100354-4

No. 81889-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

LORI SHAVLIK,
Appellant,

Vs.

JOLENE JOVEE.
Respondent.

Petition for Review

Lori Shavlik
PO Box 73
Woodinville, WA 98272

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A. IDENTITY OF PETITIONER

Lori Shavlik asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

(Identify the decision or parts of the decision of the Court of Appeals which the party wants reviewed, the date filed, and the date of any order granting or denying a motion for reconsideration.) A copy of the decision is in the Appendix at pages A-____ through ____.

C. ISSUES PRESENTED FOR REVIEW

1. Were the orders issued by the Superior Court void for lack of jurisdiction?

2. Did the petitioner obtain the anti-harassment order by fraud?

3. Did the actions of Shavlik constitute a course of conduct under RCW 10.14 justifying the issuance of an antiharassment order?

D. STATEMENT OF THE CASE

On February 16, 2019 Appellant was asked to transport the two youngest children to Fife High School Gym where the children would briefly be weight and be done. (CP 1508). This was not a match, it was a weigh in, there was to be no exchange of the children. (CP 908-911).

Appellant Shavlik was in the gym getting the children dressed after the weigh in, the children were not crying they were not upset. Respondent approached Appellant. (CP 983). The father of the children requested the transportation for his children during his court ordered visitation time, Appellant agreed. (CP 1296-1298). The Respondent had no contact with the Petitioner, the petitioner came out of her car, after the boys had finished their weigh in and the Respondent was about to leave with the boys when they stripped from her arms. (CP 628). The fact that the mother did not like the Appellant is not unlawful harassment (CP 0040). The Fife police were called, came out and heard arguments from both parties and witness standing by, and concluded that the children would go back with Appellant Shavlik, and in the report, fife police dept. noted that they talked to direct witness to the incident, and concluded that there was no physical interaction between the parties. (CP 1194-1196).

According to a police report, the police verified that the boy were there as part of the father's visitation period for that weekend as defined by the parenting plan and the mother attempted to take the children from

the grandmother who had been assigned by the father to take the children to the weigh-in. (CP 666-667) Respondent took the children from Appellant Lori Shavlik's care and custody;(CP 12290) (CP 1363).

Appellant Shavlik contacted the children's father to have him decide what to do. The Father called the Fife Police and they came, heard the stories from parties and the witness and the children were returned to the Appellant, the police stayed until the Appellant had a chance to leave with the children without any more interference. (CP 1612-1614)

On March 1, 2019 Respondent Jolene Jovee, and her attorney made false claims to Snohomish County Superior Court that the Appellant interfered with the "children's exchange" and mislead the court into believe that she was "getting the children", when she was not. (CP 0030-0031) This was a false statement and Appellant wrote a safe harbor letter (CP 0031) demanding that the statements be corrected, that there was no exchange of the children. The attorney or Respondent Jovee failed to ever correct the court record. (CP 1555) There was no exchange. (CP 1296-1298) The children were in the care and custody of their father, Nathan Jovee, these parties were involved with a Oklahoma Court Order that maintains jurisdiction over the parties and the visitation disputes. (CP 0674) (CP 0909-0911).

The court failed to give merit to the documents filed in the case (CP 0477, 0674, 0687) and issued an anti-harassment order against the

Appellant Lori Shavlik. The order modified conditions of a custody order without going through the Oklahoma court and without giving notice to the father Nathan Jovee. (CP 909-911). This court "reserved vexatious litigant" order against a respondent (CP 0983-0984), not to someone who was filing vexatious lawsuits. The commissioner reserved the issue of restricting the respondent's access to the courts without allowing her to even argue against such pre-filling order. (CP 0984)

On March 29, 2019 Commisoner Susan Gaer makes a finding that "Inappropriate Talking" is not harassment and that usually applies to the parents… (CP 1145)

Commissioner Tracy Waggoner actually issued the June 18, 2019 Order, (CP 0983) just one month after the Oklahoma Court orders Petitioner Jolene Jovee not to interfere with the Father's visitation. (CP 0686)

After the order was entered the respondent requested motions to reconsider and motions to vacate that were never ruled upon. The court continued to "strike the motions" (CP 0971). Respondent filed a motion for revision of a commissioner's order. (CP 0016) Judge Lucas finally heard the motion on September 17, 2020 and denied the revision without making findings of fact or conclusions of law. (CP 0010-0011).

