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STATE OF WASHINGTON  
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NO. 69314-0

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**IN THE COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION I**

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In re:

Angela Michelle Wright, Appellant

v.

Ryan Michael Olney, Respondent,

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Appeal from the Superior Court of Snohomish County  
The Honorable David A. Kurtz

No. 12-2-00794-1

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**APPELLANT'S OPENING BRIEF**

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## I. INTRODUCTION

This appeal questions whether the trial court erroneously applied the Domestic Violence Prevention Act (DVPA), RCW 26.50 et. seq. when it failed to include the parties' child, Bentley, on the protection order and failed to include residential provisions in the domestic violence protection order (DVPO).

Ms. Wright asks the court to find that the trial court erred when it: (1) found insufficient evidence to include Bentley on the DVPO where evidence established that Bentley witnessed domestic violence; and (2) failed to enter residential provisions on the DVPO where the entry of residential provisions is mandatory. Ms. Wright also requests an award of attorneys fees and costs pursuant to RAP 18.1 and RCW 26.50.060(1)(g).

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred when it failed to include Bentley on the domestic violence protection order where there was sufficient evidence to show domestic violence against him.
2. The trial court erred when it failed to include restrictive residential provisions in the domestic violence protection order where the entry of residential provisions is mandatory.

### **Issues Pertaining to Assignments of Error**

1. Is there domestic violence towards a child when the child witnesses domestic violence against his mother and is the subject of threats?
2. Given that the entry of residential provisions in domestic violence protection order cases containing children is mandatory, is it an error when a court fails to include restrictive residential provisions?

### III. STATEMENT OF THE CASE

Angela Michelle Wright has two young children, Bentley, age 1, and Sophia, age 3. CP 179. Ms. Wright and Bentley's father, Ryan Michael Olney, have a significant history of domestic violence. CP 1-189.

On November 14, 2010, when Sophia was an infant and Ms. Wright was pregnant with Bentley, Mr. Olney became upset when Ms. Wright refused to have sex with him. CP 124. At about 10 p.m. Ms. Wright went to bed and Mr. Olney followed her into the bedroom. CP 125. For the next three hours Mr. Olney laid in bed next to Ms. Wright calling her a "psycho bitch" and a "lying whore." CP 125.

Ms. Wright decided to leave Mr. Olney's home, began putting her belongings into her car, and called her mother. CP 142. Mr. Olney became angry and began to yell at Ms. Wright. CP 126. He then threw a baby monitor against the wall near Ms. Wright and broke it. CP 125. After Ms. Wright finished packing the car she returned to the house to get Sophia and discovered that Mr. Olney had locked her out of the house. CP 126. Sophia was inside crying alone. CP 74. 108-109, 125, 126.

Ms. Wright asked her mother to call the police while she tried to get to Sophia. CP 122. Mr. Olney ran toward Ms. Wright with his fist up as if

he was going to hit her. CP 126. He stopped when he realized that Ms. Wright was still on the phone with her mother. CP 126.

As Ms. Wright ran up the stairs to get Sophia, Mr. Olney began pushing Ms. Wright. CP 126. Ms. Wright asked Mr. Olney to leave her alone. CP 126. Mr. Olney followed Ms. Wright into Sophia's room and screamed "[g]et the fuck out of my house." CP 126. Ms. Wright started to call the police, but Mr. Olney began yelling at her to leave again. CP 126. Ms. Wright again asked him to leave her and Sophia alone so they could pack. CP126. Ms. Wright told Mr. Olney "don't touch my daughter go away!" CP 126. Mr. Olney then attempted to break Sophia's portable crib. CP 126.

Mr. Olney blocked the door as Ms. Wright attempted to leave the room with Sophia. CP 127. He refused to move and continued arguing with Ms. Wright. CP 127. Ms. Wright eventually pushed herself past Mr. Olney. CP 127.

Ms. Wright, holding Sophia and the portable crib, began down the stairs. CP 127. Mr. Olney again pushed Ms. Wright. CP 127. Ms. Wright asked him not to touch her. CP 127. Mr. Olney continued to yell and scream at Ms. Wright as she ran to her car with Sophia. CP 127. Once Ms. Wright got Sophia safely in her car she called the police and reported

Ms. Wright's petition recounted other acts of domestic violence against her and Sophia. CP 121-128. Ms. Wright alleged that Mr. Olney grabbed her wrists, bruising her, yelled in Sophia's face that Ms. Wright was "a psycho bitch and he will never be her daddy," and that Mr. Olney rants, screams, and swears at her in front of Sophia. CP 125. Ms. Wright alleged that this behavior was escalating. CP 125. Mr. Olney had begun posting horrible things about her on his Facebook page. CP 125. He had even threatened kill himself if he ever loses her again and used his guns to intimidate her. CP 128.

