

64027-5

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THE COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

NO. 64027-5

SUSAN RIVER IONE,
APPELLANT

V.

ELEANOR DOERMANN,
RESPONDENT

BRIEF OF APPELLANT

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I. Introduction

This case is about the willy-nilly ways protection orders are granted daily in our courts with little or no statutory guidance. These orders are issued without any written findings and left to the whims of fact finders, impacting the lives of thousands every year. It involves a protection order entered against Appellant. She seeks to have it dismissed or at least have a new hearing set at the lower court with rulings and instructions from this court for a proper adjudication.

II. Assignments of Error

No. 1 The court failed to make written findings

No. 2 The court improperly considered alleged violations of the temporary restraining order in effect while awaiting the final protection order hearing without an evidentiary hearing on them or

making findings and these cannot be a basis for determining if the original protection order petition is sustainable

No. 3 The court abused its discretion and made conclusions not based on the evidence

Issues Pertaining to Assignments of Error

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Issues Pertaining to Assignments of Error

III. Statement of the Case

Appellant and Respondent lived together as partners for over 21 years. They owned a dog that was breaking through its invisible fence and was attacking humans and other animals. CP 31, CP 51-53 (Appellant's statement of facts concerning the dog's passing), RoP 8-9. They agreed that the dog was vicious, a danger, and had to be put down. CP 31, RoP8. Appellant has been unemployed for quite some time and had no source of income and was dependent upon Respondent, who worked. Respondent did not have funds for a vet to put down the dog. CP 31, RoP 8. Respondent, Appellant, and the other house resident, Paul Allen, all discussed that the dog had to be put down, but that there was no money to do this. CP 31, RoP 8. Appellant said that she would put the dog down and undertook it by administering sleeping pills. Respondent was present when the food mix was made and observed the effects on the dog. CP 19, RoP8,9. She did not stop this or otherwise

intervene or object and she did not call any authorities to do so, but allowed it to continue. CP19. She then transported Paul Allen and some guest children to a nearby beach so that they would all avoid this process and then she went somewhere for a time. After the dog was no longer conscious from the overdose and showed no sign of life or ability to sense pain, Appellant, to make sure that the dog would not possibly come back into consciousness later from any wearing off of the sleeping pills, hung the dog up by its leash to assure that it was dead, as all of its signs of death prior to that showed. CP 83, RoP 9

Respondent came home by herself and found the dog in this state and undertook digging the grave for it and buried it. CP When the others came home later there was a funeral, with the story given to the children that the dog had been involved in a car accident. That was May 31, 2009. Respondent did not call animal control or the police until days later, after another gifted dog was added to

their brood of pets, and she continued to live with Appellant. CP 20. Respondent later ended the parties' relationship, left their joint home and stopped providing all income to the household on June 3, 2009. CP 6-7. On June 15, 2009, Respondent filed a Petition For Order of Protection-DV and this included temporary restraining orders of no contact. CP 1-7. Her petition mentioned a few minor incidents of contact from much earlier periods, an issue the Appellant had with the neighbors not directly involving Respondent, and now allegations that the putting down of the dog and the Appellant's significant emotional distress from having to do this and a resulting unfounded allegation of suicidal thoughts (she was quickly evaluated and released by authorities). CP 7. Respondent now alleged that the putting down of the dog was now subsequently seen by her as an implied threat that she not cross some undefined line of frustrating Appellant. CP 7. Respondent did not

see it that way on May 31, 2009 or all the other days she lived there until she moved out and only expressed this conclusion some two weeks later in the Petition. A friend gifted a dog to Appellant in June 2009 to try to fill the void from the loss of her dog. CP107,RoP 15.