Misrepresentations were made and court failed to catch it. (CP 1296-1298).

Jurisdiction was brought up several times and never ruled on. (CP 1314, 1372)

A timely notice of appeal was filed on September 24, 2020. (CP 0003).

SUMMARY OF ARGUMENT

This case comes to this court primarily on the issue of whether a Superior Court commissioner pursuant to RCW 10.14 has original jurisdiction to issue an anti-harassment order. Lori Shavlik (Shavlik) raises this issue for the first time under appeal, arguing that original jurisdiction clearly lies with the District court under RCW 10.14 and the Superior Court can only assume concurrent jurisdiction after the district court has transferred it after making detailed findings of fact and conclusions of law. For this reason, all orders have to be voided for lack of jurisdiction.

In the alternative, Shavlik requests the court of appeals vacate the order because under the record that is before this court, no harassment took place.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. The Court erred in failing to apply the standard in the law requiring exclusive jurisdiction to District Court.

Superior Court erred by issuing orders when there was no jurisdiction. Jurisdiction for anti-harassment orders is defined by RCW 10.14.150:

> The district courts shall have original jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.
> Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.
> The civil jurisdiction of district and municipal courts under this chapter is limited to the issuance and enforcement of temporary orders for protection in cases that require transfer to superior court under subsections (1) and (2) of this section. The district or municipal court shall transfer the case to superior court after the temporary order is entered.
> Superior courts shall have concurrent jurisdiction to receive transfer of antiharassment petitions in cases where

> a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer.

The statute is clear that original jurisdiction resides exclusively in the district court. The district court had the power to transfer the action to superior court under section 1 only if one of four conditions is met, none of which exist here. Even if one of those conditions could be met, the case would still have to be transferred and could be done only if the district or municipal made findings of fact and conclusions of law showing that meritorious reasons exist for the transfer. Here, the petitioner filed the action in superior court without going to district court first, so the superior court never acquired jurisdiction to hear the case.

Absence of subject matter jurisdiction may render a judgment void where a court wrongfully extends its jurisdiction beyond the scope of its authority. *Kansas City Southern Ry. Co. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (CA8)(1980) (citing Stoll v. Gottlieb, 305U.S. 165, 171, 83 L. Ed. 104, 59 S. Ct. 134 (1938)), cert. denied 449 U.S. 955, 101 S. Ct. 363, 66 L. Ed. 2d 220 (1980)

Courts have a non-discretionary duty to vacate a void judgment. *Leen v. Demopolis*, 62 Wn. App. 473, 477-78, 815 P.2d 269 (1991) *Thomas P. Gonzalez Corp. v. Consejo Nacional de Produccion de Costa Rica*, 614 F.2d 1247, 1256 (9th Cir. 1980). 11 Wright & Miller: Civil 2d §

2862; 12 Moore's Federal Practice § 60.44[5][a].

2. The court never took into consideration fraud by the petitioner.

`The respondent claims that the defendant agreed to terminate his visitation early, that incident was a "sporting event", and that the incident occurred during a "visitation exchange" and used these misrepresentations to unfairly obtain the anti-harassment order. However, the text messages she submits in support of motion and other affidavits in the record do not support that conclusion. In fact, the text messages demonstrate the respondent did not agree to terminate his visitation early. She claims that early termination of the husband's visitation was the past practice but offers no details. The husband denies her conclusory allegation that early termination of the visitation for an event such as this was a past practice and such an interpretation is not consistent with the record. The shifting story of the petitioner demonstrates that the petition obtained the order by making misrepresentations. The court should not this countenance this fraud and vacate the anti-harassment for this reason, in the event the appeals court finds that superior court somehow gained jurisdiction.

The court should not have issued the anti-harassment order because there "course of conduct" or unlawful harassment.

