 Wn.2d 994 (1970).

With increasing court congestion, there is an understandable inclination to conserve judicial resources. However, as the Florida Court of Appeals noted in affirming a lower court determination of a custody dispute on a documentary record:

We believe, however, that any procedure which limits a trial court’s access to the best evidence available in a disputed custody case should be discouraged. The importance of the trial court’s opportunity to observe the demeanor of the conflicting parties is not obviated because of crowded court calendars, which prompted

the lawyers in this case to opt for the expeditious resolution of the custody issue rather than wait for available trial time.

Bush v. Bush, 590 So.2d 531, 532 (Fla.App. 1991).

This same sensibility must control where one party risks becoming or remaining a victim of abuse, and the other party risks being restrained from seeing his or her own child for a prolonged period of time.

Common law tradition requires that credibility issues on fact questions be resolved by the court hearing live testimony with cross examination of witnesses. Marriage of Rideout, 150 Wn.2d at 352.

**C.) The DVPA And Gourley v. Gourley Honor The Common Law Tradition Favoring Live Testimony And Cross-Examination Of Witnesses In DVPA Protection Hearings.**

The DVPA is wholly consistent with the common law tradition of courts resolving credibility issues by taking live testimony and permitting cross-examination of witnesses. The full, contested hearing contemplated under RCW 26.50.050 is not described in this statute. However, RCW 26.50.020(5), addressing the jurisdiction of various courts under the act, alludes to the “full hearing provided for in RCW 26.50.050.”<sup>3</sup> Similarly, RCW 26.50.070(1) authorizes ex parte temporary orders of protection “pending a full hearing,” unquestionably a reference to the hearing authorized by RCW 26.50.050. See also RCW 26.50.070(4) (requiring a “full hearing, as provided in this chapter” be set not later than

14 days after the issuance of the temporary order of protection, or later if service is by publication or mail).<sup>4</sup>

In the absence of statutory language defining the “full hearing” contemplated under RCW 26.50.050, the Court must apply the usual and ordinary meaning to this phrase. State v. Hahn, 83 Wn.App. 825, 832, 924 P.2d 392 (1996), *review denied*, 131 Wn.2d 1020 (1997). This protection hearing is the equivalent of a trial on the merits, as a final, appealable order results. See Karas, 108 Wn.App. at 699-700. Thus, the common law tradition governing trials applies. This includes presentation of live witnesses with the right to cross-examine.

This is bolstered by the fact that RCW 26.50.050 permits the hearing to be conducted by telephone, “to reasonably accommodate a disability, or **in exceptional circumstances**, to protect a petitioner from further acts of domestic violence.” (Emphasis added) The enumeration of extraordinary circumstances that justify a telephone hearing confirms that the Legislature otherwise contemplated that litigants should have the full benefit of the traditional hearing process in most instances.<sup>5</sup>

---

<sup>3</sup> Note the legislature has not modified this language since this Court’s decision in Gourley v. Gourley.

<sup>4</sup> The full texts of the current versions of RCW 26.50.020; .050 and .070 are reproduced in the Appendix to this brief, for the convenience of the Court.

<sup>5</sup> The Snohomish County special rule governing restraining order hearings in effect at times pertinent to this case was not wholly consistent with the interpretation of the DVPA advanced herein. It provided in pertinent part:

In anti-harassment and domestic violence actions only the parties may testify without cross-examination, or make statements as allowed by the court. The court may take testimony if it appears to the court necessary for an adequate determination of the matter.

See SCLSPR 94.04(f)(6).

Other courts interpreting similar statutory provisions in other jurisdictions further support this position. See e.g. Deacon v. Landers, 587 N.E.2d 395, 398 (Oh.App. 1990) (holding that undefined phrase “full hearing” in domestic violence act requires opportunity to present evidence and cross-examine opposing party); Anderson v. Lake, 536 N.W.2d 909, 911 (Mn.App. 1995) (interpreting anti-harassment statute “hearing” as requiring opportunity to present and cross-examine witnesses, relying on precedent interpreting Minnesota’s domestic abuse act); Grist v. Grist, 946 S.W.2d 780 (Mo.App. 1997) (interpreting hearing requirement of Missouri adult abuse act to allow presentation and cross-examination of witnesses); Raney v. Raney, 86 S.W.3d 484 (Mo.App. 2002) (same).