At the hearing on the Petition on July 20, 2009, Respondent's attorney only said six words about the dog incident. RoP 4. Appellant continued to request a protection order even though the parties did not live together, did not work together, did not have any other ongoing mutual obligated contacts and she presented no examples of any recent or reasonably time relevant physical abuse or imminent threats of harm other than maybe her now new interpretation of the dog being put down, which she only said was grotesque and violent. RoP 4. Respondent did allege that it was a violation of the temporary protection order as indirect contact to Respondent when Appellant allegedly made five

phone calls to Appellant's own doctors office to make sure that Respondent, who worked there, would not have access to Appellant's own medical records. RoP 6. This, of course, was no type of direct or indirect contact with Respondent and was exactly the opposite--to make sure there would be no contact or access between them--and the multiple calls were because the office purposely decided not to return any of her calls (CP 133), causing multiple follow-up calls to make sure the calls were going through and to the right person. Respondent also alleged two phone calls to her cell phone, but these were not acted upon to resolution or conclusion by police or other courts by the time of the protection court hearing and the evidence of same was not before this court and was not determined to have happened on a beyond a reasonable doubt violation standard. Respondent even complained about an undescribed threatening gesture alleged to have

happened at the hearing, without explanation and weighed by the judge. RoP 6.

At the hearing on July 20,2009, the Commissioner made no written findings (RoP 14-15 and CP 118-121) and gave a very short and limited oral decision emphasizing:

1) allegations of violation of the of the temporary restraining order raised for the first time at the hearing and not inquired about by the Commissioner of either party and yet he ruled that the pro-se appellant did not address all of the allegations at the short time response period during the hearing and therefore theses are a ground to be added to the allegations of the Petition filed five weeks earlier.

2) the allegation that the dog was "destroyed as a weapon to impact the Respondent" (RoP at 15) made sense to judge because he ruled one must take a pet to a vet to put it down and one must always be able to afford to have a dog put down

by a vet and one can never have another dog (even a gifted dog) if one cannot afford to have a vet put down a prior dog (all at RoP 15)and

3) because Respondent controlled all the money and left Appellant with nothing a week *later* after 6/3/09, Appellant must have had a "axe to grind" against the Respondent when she put down the dog a week *earlier* on 5/31/09(RoP 15).

Of course, Appellant denied all the allegations and testified and wrote that she never had any intent to fear or harm to Respondent and swore to the opposite that she loved her and never wanted their relationship to end and if anyone was acting vindictively and with knowledge that their actions were harming the other it certainly was Respondent, who abandoned Appellant emotionally and financially and it certainly was not Respondent who needed protecting. CP 41 and 67-68 and RoP 12-13.

Appellant opposes the lower court's illogical and improper oral decision conclusions.

The court had before it the 14 declarations of numerous objective people who knew both parties for many years and testified to Appellant's non-violent nature (lack of abuse/threats, physical or otherwise toward Respondent or others) and love of animals and great loss in necessarily having to put down the dog. CP 29-39,69-103.

Appellant appeals the July 20, 2009 Protection Order.

IV. Summary of Argument

The lower court should be reversed and the protection order should be vacated for the numerous arguments presented below and summarized in the Assignments of Error.

V. Argument

Assignment of Error No. 1 The court failed to make written findings

RCW 26.50.070 (6) and RCW 26.50.060 both require courts to make specific written findings of fact when a protection order is denied. However, the statutes do not require this of actual protection orders ordered, affecting constitutional rights of citizens. This is a violation of our Washington and US Constitutions guarantees of due process. Furthermore, this failure here of this court to make written findings makes review of this case difficult. The lower court's catch all at the end of its ruling that a protection order is warranted here without in any way linking it back to the statutory grounds for issuing a protection order, does not save the order or assist this court in review and this court should require written findings as in most court orders finalizing a matter, which is

want this final protection order. This court must take notice of the significance of a protection order filed in the public court files and with city and county police computer data bases. This affects many constitutional rights we all have as outright limits our liberty to function as full members of society and it importantly impacts every aspects of our lives including schooling, employment, licensing, certain occupations, and myriad of relationships with anyone concerned by these issues.