Before full hearing on the DVPO, Mr. Olney violated the temporary protection order eight times. CP 140. On November 25, 2010, Mr. Olney sent Ms. Wright the text message "Happy turkeyday. [sic]" CP 140. Then between 3:18 a.m. and 4:32 a.m., on November 26, 2010, Mr. Olney sent her seven other text messages. CP 140. In two of the messages he pretended to be someone else. CP 140. The content of the messages ranged from begging Ms. Wright not to call the police, to professing his love for her, to begging her to talk to him. CP 140. The final text message to Ms. Wright stated "I dont [sic] tell them you got an order, it was my bad, please don't report this, I'm so sorry, hate jail, don't belong. Shopping

spree at costco [sic] for diapers if hush\_." CP 140. Ms. Wright reported the violations to the police. CP 138.

On December 15, 2010, the court found that Mr. Olney committed acts of domestic violence against Ms. Wright and Sophia and granted Ms. Wright a one year DVPO that included Sophia. In April 2011, Mr. Olney petitioned to have the DVPO terminated. CP 116-118. Ms. Wright agreed with the motion because Mr. Olney promised he would get professional help and they were expecting a child together. CP 115. The DVPO was terminated on April 25, 2011. CP 119. Ms. Wright and Mr. Olney reunited.

On June 17, 2011, Bentley was born at Evergreen Medical Center six weeks premature. CP 183. Mr. Olney attended the birth carrying a knife and loaded gun. CP 111-113. After being confronted by hospital security about the weapons, Mr. Olney began drinking in the hospital room. CP 108. He was upset about the confrontation. CP 108. Ms. Wright asked him to leave and Mr. Olney became so enraged that he knocked the contents of her table onto the floor. CP 108.

The next day Mr. Olney contacted the hospital on two occasions "ranting" that Ms. Wright should not be allowed to take Bentley home because she was not responsible enough to care for him and did not have

a license. CP 112. The hospital was so concerned about Mr. Olney's behavior that they moved Ms. Wright to a different floor and escorted her to her car upon her discharge. CP 112.

On June 24, 2011, Ms. Wright filed her second DVPO petition and obtained a temporary protection order that included her children. CP 100-114. The petition was based primarily on the events that occurred at the hospital but she also alleged that she has had to ask Mr. Olney, on multiple occasions, not to shoot his guns when she and the children were present. CP 110. However, Mr. Olney continued to do it to scare them. CP 110. Ms. Wright also alleged that Mr. Olney had, via Facebook, threatened to have the children taken away, pushed her through the kitchen door when she was holding Sophia, kicked her in the lower back out the front door, leaving bruises, and punched the pillow where she was sleeping to scare her. CP 109-110. Ms. Wright's petition was denied and she briefly reunited with Mr. Olney. CP 35.

On November 13, 2011, Mr. Olney spent the day and night harassing Ms. Wright by text message. CP 73-74, 77-78. That evening Mr. Olney showed up at Ms. Wright's residence uninvited while she was home alone with both children despite the fact that he was banned from

her apartment complex. CP 73-74, 144. Ms. Wright was so scared she contacted the police. CP 73-74.

Mr. Olney was arrested at Ms. Wright's apartment for driving without a license. CP 77-78, 81. When he was arrested the police found a loaded firearm on his person. CP 77-78.

The day after Mr. Olney was arrested he called Sophia's father and told him "the bitch is going to get what is coming to her." CP 63. Sophia's father became concerned and called Ms. Wright to let her know what Mr. Olney had said. CP 63.

From November 15, 2011 through the early morning hours of November 16, 2011, Mr. Olney again sent Ms. Wright a number of text messages. CP 63. The messages stated: "I'm going to make you pay for this," and "we're all out to get you." CP 63.

On the morning of November 16, 2011, Ms. Wright went out to her vehicle and discovered all four of her tires were deflated. CP 80. No other cars, including the ones parked next to Ms. Wright's car, had deflated tires and there were no other reports of vandalism from the apartment complex. CP 80.

On November 17, 2011, Ms. Wright filed her third DVPO petition against Mr. Olney and obtained a temporary protection order that included

her children. CP 67-93. Ms. Wright's petition was based on Mr. Olney's acts from November 13, 2011 through November 17, 2011. CP 70-73. She also alleged that Mr. Olney screamed at her in front of the children, calling her a "fucking cunt" and telling the children that she is a "piece of shit." CP 74.