The statute at issue is RCW 10.14.020:

> Definitions.
> Unless the context clearly requires otherwise, the

definitions in this section apply throughout this chapter.

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

"Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

Here, the undisputed facts show that the petitioner approached the Respondent and attempted to interfere with the former husband's visitation period. The Respondent gathered up the children and tried to move them away from the petitioner, warning the Petitioner that she was interfering with the visitation. While this may have annoyed the petitioner, it was not unlawful harassment, because the action served a legitimate and lawful purpose, that of trying to prevent the petitioner from interfering with the visitation.

The orders of Mach 1, 2019, and May 24th should be set aside on the basis of fraud. The June 18th order should be set aside on the grounds that it was the petitioner, not the respondent who engaged in unlawful

harassment, so the order of protection should have been directed at the petitioner.

3. The judge who heard the case should have been disqualified for bias.

Though a judge's adverse in-court comments regarding an individual are ordinarily not considered to be disqualifying per se, the fact that a judge's remarks have been made in a judicial context does not insulate them from scrutiny;[1] The most fundamental exception is that a judge may not make comments that reflect actual bias[2] - either for or against a party[3]. A logical basis for inferring bias may exist when a judge's remarks, though uttered in a judicial capacity[4], connote a "fixed opinion"[5] or "closed mind"[6] with respect to the merits of a case.[7] This is particularly

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[1] See *in re Chevron USA Inc*., 121 F.3d 163, 166 (5th Cir. 1997); *Loranger v. Stierman*, 10 F.3d 776, 780 (11th Cir. 1994)

[2] See *Gardiner v. A.H. Robins Co., Inc.* 747 F.2d 1180 (8th Cir. 1984)(a finding of bias is not precluded merely because a judge's remarks are made in a judicial context.)

[3] *Parliament Ins. Co. v. Hanson*, 676 F.2d 1069 (5th Cir. 1982)

[4] *Liteky v. U.S.* 114 S. Ct. 1147, 1157 (1994)

[5] Cf. Cleveland Bar Assn. v. Clearly, 93 Ohio St.3d 191, 200-201, 754 N.E.2d 235 (2001) (noting that the term "bias or prejudice" implies "a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment" on the judge's part as opposed to "an open state of mind which will be governed by the law and the facts.")

[6] See *U.S. v. Cohen*, 644 F. Supp. 113, 116 (E.D. Mich. 1986); *Riverside Mar. Remanufacturers, Inc. v. Booth,* 2005 Ark. App. LEXIS 767, *6-7

true where such comments are made at a state of the proceeding when a judge would not normally be expected to have formed a fixed opinion about the dispositive facts.[8] Where a judge makes comments reflecting an intention to deprive a party of a legal right - judicial disqualification,[9] or at least a hearing to determine if disqualification is warranted, may be mandated.[10]

Here, the judge demonstrates clear bias by restricting the appellant's access to the courts without due process by not allowing her to even argue against such a pre-filing order**.**[11] Out of regard for the constitutional

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(2005) (in making certain comments, the trial judge, although recognizing that Riverside had yet to present its case, gave the appearance of having a mindset that that could not be reconciled with the proposition that that he was committed to hear all relevant evidence and arrive at a judicious result.)

[7] See *Mitchell v. Maynard*, 80 F.3d 1433, 1450(10th Cir. 1996) (finding an appearance of bias where the judge said plaintiff's claims were frivolous and "a waste of the of the jury's time")

[8] *Cf. Wright v. State*, 628 So. 2d 1071, 1073 (Ala. Crim. App. 193)("in situations where premature remarks are made, a red flag is raised".).