Assignment of Error No. 2 The court improperly considered alleged violations of the temporary restraining order in effect while awaiting the final protection order hearing without an evidentiary hearing on them or making findings and these cannot be a basis for determining if the original protection order petition is sustainable

Allegations of violation of the of the temporary restraining order raised for the first time at the hearing were not inquired about by the Commissioner of either party and yet he ruled that the pro-se appellant did not address all of the allegations at the short time response period during the hearing and therefore these are a ground to be added to the allegations of the Petition filed five weeks earlier. Importantly, he was clearly upset at the mere allegation that the prior court order of restraint was allegedly not followed, but not so upset as to inquire about probable cause for a finding of violation. He became police, prosecutor, judge and enforcer of judgment on these allegations by finding assumed guilt and violation as a grounds for its ruling on the subsequent Protection Order, without proper notice of all the discovery and allegations, raised for the first time at the hearing, in violation of Appellant's Washington and US Constitution due process rights. Most

importantly, these allegations do not go to this case of a DV Protection order, as they do not involve RCW 26.50.10 "physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault" and certainly not sexual assault. Appellant lost her trial on the violations alleged and ended up with a year, or extension for years, protection order against her, opening her to jeopardy of criminal prosecution for contacts allowed by all other Americans.

Assignment of Error No. 3 The court abused its discretion and made conclusions not based on the evidence

The lower court's oral rulings for granting the Protection order are illogical, unreasonable and improper grounds for granting the order and an abuse of discretion and certainly not based on the evidence and true timeline of events. He

ruled that the allegation that the dog was destroyed as a weapon to impact the Respondent because one has to take a pet to the vet to be put down and one has to always be able to afford to have a dog put down by a vet and one can never have another dog (even a gifted dog) if one cannot afford to have a vet put down a prior dog. Of course, all these are untrue ,illogical, not supported by any law, and a just this lower court's biases not supported by anything and an abuse of discretion. RoP 14-15.

Appellant asks this court to take judicial notice of the clear law that dogs are property of the owner and can be put down in any humane manner not in violation of the only two statutes related to this. RCW 16.08.090 (1) requires dog owners to make sure that dangerous dogs are kept within a proper enclosure, muzzled and restrained to prevent it from biting any person or animal. RCW 16.52.190 allows euthanizing a dog by poison in a lawful and humane manner by the dog's owner.

One is not required to go to a vet and money one has does not come into the question at all and certainly whether one gets another animal by gift and others in the house pay its expenses are totally irrelevant to the subject dog being put down. This lower court did not allow for death by overdose of sleeping pills and forgot to even say that this is not only humane and painless, but worked here according to all the evidence presented. The court thought that this was "brutal" (RoP 15) and as police, prosecutor, judge and judgment enforcer of the law of animals, he failed to understand the law or the only two reported cases of death to pets looking into the means of killing as painful and inhumane, and these are certainly not the methods used here. In State v. Paulson, Wn App, 128 P. 3rd 133 (2006) it was a dog put down by arrows not to vital organs and multiple entry, pull out and reentry with time expended and pain incurred. In State v. Andree, 90 Wn App 917 (1998) it was a kitten put

down by nine time stabbing with a knife with same results. There is no evidence here of pain or cruelty. The explanation of the hanging to assure death in a dead pet is not contrary to the law and was not certainly an evil chopping up of the body or placing it in the family kitchen cooking pot to have an impact, but was simply that-- further assurance that the dog is put down.

It is important that this method and placement of the dog seen by Respondent upon returning home could not have been a message to Respondent because they had discussed putting the dog down, she saw the pill process and the effects on the dog and chose to take the children to the beach and be away and importantly let it happen by not calling any authorities and not taking the dog to a vet immediately to have its stomach pumped out or otherwise put down and thanked Appellant. CP 31, CP 51-53, RoP 8-9, CP 19. Had she come home later the dog would have been buried and no possible message as all was

already known to respondent. Most importantly, Respondent was not taking it as a message, dealt with burying the dog and lived with Appellant several more days before their relationship break up and the financial ruin of Appellant by her sole source of income in their 20 year relationship ending. Thinking it was a message much later when she was looking for an excuse for DV protection was a trumped up argument for now being in fear of physical harm herself after they had already separated without incident two weeks before filing the Petition.