Before the full hearing on the merits, Mr. Olney violated the temporary DVPO more than eight times. CP 84-93. Specifically, on November 24, 2011, Mr. Olney called multiple times using two separate numbers and sent three text messages. CP 82-84. On November 25, 2011, Mr. Olney sent Ms. Wright more text messages. CP 85-86. On November 26, 2011, Mr. Olney called Ms. Wright eleven times between 5:17 a.m. and 5:41 a.m. When Ms. Wright answered her phone she heard Mr. Olney say "murder" in a low scary voice. CP 85-93.

The police contacted Mr. Olney to discuss these messages. CP 91. Mr. Olney accused Ms. Wright of sending the text messages to herself from the Verizon website. CP 91. The investigating officer, using his own account, attempted to send text messages from the Verizon website to his phone. CP 91. He discovered that these types of text messages did not have any resemblance to the ones received by Ms.

Wright. CP 91. The police found no merit to Mr. Olney's allegations. CP 91. Mr. Olney received two citations for violating the DVPO. CP 81, 87.

After multiple continuances, Ms. Wright's petition was denied without prejudice by the court on February 29, 2012. CP 56. Mr. Olney filed a petition to establish paternity on the same day. CP 155.

On June 19, 2012, Mr. Olney pled guilty to violating one of the protection orders. CP 40. The charge had been pending since December 2011 and Ms. Wright was expected to testify for the prosecution. CP 40, 75. Only after Mr. Olney discovered Ms. Wright's cooperation did he decide to plead guilty. CP 40. The judgment and sentence included a five year criminal no contact order protecting Ms. Wright. CP 185-186. The criminal no-contact order did not include Sophia and Bentley and only keeps Mr. Olney 150 feet from Ms. Wright's residence, school, and workplace. CP 185-186.

Ms. Wright filed her fourth DVPO petition against Mr. Olney on June 19, 2012 and was granted a temporary DVPO with both children on the order. CP 174-189. Her petition included allegations of fear of imminent harm and Mr. Olney's past acts of domestic violence. CP 182-189. She also alleged that one evening after Ms. Wright refused to have sex with Mr. Olney because he was intoxicated Mr. Olney got into bed with

her and began tapping his gun on the headboard. CP 184. Mr. Olney carried a loaded handgun tucked into the waistband of his trousers every time he was around Ms. Wright and the children, a fact that Mr. Olney does not deny. CP 148-150; CP 51; CP 157.

Ms. Wright supplemented her petition by filing police reports, photos, medical records, and print outs of the exact text messages she received from Mr. Olney in violation of her previous orders. CP 33-173. She filed Mr. Olney's June 19, 2012 conviction and the five year criminal no contact order. CP 185.

Ms. Wright's mother submitted a declaration stating that she had been on the phone with Ms. Wright on multiple occasions while Mr. Olney berated and fought with Ms. Wright. CP 58-59. Ms. Wright's mother declared that during these times she could hear the children in the background crying and that she had observed bruising on Ms. Wright's wrists and lower back. CP 58-61.

In response to the June 19, 2012 petition, Mr. Olney filed declarations admitting to taking a knife and loaded gun into the hospital and contacting the hospital making accusations that Ms. Wright was unfit to care for Bentley. CP 51. Mr. Olney stated, "[t]hose who know me know that I always carry a firearm for protection of myself and family." CP 51.

He calls his behavior at the hospital an “inadvertent mistake during a time of great excitement.” CP 51, 157. He also states Ms. Wright simply “blew it out of proportion.” CP 157.

Mr. Olney also admitted to the April 8, 2011 violation where he emailed Ms. Wright and begged her to have the protection order terminated. CP 157. Mr. Olney admits to this violation explaining that the contact was simply a “heartfelt e-mail” and it was not violent or threatening in nature. CP 157.

On July 27, 2012 the court dismissed Ms. Wright’s petition based on the fact that no new incidents of domestic violence had occurred since the last DVPO was dismissed. CP 29-30. The court did not make any findings regarding whether there was sufficient evidence for Sophia and Bentley to be placed on a protection order. CP 29-30.

Ms. Wright timely filed a motion to revise. CP 22-28. On August 16, 2012 the Honorable Judge David A. Kurtz granted a five year order protecting Ms. Wright but denied her request to include the children. CP 17-21. The court eventually included Sophia on the order but only because she was not Mr. Olney’s child. CP 13-21. Specifically, the order on revision states:

“The order for protection shall include the petitioner and the child, Sophia Wright (child is not Respondent’s biological child) only. The order for protection shall not be construed to mean .191 limitations exist. The court must make its own independent determination in cause no. 12-5-00042-4. In addition, the court adopts the provisions in the attached Appendix A.” CP 14.