[9] See *Pastrana v. Charter*, 917 F. Supp. 103, 108(D.P.R. 1996)

[10] See *Goldberger v. Goldberger*, 96 Md. App. 313, 624 A.2d 1328, 1332(1993)

[11] Restricting access to the courts is, a serious matter. " [T]he right of access to the courts is a fundamental right protected by the Constitution." *Delew v. Wagner*,143 F.3d 1219, 1222 (9th Cir. 1998). The First Amendment " right of the people . . . to petition the Government for a redress of grievances," which secures the right to access the courts, has been termed " one of the most precious of the liberties safeguarded by the Bill of Rights." *BE & K Const. Co. v. NLRB*,536 U.S. 516, 524-25,122

underpinnings of the right to court access, " pre-filing orders should rarely be filed," and only if courts comply with certain procedural and substantive requirements. De Long v. Hennessey, 912 F.2d 1144, 1147. When district courts seek to impose pre-filing restrictions, they must: (1) give litigants notice and " an opportunity to oppose the order before it [is] entered" ; (2) compile an adequate record for appellate review, including " a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed" ; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as " to closely fit the specific vice encountered." Id. at 1147-48.

Here, the judge never even began to meet the first requirement.

She never gave Shavlik notice that such an order was even being contemplated. She did not give her a list of cases upon which the order was to based. The fact that the case she was basing her vexatious litigant finding on a case that Shavlick didn't even file is further evidence of

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S.Ct. 2390, 153 L.Ed.2d 499 (2002) (internal quotation marks omitted, alteration in original); see also *Christopher v. Harbury*,536 U.S. 403, 415 n.12,122 S.Ct.2179, 153 L.Ed.2d 413 (2002) (noting that the Supreme Court has located the court access right in the Privileges and Immunities clause, the First Amendment petition clause, the Fifth Amendment due process clause, and the Fourteenth Amendment equal protection clause).

Among all other citizens, [the vexatious litigant] is to be restricted in his right of access to the courts. We cannot predict what harm might come to him as a result, and he should not be forced to predict it either. What he does know is that a Sword of Damocles hangs over his hopes for federal access for the foreseeable future." *Moy v. United States*, 906 F.2d 467, 470 (9th Cir. 1990).

pretrial bias on the part of the judge. If the appellate court finds the superior court did have jurisdiction it should remand the case back with clear instructions that this judge should be disqualified from hearing this case again.

F. CONCLUSION

The orders of Superior Court must be vacated and the standard of the law applied to the parties and the subject matter.

For the foregoing reasons, appellant respectfully requests that this Court reverse the Trial Court's ruling in every respect and remand this matter back to Evergreen District Court with instructions to find that the standard of the law must be applied. This Court order further relief in the form of costs and penalties as may be appropriate.

Respectfully submitted this 3 day of November, 2021.

*s/Lori Shavlik*_____
Lori Shavlik, pro se

CERTIFICATE OF SERVICE

I hereby certify that on November, 2021, I caused to be served a true and correct copy of the preceding document on the party listed below at their address of record and via email:

Jolene Jovee, Respondent in this case.

s/Lori Shavlik
Lori Shavlik, pro se

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LORI SHAVLIK, Appellant, v. JOLENE JOVEE, Respondent.	No. 81889-9-I DIVISION ONE UNPUBLISHED OPINION

CHUN, J. — Lori Shavlik appeals an order extending a one-year civil antiharassment protection order against her and an order denying her motion for revision. Representing herself, Shavlik contends that the antiharassment order must be vacated because (1) the superior court lacked jurisdiction, (2) the petition for the order was based on false information, and (3) the court was biased against her. For the reasons discussed below, we affirm.

I. BACKGROUND

Jolene Jovee and her ex-husband Nathan Jovee are the parents of three boys: L.J., S.J., and B.J.[1] Nathan's mother, Lori Shavlik, is the paternal grandmother of the boys. Jolene and her significant other, Brandon Huber, are the parents of one boy, L.H.

[1] We refer to Jolene Jovee and Nathan Jovee by their first names for clarity. We intend no disrespect.

Nathan and Jolene divorced in Oklahoma in 2018. The Oklahoma divorce decree and parenting plan awarded custody to Jolene and granted visitation to Nathan on every other weekend and certain holidays.

On March 1, 2019, Jolene petitioned in superior court for a civil antiharassment protection order against Shavlik based on an incident that took place on February 16, 2019. S.J. (age 7) and B.J. (age 4) needed to go to Fife High School that afternoon to weigh in for their wrestling tournament. Jolene said Nathan knew and agreed that she and Huber would be there even though it was Nathan's visitation weekend. Jolene expected Nathan to transport the boys to the weigh in, so she was surprised to discover that Shavlik brought them instead. Jolene alleged that when she walked into the gym and approached the boys to greet them and ask where their father was, Shavlik became frantic, aggressive, and enraged. Jolene said that B.J. reached for her and began to cry, but when she tried to comfort him, Shavlik angrily pushed her away and tried to take the boys outside even though they were not fully dressed. Jolene said both boys cried and told her they were scared of Shavlik. Jolene asked Huber to call the police.

When police arrived, Jolene showed them the Oklahoma divorce decree and parenting plan and said she did not feel safe allowing Shavlik to transport the boys back to Nathan's house. According to the police report, Shavlik claimed that Jolene was interfering with Nathan's visitation time and Jolene believed Nathan violated the parenting plan by not being present at the event. Based on

language in the parenting plan that reasonable accommodation be made to get the children to activities, police allowed Shavlik to take the boys back to Nathan's house.

A hearing on the petition took place on March 1, 2019, with Jolene represented by counsel. Shavlik did not appear. When the superior court commissioner asked whether Jolene was supposed to have custody of the children at the weigh in, counsel said, "[A]t that sporting event, yes." At the conclusion of the hearing, the commissioner entered a temporary order of protection against Shavlik. Minors addressed by the order included Jolene and Nathan's three children and Jolene and Huber's child. The order restrained Shavlik from making any attempts to contact or keep under surveillance Jolene or any of Jolene's four children. The order further specified that Shavlik was "restrained from any contact whatsoever, no phone, mail, email, texting or third party contact, or through social media." The court reissued the temporary order on March 15, 2019 to allow Jolene additional time to serve Shavlik.

On March 29, 2019, the superior court held a hearing to determine whether Shavlik had committed unlawful harassment. Jolene and her counsel were present; Shavlik was not. Jolene requested a three-year order restraining Shavlik from any contact with all four children, even when Shavlik's grandchildren had visitation with Nathan. Although the court ruled that it "does not find it reasonable to restrain the respondent from exchanges of the children and other times when the children are in their father's care," it issued a final order that

restrained Shavlik from making any attempts to contact or surveil Jolene and all four children, "directly or indirectly, or through third parties." The order further specified as follows:

> No contact in public places, no contact with the youngest minor. No contact with the minors at exchanges. . . . No contact at sporting and school events of the minors addressed in this petition, court matters involving the petitioner and the minors addressed in this order, no contact through email, texting, or social media.

On April 21 and April 28, 2019, Jolene alleged in police reports that Shavlik violated the order by being at Nathan's house while L.J, S.J., and B.J. were present. A prosecutor charged Shavlik, but later dismissed the charges without prejudice.

At a hearing on May 24, 2019, the superior court granted Shavlik's motion to vacate the March 29, 2019 protection order on the ground that it was void for lack of service. The court concurrently entered a new temporary order. Unlike the previous temporary order, it did not restrain Shavlik from contacting her grandchildren. Rather, the order restrained Shavlik from making any attempts to contact Jolene and L.H. and from being within 100 yards of the exchange location of Jolene and Nathan's children for visitation. The order further specified that Shavlik's contact with them "is limited to [Nathan's] visitation and she [is] excluded from sporting events."

On June 18, 2019, the court again held a hearing on the antiharassment petition. Jolene was represented by counsel and Shavlik appeared pro se. Following the hearing, the court entered a final one-year order of protection that restrained Shavlik from making any attempts to contact Jolene and from being

within 100 yards of the exchange location of Jolene and Nathan's children for visitation with Nathan. The order further specified that Shavlik's contact with her grandchildren is limited to Nathan's visitation "except not at any scheduled events at which [Jolene] is present." The order reserved ruling on attorney fees "as well as to findings of vexatious litigant."

On May 13, 2020, Jolene contacted police to report that Shavlik had violated the order of protection by e-mailing her in an apparent attempt to accomplish service of court documents. Jolene responded to the e-mail, stating, "I am not sure what this is because no attachments will open. I did not consent to service by email." Shavlik still sent 13 more e-mails to Jolene. Jolene reported the additional e-mail incidents to police.

On June 15, 2020, Jolene petitioned for renewal of the June 18, 2019 final order of protection based on Shavlik's unwanted e-mails and on the alleged April 2019 violations of the temporary protection order. Shavlik responded, stating that she intended to serve Jolene by e-mail. Shavlik also moved for contempt against Jolene.

A hearing took place on August 26, 2020. Both parties appeared at the hearing pro se. The superior court commissioner denied Shavlik's motion for contempt and granted Jolene's petition for renewal, finding that Shavlik "has not shown by a preponderance of the evidence that acts of unlawful harassment will not continue." The renewed order was essentially identical in its terms to the

June 18, 2019 order. The order expired on August 26, 2021, one year after it issued.[2]

Shavlik moved to revise the August 26, 2020 order, which the superior court denied on September 17, 2020. Shavlik now appeals the August 26, 2020 renewed protection order and the order denying her motion for revision.[3]

II. ANALYSIS

Preliminarily, we observe that a pro se litigant is bound by the same rules of procedure and substantive law as a licensed attorney. Holder v. City of Vancouver, 136 Wn. App. 104, 106, 147 P.3d 641 (2006).

"The scope of a given appeal is determined by the notice of appeal, the assignments of error, and the substantive argumentation of the parties." Clark County v. W. Wash. Growth Mgmt. Hr'gs Review Bd., 177 Wn.2d 136, 144, 298 P.3d 704 (2013) (citing RAP 5.3(a); 10.3(a), (g); and 12.1). "'Only issues raised in the assignments of error . . . and argued to the appellate court are considered on appeal.'" Weyerhauser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654,

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[2] No issue is raised on appeal about whether Shavlik's appeal was rendered moot when the renewed order expired on August 21, 2021. "Generally, we will dismiss an appeal where only moot or abstract questions remain or where the issues raised in the trial court no longer exist." Price v. Price, 174 Wn. App. 894, 902, 301 P.3d 486 (2013). A case is not moot if a court can still provide effective relief. Hough v. Stockbridge, 113 Wn. App. 532, 537, 54 P.3d 192 (2002), reversed on other grounds, 150 Wn.2d 234, 76 P.3d 216 (2003) (noting that the stigma of an expired antiharassment order may be removed by a favorable decision). We decline to dismiss Shavlik's appeal on this basis.

[3] Jolene did not file a respondent's brief. "A respondent who elects not to file a brief allows [their] opponent to put unanswered arguments before the court, and the court is entitled to make its decision based on the argument and record before it." Adams v. Dep't of Labor & Indus., 128 Wn.2d 224, 229, 905 P.2d 1220 (1995).

693, 15 P.3d 115 (2000) (alteration in original) (quoting State v. Kalakosky, 121 Wn.2d 525, 540 n.18, 852 P.2d 1064 (1993)).

A. Jurisdiction

Shavlik says that, under RCW 10.14.150, district courts have exclusive original jurisdiction to hear antiharassment claims. She contends that the district court is empowered to transfer such an action to superior court only if certain statutory conditions are met. Because Jolene initiated the action in superior court without going to district court first, Shavlik contends that the antiharassment orders are void because the superior court never acquired jurisdiction to hear the case. Shavlik is incorrect.

We review de novo questions of subject matter jurisdiction. Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 314, 76 P.3d 1183 (2003). In 1993, the Washington Constitution was amended to vest both superior courts and district courts with original jurisdiction in cases of equity. See WASH. CONST. art. IV, § 6 ("Superior courts and district courts have concurrent jurisdiction in cases in equity."). An action under chapter 10.14 RCW is an action in equity. Hough v. Stockbridge, 150 Wn.2d 234, 236, 76 P.3d 216 (2003). The vesting of original jurisdiction in the superior courts does not prevent the legislature from granting concurrent jurisdiction to district courts in the same class of cases. McIntosh v. Nafziger, 69 Wn. App. 906, 911, 851 P.2d 713 (1993). The superior court retains original jurisdiction unless the legislature vests exclusive jurisdiction in another court. Ledgerwood v. Lansdowne, 120 Wn. App. 414, 419, 85 P.3d 950 (2004).

It is well established that RCW 10.14.150 does not vest exclusive jurisdiction over antiharassment cases in the district court. McIntosh, 69 Wn. App. at 912 ("[W] e construe RCW 10.14.150 as providing the district and superior courts with concurrent original jurisdiction, thereby allowing civil anti-harassment actions to be brought either in the district or superior courts"); Ledgerwood, 120 Wn. App at 422 (holding that the superior court has original jurisdiction to hear antiharassment petitions). The superior court did not lack subject matter jurisdiction over the proceedings in this case.

B. Unlawful Harassment

Shavlik contends that Jolene failed to show that her actions constituted "unlawful harassment" as defined by RCW 10.14.020. We review the trial court's decision to grant or deny a protection order for an abuse of discretion. RCW 10.14.080(6); State v. Noah, 103 Wn. App. 29, 43, 9 P.3d 858 (2000). A trial court abuses its discretion if its ruling is "manifestly unreasonable or is based on untenable grounds or reasons." State v. Rapozo, 114 Wn. App. 321, 323, 58 P.3d 290 (2002). A court's decision stems from untenable grounds "if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

We review the trial court's findings for substantial evidence. In re Marriage of Rideout, 150 Wn.2d 337, 351, 77 P.3d 1174 (2003) (where court holds a hearing and weighs contradictory evidence before entry of a protection order, the proper standard of review is substantial evidence). "Substantial

evidence" exists if the evidence is sufficient to persuade a fair-minded rational person of the truth of the evidence. In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). We defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. In re Vulnerable Adult Petition of Knight, 178 Wn. App. 929, 937, 317 P.3d 1068 (2014).

A superior court may enter a civil antiharassment protection order if it finds by a preponderance of the evidence that "unlawful harassment" exists. RCW 10.14.080(3); Noah, 103 Wn. App. at 38. "Unlawful harassment" is "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose." RCW 10.14.020(2). A "course of conduct" is "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." RCW 10.14.020(1).

A petitioner may seek to renew a civil antiharassment order prior to its expiration. RCW 10.14.080(5). The petition for renewal must state the reasons why the petitioner seeks to renew the protection order. Id. The court must then renew the order "unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires." Id.

Shavlik contends that the superior court's antiharassment orders stemmed from fraud. This is so, she contends, because Jolene's counsel misled the court when he said Jolene was authorized to take custody of the children at the

wrestling weigh-in. Shavlik also says that her behavior at the weigh-in cannot constitute "unlawful harassment" because it served the legitimate and lawful purpose of seeking to prevent Jolene from interfering with Nathan's visitation time.

Regardless of the merit of these assertions, they have no bearing on the matter at issue in this appeal, which is whether the superior court erred in entering a renewed order of protection on August 26, 2020. Pursuant to RCW 10.14.080(5), Jolene petitioned for renewal along with a declaration stating the reasons why she sought to renew the petition. Jolene stated that her counsel withdrew on April 29, 2020 because she could not pay accumulated charges of more than $30,000. Before counsel withdrew, he and Shavlik had an agreement to serve documents by e-mail. After counsel withdrew, Jolene responded to Shavlik by e-mail and included a mailing address at which she agreed to accept service. Shavlik then e-mailed court documents to Jolene. Jolene responded that she did not consent to service by e-mail. Shavlik still e-mailed Jolene 13 more times. Jolene also pointed to Shavlik's alleged violations in April 2019.

Shavlik's response asserted that Jolene failed to explain or document with evidence any course of conduct that violated the order. Shavlik also stated that she intended to keep serving Jolene by e-mail. But the June 18, 2019 order plainly restrains Shavlik from attempting to contact her. "Course of conduct" includes "the sending of an electronic communication." RCW 10.14.020(1). Jolene submitted evidence documenting that Shavlik e-mailed her repeatedly,

despite being informed that Jolene would only accept service by mail. We conclude that the superior court did not err by ruling that Shavlik "has not shown by a preponderance of the evidence that acts of unlawful harassment will not continue."[4]

C. Disqualification

Shavlik states that the superior court commissioner who entered the August 26, 2020 renewed protection order should have been disqualified for showing actual bias and prejudice against her.

"Due process, the appearance of fairness, and Canon 3(D)(1) of the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality may be reasonably questioned." Wolfkill Feed and Fertilizer Corp. v. Martin, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). We presume a trial court to regularly and properly perform its functions without prejudice or bias. West v. Wash. Ass'n of County Officials, 162 Wn. App 120, 136, 252 P.3d 406 (2011). "The test for determining whether a judge's impartiality might reasonably be questioned is an objective one that assumes the reasonable person knows and understands all the relevant facts." In re Estate of

[4] Shavlik also contends that the March 1, 2019 and May 24, 2019 temporary orders should be vacated based on fraud. And she asserts that the June 18, 2019 final order should be vacated because Jolene is the one who engaged in unlawful harassment. But the temporary orders became moot when the superior court entered the final order on June 18, 2019. See Ferry County Title & Escrow v. Fogle's Garage, Inc., 4 Wn. App. 874, 881, 484 P.2d 458 (1971) (a final judgment renders the propriety of a temporary order moot). And Shavlik did not timely appeal the final order as required by RAP 5.2(a). In any case, the minute entry for the June 18, 2019 hearing shows that the court carefully considered Shavlik's arguments and entered a final order that was far less restrictive than the temporary orders.

Hayes, 185 Wn. App. 567, 607, 342 P.3d 1161 (2015) (citing Sherman v. State, 128 Wn.2d 164, 206, 905 P.2d 355 (1995)). The party claiming bias or prejudice must support the claim with evidence. An appearance of fairness doctrine claim requires evidence of the judicial officer's actual or potential bias. State v. Dugan, 96 Wn. App. 346, 354, 979 P.2d 885 (1999). "[M]ere speculation is not enough." Estate of Hayes, 185 Wn. App. at 607.

Shavlik contends that the superior court commissioner demonstrated actual bias and prejudice against her because the August 26, 2020 renewed order of protection contained a notation indicating that judgment was reserved "as to findings of vexatious litigation."[5] Shavlik contends that the superior court commissioner never provided notice that a vexatious litigation finding was being contemplated or gave her an opportunity to argue against it, thereby demonstrating actual bias by restricting Shavlik's access to the courts without due process.

We disagree. Shavlik's speculative claim is not enough to demonstrate actual bias or prejudice. Moreover, the record does not support it. The minute entry for the June 18, 2019 hearing, at which Shavlik was present, notes that "petitioner's motion for a finding of vexatious litigation is reserved." The June 18, 2019 order reflects this. Shavlik expressly acknowledged receipt of a copy of the

[5] "[I]n Washington, trial courts have the authority to enjoin a party from engaging in litigation upon a 'specific and detailed showing of a pattern of abusive and frivolous litigation.'" Yurtis v. Phipps, 143 Wn. App. 680, 693, 181 P.3d 849 (2008) (quoting Whatcom County v. Kane, 31 Wn. App. 250, 253, 640 P.2d 1075 (1981)).

order. She had notice of the matter more than a year before the August 26, 2020 hearing.

We affirm.

Chun, J.

WE CONCUR:

Mann, C.J.

Dwyer, J.

LORI SHAVLIK - FILING PRO SE

November 03, 2021 - 4:18 PM

Filing Affidavit of Service

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Trial Court Case Title:	Jolene Marie Jovee Vs Lori Darlene Shavlik
Trial Court Case Number:	19-2-01820-31 (JIS Number: 19-2-01820-6)
Trial Court County:	Snohomish Superior Court
Signing Judge:	Mann, Chun, Dwyer
Judgment Date:	10/04/2021

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