Again, the lower court's misunderstanding of the law and his own animal dealing biases favoring vets only and all other means as a message to observers and his own pet ownership means test for many of these issues, is an abuse of discretion and contrary to the evidence and the law and also illogical and improper to the domestic violence standards in RCW 26.50.10(1).

The trial court also missed the boat totally in opining that because Respondent controlled all the money and left Appellant with nothing a week **after** the dog was put down, Appellant must have had a axe to grind against the Respondent when she put down the dog a week **earlier**. RoP 15. This is just silly. The court thus came up with an incorrect and illogical motive to support Respondent's revisionist history, going to court long after the event. Nothing in Respondent's allegations before the dog put down indicate any reason for Appellant to have an axe to grind to try to send Respondent a message. She is the first to tell you that the unannounced break up any stopping of household contribution, even to the unpaid mortgage, all occurred the following week and came as a major shock to Respondent ,as explained to the court very emotionally at the hearing, related in the Report of Proceedings.

The real problem here is the Washington state law is unclear about what standards a court must

employ in weighing facts and granting or denying protection orders. On the one hand ,many think that each one should be granted because what is the harm to the individual and all of society is protected with such an order. We all want to prevent possible, even improbable, violence. On the other hand, if we so little value an individual's rights and issue these orders to anyone who asks just to make sure nothing ever happens in the "truly" necessary cases, we have abandoned all standards of due process and guarantee of our rights and allow these to affect so many areas of an individual's life. again, there is no guidance in the statute and case law and it is a judge's gut feeling and position on the spectrum between these two positions. We submit that the lower court did not use logic, timelines and factual reasoning correctly her and was just plain taken aback by the dog put down contrary to his own beliefs and not according to the law that this must be reversed. Here the

court did not articulate or even refer to the definitions of DV to warrant a protection order. The facts before it were insignificant or non-existent support regarding physical harm or reasonable fear of that harm (nothing like the dog situation happened toward Respondent to indicate that similar would happen to her and she did not even see it as a message at the relevant ,real life time of the put down, but then the court did not even speak to whether there was a reasonable fear, only his clearly expressed views on this particular event and how he would have had it proceed) and all the factors regarding physically separated and not joined by home, workplace, finances, etc after the breakup certainly support denial of the protection order. The court needs to provider clearer guidance to the lower courts regarding this area of law.

Request for Attorney Fees and Costs

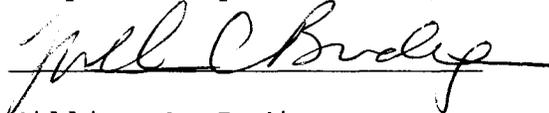
Appellant requests attorneys fees and costs as the prevailing party on appeal under RAP 18.1 and all provisions under RCW 26.50 et seq. to prevailing parties in protection order cases.

VI. Conclusion

For the foregoing reasons, Appellant requests that this court vacate the subject protection order or, minimally, remand the case to the lower court for rehearing consistent with Appellant's argument and award Appellant attorneys fees and costs.

Dated this 19th day of March, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William C. Budigan", written over a horizontal line.

William C. Budigan

Attorney for Appellant

WSBA 13443

THE COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

SUSAN RIVER IONE)
APPELLANT) NO.64027-5
) APPELLANT'S
V.) DECLARATION OF
) SERVICE
ELEANOR DOERMANN,)
RESPONDENT)
_____)

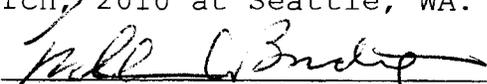
I, William Budigan, declare that on 19th day of March, 2010, I deposited in the U.S. Mail, postage prepaid thereon, an envelope directed to Clerk and to:

Amanda Hoke DuBois
Attorney for Respondent
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Seattle, WA 98103-8871

Said envelopes contained Appellants Brief and this Declaration of Service.

I certify that the foregoing is true and correct under penalty of the perjury laws of the State of Washington.

DATED this 19th day of March, 2010 at Seattle, WA.


WILLIAM C. BUDIGAN WSB# 13443
Attorney for Appellant

DECLARATION -1
OF SERVICE

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