The court held that there is an insufficient basis to enter a protective order as to Mr. Olney’s child, Bentley. CP 15. Appendix A states:

“The court finds an insufficient basis to enter a protection order as to the children, Sophia and Bentley. The court will permit the child Sophia to be included in the protection order only because Mr. Olney has no legal right to have contact with Sophia, who is not his child. No inference should be drawn from the inclusion of Sophia that would affect Mr. Olney’s parental rights, which should be properly litigated in the family law parentage action currently pending. The court upholds the commissioner’s implicit ruling that there is insufficient basis to enter a protective order as to Mr. Olney’s child, Bentley Waechter.” CP 15.

Ms. Wright timely filed an appeal of this decision. CP 1-12.

#### **IV. ARGUMENT**

##### **A. THE TRIAL COURT ERRED IN FINDING THAT THERE WAS AN INSUFFICIENT BASIS TO ENTER AN ORDER FOR PROTECTION THAT INCLUDED BENTLEY.**

Domestic violence is a problem of immense proportions. State v. Dejarlais, 136 Wn.2d 939, 969 P.2d 90 (1998). It is highly correlated with child abuse as well as other significant social problems. Id. at 944. Each

year millions of dollars are spent for services to adults and children who suffer domestic violence. Id. at 944. This is why the Domestic Violence Prevention Act (DVPA), RCW 26.50, authorizes adult victims of domestic violence to petition the court for an order to protect themselves and their children. Spence v. Kaminski, 103 Wn. App. 325, 330, 12 P.3d 1030 (2000); Hecker v. Cortinas, 110 Wn. App. 865, 868, 43 P.3d 50 (2002); RCW 26.50.030. It is also the reason why courts are authorized to not only issue protection orders that restrain a respondent from committing acts of domestic violence, but also restrict contact between a respondent and his or her children. In re the Marriage of Stewart, 133 Wn. App. 545, 550-551, 137 P.3d 25 (2006), rev. denied, 160 Wn.2d 1011 (2007); RCW 26.50.010(a); RCW 26.50.060(1)(b-h).

Domestic violence is defined, in relevant part, as “[p]hysical harm, bodily injury, assault, sexual assault, stalking, or the infliction of fear of imminent physical harm, bodily injury or assault between family or household members ....” RCW 26.50.010(1). Under the plain language of the statute, physical harm is *not* required to prove domestic violence. Hecker, 110 Wn. App. at 870 (emphasis added). Rather, infliction of fear of imminent physical harm is also domestic violence. Id.

Recent acts of domestic violence are not required in order to obtain a domestic violence protection order. Spence, 103 Wn. App. at 334; Muma v. Muma, 115 Wn. App. 1, 7, 60 P.3d 592 (2002). Evidence that demonstrates a present fear based on past violence is sufficient to support a finding of domestic violence. Muma, 115 Wn. App. at 6-7.

1. The Trial Court Erred in Failing to Grant Petitioner a Year Order for Protection that Included Bentley Because She Satisfied the Preponderance of the Evidence Standard.

The DVPA authorizes the court to issue a protection order after notice and a hearing. RCW 26.50.060. A successful petition must allege “the existence of domestic violence” committed by the respondent and must be accompanied by an affidavit that states specific facts and circumstances supporting relief. RCW 26.50.030(1); Spence, 103 Wn. App. at 330; Hecker, 110 Wn. App. at 867-868.

An order for protection is a civil remedy and needs only to be supported by a preponderance of the evidence. City of Tacoma v. State, 117 Wn.2d 348, 351-52, 816 P.2d 7 (1991); Reese v. Stroh, 128 Wn.2d 300, 312, 907 P.2d 282 (1995); Spence, 103 Wn. App. at 332-333. This evidentiary standard is satisfied by substantial evidence, which is evidence sufficient to persuade a fair-minded person of the truth of the

asserted premise. Pilcher v. Dep't of Revenue, 112 Wn. App. 428, 435, 49 P.3d 947 (2002). Corroborating evidence is not required which, because of the nature of domestic violence, is often not available.

However, in this case Ms. Wright was able to provide the trial court with significant corroborating evidence of domestic violence. At the August 16, 2012 hearing, the court had evidence that Mr. Olney had been found, by the same court, to have committed acts of domestic violence against the petitioner and her infant daughter one and a half years earlier. CP 120-145. The court had a copy of Mr. Olney's Finding and Sentence showing his conviction in a domestic violence case where Ms. Wright was the victim.<sup>1</sup> CP 178-189.

The court also had multiple police reports documenting Mr. Olney's history of protection order violations. CP 151-172, 65-93. The court had medical records showing Evergreen Hospital's efforts to safeguard Ms. Wright and her newborn baby from Mr. Olney. CP 99-114. The court even had evidence that Mr. Olney had been arrested for negligent conduct with a fire arm. CP 94-98. This evidence is more than sufficient to persuade a fair-minded person of the truth of the asserted premise; it was far more than the required preponderance. Hence, the court's finding is erroneous.