The DVPA contemplates that litigants will have the opportunity to present live testimony and cross-examine key witnesses in a “full hearing.” This comports with the rule of construction that statutes and court rules will be interpreted in a manner that renders them constitutional, whenever possible. See Rohrich, 132 Wn.2d at 476. A contrary view likely would offend the minimum requirements of federal procedural due process. See generally Mathews v. Eldridge, 424 U.S. 319 (1976).

Each party in a domestic violence protection hearing has a liberty interest at stake. The petitioner seeks freedom from abuse, and/or abuse of family or household members. The respondent accused of abuse is faced with a loss of contact with family or household members. These are significant interests requiring due process protections. See Karas, 108

Wn.App. at 699-700 (discussing relative rights of parties under DVPA in context of respondents' federal due process rights and also noting that nothing in the Act prevents a party from presenting witnesses or seeking discovery).

In Mathews, the United States Supreme Court recognized that proceedings that turn upon issues of witness credibility require the heightened protection of an evidentiary hearing, as opposed to a determination based upon written submissions alone. 424 U.S. at 343-44; see also Goldberg v. Kelly, 397 U.S. 254 (1970) (requiring an evidentiary hearing before termination of welfare benefits). In Goldberg, the Court found that, on balance, welfare benefits could not be discontinued without a pretermination hearing with minimal due process protections, including the right to present live testimony and cross-examine witnesses. The Court held, in pertinent part:

Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision.

397 U.S. at 269.

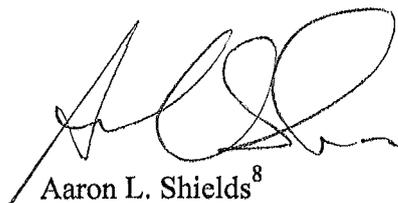
Under the interpretation of the DVPA as set forth by this Court in Gourley v. Gourley, 158 Wn.2d 460, 145 P.3d 1185 (2006), and substantiated by the additional cases cited herein, the constitutional baseline for federal procedural due process can only be met when the court

provides an opportunity to present and cross examine witnesses to resolve disputed issues.<sup>6</sup>

## VI. CONCLUSION

The Court should hold that the trial and appellate courts failed to properly interpret Gourley v. Gourley. The court should hold that Mr. Aiken was denied due process and vacate the orders entered by the trial court.<sup>7</sup>

Respectfully submitted this 26<sup>th</sup> day of May, 2016.



Aaron L. Shields<sup>8</sup>  
The Shields Law Firm, PLLC  
Attorney for Appellant  
3301 Hoyt Avenue  
Everett, WA 98201  
T) 425-263-9798  
F) 425-263-9978

\*Brief transmitted for filing by e-mail; signed original retained by counsel.

---

<sup>6</sup> Procedural due process is a flexible concept. Even in contexts generally requiring a full evidentiary hearing with the right of cross-examination there may be extraordinary circumstances that, on balance, outweigh these entitlements in a particular instance. See State v. Dahl, 139 Wn.2d 678, 686-87, 990 P.2d 396 (1999). For example, under the DVPA the Legislature authorizes “hearing by telephone” to accommodate a disability, or in exceptional circumstances to protect the petitioner from further acts of domestic violence. RCW 26.50.050. In the proper case, a court would have to decide whether these situations are sufficiently extraordinary to justify downgrading procedural due process protections.

<sup>7</sup> The underlying order has expired by its own terms. The only proper remedy this court can provide to Mr. Aiken is to vacate the orders of the trial court.

<sup>8</sup> Appreciation and credit is given to Catherine Wright Smith for her assistance in the argument briefing herein.

# APPENDIX

## **RCW 26.50.020**

### **Commencement of action—Jurisdiction—Venue.**

(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.