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<sup>1</sup> Pursuant to ER1101(c)(4), in RCW 26.50 proceedings the evidence rules do not apply.

2. The Trial Court Erred Because It Failed to Apply the Stewart Holding.

The trial court made an error of law by refusing to enter a one year Order for Protection that included both children. Children victims of domestic violence can be protected by DVPOs. Stewart, 133 Wn. App. at 550-551; RCW 26.50.010(a); RCW 26.50.030; RCW 26.50.060(1)(b-h). A DVPO protects children victims from respondents who commit domestic violence. Id. at 7; RCW 26.50.010(a); RCW 26.50.030; RCW 26.50.060(1)(b-h). Washington's legislature refuses to have state courts delay issuing a protection order until children and adult victims are actually physically battered or irreparably harmed. Muma, 115 Wn. App. at 7; Spence, 103 Wn. App. at 334. The court failed to apply the Stewart holding and failed to correctly apply chapter 26.50 RCW.

Psychological harm to children is a proper basis for the court to grant an order protecting children. Stewart, 133 Wn. App. at 551. In Stewart, the court held that there is psychological harm when children witness acts of domestic violence by one parent against another. The court determined that such psychological harm "is also domestic violence, and is a statutory basis for an order of protection." 133 Wn. App. at 551.

In Stewart, Nichole Stewart petitioned for a protection order against her former husband. Stewart, 133 Wn. App. at 545. There were no allegations that Mr. Stewart directly assaulted the children but the children were present during the assault on Ms. Stewart. Id. The court upheld the protection order that included the children, finding that their presence during the assault made them victims of domestic violence. Id.

Children experience domestic violence in many ways. Commonly, as in Stewart, children actually witness the violence. Jeffrey L. Edleson, Children's Witnessing of Adult Domestic Violence, 14 No. 8 J. Interpers Violence 839, 839-870 (August 1999).<sup>2</sup> However, being an eye-witness is not the only way children experience family violence. Id. Many children are traumatized by events they hear but do not see. Id. Often children are also made accomplices to the violence: being a hostage, a weapon, or a spy. Id. Finally, children can be traumatized by the aftermath of the violence: when a parent is unavailable because of injuries, when a parent is taken away by police, when a child lives in fear of the next episode, or is force to flee their home. Id.

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<sup>2</sup> <http://jiv.sagepub.com/content/14/8/839.full.pdf+html>

Both of Ms. Wright's children, Sophia (age 3) and Bentley (age 13 months), witnessed domestic violence against Ms. Wright by Mr. Olney. The evidence showed that Mr. Olney raised his fist and swung at her multiple times in front of both children. CP 178-189. Previously, Mr. Olney locked Ms. Wright, who was pregnant, out of his house at 1:00 am although infant Sophia was inside crying alone. CP 74, 108-109, 125. He also threw objects at walls next to where Ms. Wright and Sophia were standing. CP 178-189.

On November 14, 2010, when Ms. Wright was trying to leave Mr. Olney's residence he tried breaking Sophia's portable crib while Sophia was in the room. CP 74, 108-109, 125, 131-134. Mr. Olney has also kicked Ms. Wright in the lower backside when she was pregnant with Bentley and while she held onto Sophia as she was trying to leave Mr. Olney's home. CP 178-189. Mr. Olney also pushed Ms. Wright while she held her daughter. CP 58, 74, 178-189. Mr. Olney even screamed in Sophia's face when she was only 13 months old "I'm not your daddy your mom's a psycho!" CP 178-189.

The children's exposure to domestic violence committed by Mr. Olney was corroborated. The children's maternal grandmother attested to being on the phone with Ms. Wright during incidents of violence. She said

she heard her grandchildren crying in the background. CP 57-61, 120-145.

Mr. Olney tried to interfere with Ms. Wright's child custody as another way to abuse her. CP 148-150. Mr. Olney contacted Sophia's biological father and proposed that they "work together" to make Ms. Wright "get what she deserves." CP 148-150. Mr. Olney went as far as taking photos of Sophia, at the age of 13 months, in his room full of "medical" marijuana and sent them to Sophia's father. CP 131-136. He then sent text messages to Ms. Wright threatening to send the pictures to CPS if Ms. Wright called the police. CP 131,136. Mr. Olney also threatened to have CPS take Bentley right after he was born and contacted the hospital "ranting" that Ms. Wright was unfit to care for Bentley. CP 46-54; CP 112.

Ms. Wright's fear of imminent physical harm of her children is reasonable. Mr. Olney carried a loaded handgun tucked into the waistband of his trousers every time he was around Ms. Wright and the children, a fact that Mr. Olney does not deny. CP 148-150; CP 51; CP 157. Even on the day Bentley was born, Mr. Olney took a knife and a loaded gun into the hospital. CP 111.

On the night of November 13, 2011, Mr. Olney came to Ms. Wright's apartment uninvited while she was home alone with both children although he is banned from Ms. Wright's apartment complex. CP 120-145, 65-93. When Mr. Olney was arrested later that night, the police found a loaded firearm on his person. CP 65-93. Coincidentally, three days later Ms. Wright discovered all four car tires had been deflated. CP 65-93.

Mr. Olney has a documented history of violating court orders. On June 19, 2012, Mr. Olney pled guilty to a domestic violence charge stemming from one of the violations. CP 40-41. Mr. Olney has at least two other criminal domestic violence cases pending involving Ms. Wright as the victim. CP 40-41. Mr. Olney has made several threats towards Ms. Wright after she called the police: "I'm going to make you pay for this," "the b... is going to get what is coming to her," and "...we're all out to get you." CP 62-64.

A five year criminal No-Contact Order was entered on June 19, 2012 protecting Ms. Wright. CP 178-189. However, the order does not include the children and only keeps the Mr. Olney 150 feet from Ms. Wright's residence, school, and workplace. CP 178-189. A preponderance of the evidence shows domestic violence to both children.

The court's failure to include the children as protected parties in the domestic violence protection order is an error.

**B. THE TRIAL COURT ERRED IN FAILING TO ENTER RESIDENTIAL PROVISIONS WHERE THE DOMESTIC VIOLENCE PREVENTION ACT REQUIRES RESIDENTIAL PROVISIONS FOR CHILDREN IN COMMON.**

The trial court erred in failing to include residential provisions for Bentley in the DVPO because the DVPA requires residential provisions. RCW 26.50.060(1)(d). Mr. Olney's due process rights were protected, and there was sufficient evidence to enter restricted residential provisions for Mr. Olney. The "[i]nterpretation of court rules, statutes, and the Constitution are issues of law, subject to de novo review." In re Talley, 172 Wn.2d 642, 649, 260 P.3d 869 (2011).

To protect families, the court is required to make residential provisions for children on the same basis as provided in RCW 26.09. RCW 26.50.060(1)(d). Specifically, the DVPA states, "the court *shall* make residential provision with regard to minor children of the parties." RCW 26.50.060(1)(d) (emphasis added). Further, except where the residential provisions have the long-term effect of modifying a final parenting plan, the court's residential provisions may completely "[r]estrain the respondent from having any contact with the ... children" for up to one

year. In re the Marriage of Barone, 100 Wn. App. 241, 274, 996 P.2d 654 (2000); Stewart, 133 Wn. App. at 554; RCW 26.50.060(1)(h); RCW 26.50.060(2).

Including mandatory residential provisions is consistent with the legislative intent of the DVPA. Danny v. Laidlaw Transit Serv., Inc., 165 Wn.2d 200, 209, 193 P.3d 128 (2008). The DVPA was passed to “encourage domestic violence victims to end abuse, leave their abusers, [and] *protect their children.*” Id. at 210, 213 (emphasis added.)

Failing to include residential provisions in a DVPO leaves the child and adult victim vulnerable to the abuser. Including residential provisions for the children in common furthers the legislative intent of preventing domestic violence by ensuring that the respondent cannot use children to further victimize and control the victim.

1. The Trial Court Erred in Failing to Include Residential Provisions for Bentley Because the DVPA Requires Residential Provisions Regardless of Whether Similar Relief Can Be Sought Elsewhere.

Relief available under the DVPA cannot be denied on the grounds that it is available elsewhere. Issues of statutory interpretation are issues of law that are reviewed de novo. Talley, 172 Wn.2d at 649.

The DVPA specifically states that its protections “shall not be denied or delayed on the grounds that relief is available in another action” and “[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.” RCW 26.50.025(2); RCW 26.50.030(2).

Despite finding that Mr. Olney had committed acts of domestic violence against Ms. Wright, the court failed to include any residential provisions in the DVPO. The court concluded that Mr. Olney’s parental rights “should be properly litigated in the family law parentage action....” CP 15. This decision specifically denied Ms. Wright relief *required* under the DVPA because the same relief was available in the paternity action. The court erred when it refused to enter residential provisions for Bentley.

2. The Trial Court Erred in Failing to Include Residential Provisions for Bentley Because the DVPA Provides Significant Due Process Protections to Protect Parents.

The trial court erred in ordering that the parenting issues should be “properly litigated” in the paternity action because the DVPA provides sufficient due process protections for Mr. Olney. Constitutional issues are issues of law that are reviewed de novo. Talley, 172 Wn.2d at 649.

In the order on revision, the court stated, “no inference should be drawn from the inclusion of Sophia that would affect Mr. Olney’s parental

rights, which should be *properly* litigated, in the family law parentage action ...” (emphasis added) CP 15. Based on this statement, it appears as if the trial court did not believe that Mr. Olney’s parental rights would be adequately protected in a DVPO hearing. This is not true.

The court has held that DVPO proceedings provide sufficient due process protections for parents. Gourley v. Gourley, 158 Wn.2d 460, 467, 165 P.3d 1185 (2006). While parents have a constitutional right to the care, custody, and control of their children, the government also “has a compelling interest in preventing domestic violence or abuse.” Id. The court engages in a balancing test to determine the “procedures employed” to avoid an erroneous deprivation of parental rights Id.

The DVPA provides multiple due process protections for parents. Gourley, 158 Wn.2d at 467. It requires:

“(1) a petition to the court, accompanied by an affidavit setting forth facts under oath, (2) notice to the respondent within five days of the hearing; (3) a hearing before a judicial officer where the petitioner and respondent may testify, (4) a written order, (5) the opportunity to move for revision in superior court, (6) the opportunity to appeal, and (7) a one-year limitation on the protection order if it restrains the respondent from contacting minor children.” Id. at 468-469.

These due process protections safeguard against any erroneous deprivation or limitation of parental rights. Id.

Mr. Olney's parental rights were adequately protected in the DVPO proceeding. He was entitled to, and received the protections. In addition, if he was unhappy with the residential provisions entered by the court in the DVPO, Mr. Olney could petition the court for a parenting plan in the parentage action.

The court erred in failing to enter residential provisions for Bentley and ordering that this issue be addressed in another forum.

3. The Trial Court Erred in Failing to Include Restrictive Residential Provisions for Bentley Where Evidence Established a Basis for Restrictive Factors.

The trial court erred when it found there was not sufficient evidence to enter residential provisions for Bentley. Findings of fact are reviewed "under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational person the premise is true." Stiles v. Kearney, 169 Wn. App. 250, 260, 277 P.3d 9 (2012).

The DVPA requires that residential provisions be entered on same grounds as RCW 26.09. Under RCW 26.09.187(3) residential provisions are entered in a manner "which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic

circumstances.” RCW 26.09.187(3)(a). Residential time is limited by the presence of restrictive factors. RCW 26.09.187(3)(a).

The court shall restrict residential time where a parent is found to, among other things, have engaged in a pattern of emotional abuse of a child or has a history of acts of domestic violence. RCW 26.09.191(2)(a)(ii)-(iii). The court may also restrict residential time where a parent engages in an abusive use of conflict “which creates the danger of serious damage to a child’s psychological development.” RCW 26.09.191(3)(e).

The record in this case shows a significant history of domestic violence by Mr. Olney. On two occasions, the court found there was enough evidence to enter a DVPO against Mr. Olney. CP 17-21, 45. The physical violence included grabbing, throwing objects, kicking, bruising, pushing and shoving. CP 58, 74.

The emotional abuse included screaming profanities in front of the children, raising his fists as if threatening to punch Ms. Wright, locking her out of the home in the middle of the night with Sophia inside, punching the pillow close to Ms. Wright’s head, calling her a “psycho bitch and lying whore” for hour upon hour while she tried to sleep, texting her incessantly

(approximately 100 times) over the course of three days, and threatening to take Bentley and Sophia away. CP 74, 108-109, 125, 131-134, 136.

In addition to the physical and emotional abuse, Mr. Olney has shown a complete disregard for the court's orders by repeatedly violating the DVPOs. He has already pled guilty to one of the violations. CP 63-64, 140, 160, 185. Mr. Olney admitted to violating one order but minimized its significance by stating that the contact was only over email and was not violent or threatening in nature. CP 151-152.

Mr. Olney violated the DVPO again to wish Ms. Wright a "Happy Turkey Day." CP 140. When he recognized that this contact could result in an arrest and he begged Ms. Wright not to call the police. CP 140. Mr. Olney even attempted to bribe Ms. Wright stating that he would take her on a "shopping spree" for diapers if she did not report him. CP 140.

After he violated the DVPO a third time, Mr. Olney went as far as accusing Ms. Wright of sending the text messages to herself. CP 91. The police found no merit to this allegation. CP 91.

The record also documents emotional abuse of both Sophia and Bentley. Specifically, Mr. Olney yelled in Sophia's face, "I'm not your daddy and your mommy is a fucking psycho." CP 109. Mr. Olney has also shoved Ms. Wright as she was walking down the stairs, when she

pregnant with Bentley and holding Sophia. He has shoved Ms. Wright while she was holding Sophia, pushing her through the kitchen doorway. Mr. Olney often fought and swore at Ms. Wright when Sophia was present, and he threateningly raised his fists to Ms. Wright in the children's presence. CP 109, 125, 185.

Mr. Olney also engaged in a systematic abusive use of conflict with Ms. Wright that is harmful to Sophia and Bentley. He sent pictures of Sophia in his marijuana grown room to Sophia's father and threatened to email them to CPS. Sophia's father was so upset by the text messages he received from Mr. Olney that he sent a text to Ms. Wright and stated, "Ryan just sent me the pics of Sophia" and "Im [sic] scared he is gonna [sic] come try to hurt you and Sophia and do some crazy shit so will you please let me know your [sic] ok he is going crazy right now." CP 133.

The next day Mr. Olney sent approximately 100 text messages to Ms. Wright. CP 131-134. The content of the text messages ranged from vulgar name calling, to threatening, to professing his love for her and offering her money for rent. CP 131-134.

On the day Bentley was born, Mr. Olney took a knife and loaded gun into the hospital. CP 111. After being confronted by the hospital staff about the weapons, Mr. Olney began to drink alcohol in the hospital room.

When Ms. Wright asked him to leave he became so upset that he knocked her things off of a table. CP 108. The next day he contacted the hospital “ranting” about Ms. Wright’s inability to care for Bentley. CP 112. The hospital was so concerned about this behavior that they hid Ms. Wright on different floor and escorted her to her car upon her discharge. CP 112.

There was sufficient evidence before the trial court to enter a finding that Mr. Olney had a history of domestic violence, emotional abuse of Sophia and Bentley, and engaged in an abusive use of conflict that endangered Sophia and Bentley. These findings should have resulted in restrictive residential provisions for Mr. Olney in regard to his son Bentley.

The court should have entered restrictive residential provisions for Mr. Olney’s contact with Bentley. Relief under the DVPA cannot be denied simply because it is available elsewhere. The DVPA mandates that residential provisions be entered in DVPO cases that contain children and provides sufficient due process protections for parents. There was sufficient evidence before the trial court of Mr. Olney’s pervasive history of acts of domestic violence to not only Ms. Wright, but both of her children. The court’s failure to include Bentley on the DVPO was an error of law.

### **C. REQUEST FOR REASONABLE ATTORNEY FEES**

Counsel for Ms. Wright, pursuant to RAP 18.1, respectfully requests an award for reasonable attorney fees and appellate costs.

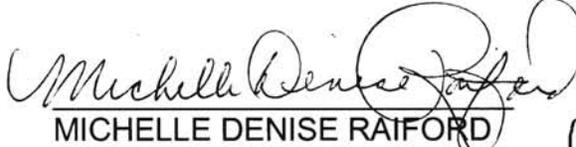
RCW 26.50.060(1)(g) states that the court may order the respondent to "reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees." NJP has incurred statutory costs, transcript costs, and attorney costs in this action. Thus a request for costs is respectfully submitted to this court.

### **V. CONCLUSION**

Ms. Wright respectfully asks this court to find the following: (1) that there was sufficient evidence to include Bentley on the order for protection where the children were subjected to witnessing domestic violence against their mother; (2) the trial court erred when it failed to enter mandatory residential provisions for Bentley on the order of protection; and (3) Ms. Wright is entitled to attorneys fees.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of November 2012.

**NORTHWEST JUSTICE PROJECT**



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IN THE COURT OF APPEALS DIVISION I  
OF THE STATE OF WASHINGTON

In re:

ANGELA MICHELLE WRIGHT,

Appellant,

vs.

RYAN MICHAEL OLNEY,

Respondent,

No. 69314-0

CERTIFICATE OF SERVICE

MICHELLE D. RAIFORD, being first duly sworn upon oath, deposes and says:

I am the attorney of record for the Appellant in this action. On the 26<sup>th</sup> day of November, 2012, I delivered using ABC Legal Messenger a copy of *Appellant's Opening Brief* and a copy of this *Certificate of Service* to the following:

James Francis Pleasants  
Attorney at Law

CERTIFICATE OF SERVICE - 1 of 2

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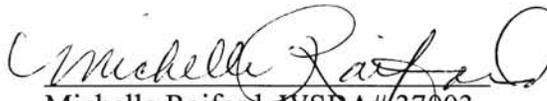
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Dated this 26th day of November, 2012 in Everett, Washington.

  
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