(2)(a) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

(5) The courts defined in \*RCW 26.50.010(4) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the

superior court to extend the order for protection.

(6) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

(7) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse.

(8) For the purposes of this section "next friend" means any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor's stated interest in the action.

#### **RCW 26.50.050**

##### **Hearing—Service—Time.**

Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in RCW 26.50.085 and 26.50.123, personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the petitioner requests additional time to attempt personal service. If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 26.50.070, 26.50.085, and 26.50.123.

**RCW 26.50.070**

Ex parte temporary order for protection.

(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

- (a) Restraining any party from committing acts of domestic violence;
- (b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;
- (c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
- (d) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;
- (e) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;
- (f) Considering the provisions of RCW 9.41.800; and
- (g) Restraining the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260.

(2) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(3) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(4) An ex parte temporary order for protection shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 26.50.085 or by mail under RCW 26.50.123. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication or by mail is permitted. Except as provided in RCW 26.50.050, 26.50.085, and 26.50.123, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(5) Any order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(6) If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte order of protection shall be filed with the court.

#### **RCW 26.50.160**

Judicial information system—Database.

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a database containing the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every sexual assault protection order issued under chapter 7.90 RCW, every criminal no-contact order issued under chapters 9A.46 and 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, every parentage action under chapter 26.26 RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and every order for protection of a vulnerable adult under chapter 74.34 RCW. When a guardian or the department of social and health

services has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought shall be included in the database as a party rather than the guardian or department;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 26<sup>th</sup> day of May, 2016, I caused to be filed the foregoing document with the Supreme Court of the State of Washington as follows:

Supreme Court of the State of Washington  
Temple of Justice

Via email to - Supreme@courts.wa.gov.

I also caused a true and correct copy of the foregoing document to be hand delivered to the following:

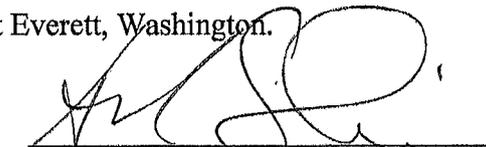
Respondent's Attorney:

Gail Nunn  
O'Loan Nunn Law Group, PLLC  
2707 Colby Avenue, Suite 1204  
Everett, WA 98201  
(425) 258-6860

Guardian Ad Litem for Children:

Jeanette Heard  
Attorney At Law  
3228 Broadway Avenue  
Everett, WA 98201  
(425) 252-7449

Dated this 26<sup>th</sup> day of May, 2016 at Everett, Washington.

  
Aaron L. Shields, WSBA 26285

## OFFICE RECEPTIONIST, CLERK

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, May 27, 2016 8:53 AM  
**To:** 'Jennifer Winter'  
**Cc:** Shields Aaron  
**Subject:** RE: Aiken 92631-0: Attached Image Shields Law Firm

Received 5/27/2016.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Jennifer Winter [mailto:jennifer@theshieldslawfirm.net]  
**Sent:** Thursday, May 26, 2016 4:59 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Shields Aaron <aaron@theshieldslawfirm.net>  
**Subject:** Aiken 92631-0: Attached Image Shields Law Firm

Cour Clerk,

Attached is Appellant's Supplemental Brief. Please confirm receipt for filing today. Thank you.

Jennifer R. Winter  
Paralegal  
The Shields Law Firm, PLLC  
3301 Hoyt Avenue, Suite A  
Everett, WA 98201  
425-263-9798 OFFICE  
425-263-9978 FAX

**NOTICE:** The information contained in this transmission is **CONFIDENTIAL** and may also be protected by **ATTORNEY/CLIENT PRIVILEGE**.

The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that unauthorized viewing, dissemination, distribution or copying of this transmission is in violation of the Electronic Communications Privacy Act of 1986 (18 U.S.C. § 2700 et seq.) as well as Domestic and International Laws and Treaties. If you have received

the communication in error, please immediately notify The Shields Law Firm, PLLC by telephone, 425-263-9798.

Begin forwarded message: