102607-2

COA No. 84415-6-I

SUPPREME COURT OF THE STATE OF WASHINGTON

In re:
DAVID THACKER,

Appellant,

and

CRYSTAL SKOV,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Pursuant to Washington Rule of Appellate Procedure 13.4, David Thacker respectfully requests review of the decision of the Washington State Court of Appeals, Division I, identified in Section II of this Petition.

II. DECISION

On October 2, 2023, the Court of Appeals, Division I issued its unpublished decision in Thacker v. Skov, No. 84415-6-I, dismissing Thacker's appeal of the reversal of the DVPO entered against Skov as moot because the DVPO would have expired before the Court of Appeals' decision. The Court of Appeals held that there are no significant collateral consequences in the parties' current parenting action because the parenting plan action is not before the Court of Appeals and because the parenting plan controls over the DVPO action. Thacker's motion for reconsideration was denied on October 31, 2023.

III. ISSUES PRESENTED FOR REVIEW

1. Is this case appropriate for review by this Court pursuant to RAP 13.4(b)(4) as presenting an issue of substantial public interest impacting Washington State as a whole given our legislature's statement of intent to "assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide" RCW 10.99.010?

2. Is this case appropriate for review by this Court pursuant to RAP 13.4(b)(1) as the Court of Appeals' dismissal of this case for mootness is in conflict with this Court's decision in *Danny v. Laidlaw Transit Services*, 165 Wn. 2d 200, 198 P.3d 128 (2008), which holds that domestic violence impacts victims' "friends and families, neighbors, employers, landlords, law enforcement, the courts,

the health care system, and Washington state and society as a whole"?

IV. INTRODUCTION

Domestic Violence Protection Orders (DVPOs) often expire one year from the date of issuance. To complete an appeal in the Court of Appeals typically takes 12-18 months or longer from filing of the Notice of Appeal to issuance of a decision. While many other states have carved out an exception to the mootness doctrine when a DVPO is at issue, based on the public's interest in providing clear guidance to the courts and law enforcement regarding DVPOs, Washington has only addressed the issue in unpublished opinions that cannot provide guidance to courts and law enforcement. This Court should grant review to establish Washington's approach to DVPO appeals where the underlying DVPO has expired.

Similarly, in recognition of the real-world impact of a DVPO on both parties, many states hold that the collateral consequences flowing from a DVPO are significant enough to save DVPO appeals from mootness. Yet when faced with an expired DVPO, the appellate court here failed to acknowledge the wider societal consequences of DVPOs and the appellate decisions governing them. In this case the Court of Appeals refused to acknowledge collateral consequences in the parties' concurrent parenting plan modification proceeding because "[t]he parenting plan action is not before us." Slip Op. at 2.

In *Danny*, this Court staked out the clear position that domestic violence is not a private matter, but a "community problem" that is disruptive to "community life," thus it is a matter of serious public interest. *Danny*, 165 Wn.2d at 208-

09. This Court's position in *Danny* is in direct conflict with the Court of Appeals' holding in this case. This Court should grant review to bring the Court of Appeals into harmony with the policy and holding of *Danny*.

V. STATEMENT OF THE CASE

The undisputed facts of this case demonstrate that Crystal committed domestic violence during a child exchange. David and Crystal are the parents of three children, A.T., L.T., and G.T. CP 1-2. On February 2, 2022 David petitioned for an Order for Protection based on Crystal assaulting him a week prior, on January 26, 2022. CP 6. David explained that on that date, Crystal was dropping off the children to begin his residential time with them and L.T., who has special needs, was scared/activated due to a "Slender Man" show he saw while at

Crystal's house and did not want to get out of the car. CP 6.

Crystal and David spoke with L.T. for about 15 or 20 minutes, then David went back inside his house for about 10 minutes to allow Crystal to talk with L.T. alone. CP 102. David came back out to the car and spoke with L.T. again for another 15 or 20 minutes. CP 102. Eventually David picked L.T. up in a bear hug to carry him out of the car and into his house, as he had done dozens of times before. CP 6, 103.

While David was doing this, Crystal started driving forward a short way and L.T. banged his head. CP 6. David continued to carry L.T. into his house while Crystal exited her car and ran after

David, grabbing him physically and screaming and yelling at him. RP 9;[1] CP 6, 103.

Crystal admitted to Officer Dixson that when David and L.T. entered David's home, Crystal followed them into David's home, without permission. CP 95. She continued to "grab at" David and pull on L.T., then began kicking David. CP 6, 103, 114. David's wife Julia told Crystal to leave immediately and Crystal refused, then shoved Julia. CP 6, 103, 471. Crystal admitted to Officer Dixson that Julia had told her to leave the house. CP 95.

Crystal then managed to pull L.T. away from David; she left David's house and L.T. ran down the street. Julia then called 911. David told 911 that Crystal had kicked him. CP 415. When police

[1] The Verbatim Report of Proceedings consists of one volume, numbered sequentially, and is referred to herein as "1 RP" followed by the page number.

arrived, David and Crystal's oldest child, A.T., was the first one to give a statement to the police and she stated that she saw Crystal kick David. CP 120. Later, after having spent time with Crystal, during an interview with A.T. at Crystal's home, A.T. recanted her statement that she saw Crystal kick David, though she reaffirmed that Crystal entered David's house. CP 119, 120, 414.

Crystal admitted to Officer Dixson that she had shoved David. CP 468. When she was interviewed at the scene, Officer Dixon summarized Crystal's statement to her in her report as: "David went inside to see if LT would calm down, then he came back outside to try and get him out of the car. Again, David tried to forcibly take him out of the vehicle, so Crystal tried to intervene by shoving him and then David shoved her back." CP 468. [Emphasis added.]

Crystal was charged with assault by the City of Issaquah and the case was dismissed six months after the incident. CP 419.

David's domestic violence petition described past assaults by Crystal in 2017 and 2018. CP 6. These did not form the basis for Commissioner Lack's Order for Protection. RP 35.

At the hearing before Commissioner Lack, Crystal argued that if she had kicked David and shoved Julia, it was permissible because it was in "defense of another" – L.T. RP 15. Crystal's defense relied primarily on her story that David is an abuser, she was protecting L.T. from David, and David's account of the January 26 assault has inconsistencies. RP 16-17.

Commissioner Lack found that Crystal entered David's home without permission, and there was insufficient evidence to support Crystal's

argument that defense of L.T. was necessary. RP 36. Commissioner Lack noted that David's bruising is consistent with what was provided in his testimony, concluding "I do believe that Ms. Skov committed an assault by a preponderance of the evidence." RP 37.

Crystal moved to reconsider based in part on the Issaquah Prosecuting Attorney's Motion to Dismiss Without Prejudice the criminal charges against her. CP 413. Commissioner Lack denied her motion, finding that the evidentiary rules and standard of proof are different in a criminal matter than in a civil protection order proceeding, so dismissal of criminal charges does not bear on whether Crystal committed domestic violence. CP 414.

Commissioner Lack noted that while testimony of children is disfavored, A.T. consistently

maintained that Crystal entered David's home, was told to leave, and did not do so. CP 119, 414. Commissioner Lack found that when Crystal entered David's home without permission and did not leave when told to do so, she was trespassing and that alone forms the basis for a protection order. CP 414.

Commissioner Lack specifically rejected Crystal's argument that her physical interference was required to protect L.T. CP 414. Further, Commissioner Lack found that David told 911 that Crystal had kicked him. CP 415.

Additionally, Commissioner Lack found that Crystal's own police interview transcript indicates that she was screaming and escalating the situation. CP 96, 415. The Commissioner found that this supported the conclusion that Crystal committed a physical assault against David. CP 415.

Commissioner Lack found that it is clear that Crystal committed three acts of domestic violence on January 26, 2022, any one of which independently provides a basis to enter a protection order. CP 415.

- Crystal entered David's home without permission
- Crystal yelled and screamed and was verbally abusive to David at the exchange
- Crystal kicked David

CP 416. As a result, Commissioner Lack denied Crystal's motion for reconsideration. CP 416.

Crystal then moved to reconsider before Judge David Keenan, repeating her arguments on reconsideration. CP 417. Without granting oral argument, Judge Keenan found "having reviewed the briefs and records of the case, the Court concludes that Respondent did not commit acts of domestic violence against Petitioner." CP 460.

Similarly, Judge Keenan's Order Terminating Protection Order simply checked boxes and provided no findings. CP 447. Judge Keenan did not provide any reasons, written or oral, for his ruling.

On appeal, David argued that, as explained above, Crystal had admitted conduct comprising domestic violence. The Court of Appeals, Division I found that the DVPO would have expired by the time the Court would rule, thus the Court could "not provide effective relief to Thacker." The Court of Appeals further held that David's argument that the existence of a DVPO would be highly relevant to the parties' ongoing parenting modification case was without merit because "[t]he parenting plan action is not before us." Finally, the Court of Appeals held that since parenting plan actions control over DVPO actions, the existence of a DVPO would have any

significant consequence in the parties' parenting plan modification.

David pointed out that the trial court has a duty to look at current circumstances of both parents when fashioning a parenting plan. *In re Marriage of Ambrose*, 67 Wn. App. 103, 834 P.2d 101 (1992). In a parenting plan modification action, which is the action David points to as suffering an adverse collateral consequence if this case is dismissed as moot, the legislature requires that the trial court evaluate "[t]he child's present environment…" RCW 26.09.260(2)(c).

Yet here, the superior court's finding of domestic violence by David stemmed from conduct allegedly taking place between 7 and 25 years ago, not conduct relating to the children's "present environment." David explained that the Court of Appeals' dismissal of the DVPO appeal had the

collateral consequence of depriving the trial court of relevant information about the children's "present environment" that it is statutorily required to consider.

Additionally, in supplemental briefing and briefing on reconsideration, David informed the Court that while Washington does not have caselaw specifically addressing this situation, Oregon's more developed body of law regarding mootness, DVPOs and collateral consequences points away from mootness. In particular, *State v. S.T.S.*, 236 Or. App. 646, 654, 238 P.3d 53 (2010) holds that the collateral consequence of social stigma and its adverse effect on employment opportunities saves a DVPO case from mootness.

VI. ARGUMENT

The appellate courts' treatment of expired DVPO orders on appeal is a matter of substantial public interest; dismissing such cases for mootness is contrary to the policies recognized by this Court in *Danny v. Laidlaw*.

The purpose and legislative intent of our domestic violence legislation is stated in RCW 10.99.010: "The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide." [Emphasis added.]

Similarly, "[t]he legislature finds that there are a wide range of consequences to domestic violence, including deaths, injuries, hospitalizations, homelessness, employment problems, property damage, and lifelong physical and psychological

impacts on victims and their children. These impacts also affect victims' friends and families, neighbors, employers, landlords, law enforcement, the courts, the health care system, and Washington state and society as a whole." SSB 5631, Laws of 2015, Chapter 275; RCW 70.123.010.

The *Prosecutors' Domestic Violence Handbook*, 2017 Revision, states that "[t]he late King County Prosecutor Norm Maleng called domestic violence the most serious criminal justice issue communities face and called domestic violence a 'crime against the human spirit.'" *Id.* at 5.

This Court has acknowledged that "[t]he legislature's recent actions show ... this state's clear and forceful public policy against domestic violence...." *Danny v. Laidlaw Transit Servs*, 165 Wn. 2d 200, 220. This Court further recognized that "'[t]he collective costs to the community for

domestic violence include the systematic destruction of individuals and their families, lost lives, lost productivity, and increased health care.' We find ample evidence of a clear public policy in the legislature's pervasive findings and enactments over the past 30 years." LAWS OF 1991, ch. 301, § 1; *Danny v. Laidlaw Transit Servs*, 165 Wn. 2d 200, 215.

In order to fulfill the Legislature's mandate to "assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide" (RCW 10.99.010), domestic violence victims must be able to access appellate review if the protection afforded in the lower courts proves inadequate. Here, David obtained a DVPO which was then wrongly revised. His protection from abuse was removed by the lower court, and our appellate court refused to hear

his appeal on the merits because the term of the DVPO had expired. In stark terms, rather than providing "maximum protection from abuse", David was deprived by our appellate court of any protection at all from abuse.

Because appellate cases typically are not decided until 12 to 18 months after a Notice of Appeal is filed, the majority of one-year DVPOs evade review for mootness. Rather than providing the maximum protection from abuse available under the law, this treatment of expired DVPO appeals places the protection of our courts out of reach of abuse victims. Further, dismissals for mootness are almost always unpublished, rendering it even less likely that they will be successfully petitioned to this Court, placing relief even further out of reach.

This Court has repeatedly held that issues around domestic violence and victims' access to the courts are a matter of public interest. *See State v. Dejarlais*, 136 Wn.2d 939, 944-45, 969 P.2d 90 (1998) (finding a clear statement of public policy to prevent domestic violence and holding that reconciliation may not void a domestic violence protection order); *In re Disciplinary Proceeding Against Turco*, 137 Wn.2d 227, 253 n. 7, 970 P.2d 731 (1999) (holding that "[t]he Legislature has established a clear public policy with respect to the importance of societal sensitivity to domestic violence and its consequences"); *see also State v. Dejarlais*, 88 Wn. App. 297, 304, 944 P.2d 1110 (1997) ("The Legislature has clearly indicated that there is a public interest in domestic violence protection orders."), *aff'd*, 136 Wn.2d 939, 969 P.2d

90 (1998). *Danny v. Laidlaw Transit Servs*, 165 Wn.2d 200, 217.

Given this Court's repeated recognition of the public's interest in the consequences of domestic violence and the importance of victims' access to protection orders, this Court should grant review.

Other jurisdictions decide appeals from expired domestic violence orders on the merits because of the collateral consequences that could result from the judgment. A partial review of other jurisdictions reveals a trend to permit review of expired DVPOs.

In *Bell v. Battaglia*, the District Court of Appeal of Florida's Second District noted that "[a]ppellate courts routinely consider appeals from expired domestic violence injunctions due to the collateral consequences that can flow therefrom." Id. at 1097-98. *Bell* determined that "it makes little

sense to require an appellant to prognosticate about what potential collateral effects may result in the future. To require such a showing—when relevant consequences could just as easily manifest themselves in the future as exist at the time of an order to show cause—would be a vain exercise that causes unwarranted delay and wastes the resources of the court, the parties, and their advocates. Worse, it deprives a litigant of the opportunity to rectify an erroneous adverse judgment, the future collateral consequences of which she may be unable to predict at the time she is required to respond." *Bell v. Battaglia*, 332 So.3d 1094, 1097-98 (Fla. 2d DCA 2022).

The Connecticut Supreme Court determined that collateral consequences rescued a case from mootness, noting that the danger of harm to the appellant in an expired DVPO case was "particularly

significant" given that a restraining order for domestic violence requires a showing of continuous threat of violence." *Putman v. Kennedy*, 900 A.2d 1256, 1258 (2006).

Oregon holds in *State v. S.T.S.* that the collateral consequence of social stigma and its adverse effect on employment opportunities saves a DVPO case from mootness. 236 Or. App. at 654. The Hawai'i Supreme Court explicitly adopts the collateral consequences exception to the mootness doctrine in a case involving a domestic violence temporary restraining order (TRO), where there was a reasonable possibility that issuance of the TRO would trigger prejudicial collateral consequences, i.e., cause harm to the defendant father's reputation. *Hamilton ex rel. Lethem v. Lethem*, 119 Hawai'i 1, 4, 9-10, 193 P.3d 839, 842, 847-48 (2008).

Maryland holds that the expiration of a protective order does not render the matter moot because a finding of abuse under the Domestic Violence Act-FL § 4-501 et seq.- carries collateral consequences and social stigmas. *Piper v. Layman*, 125 Md.App. 745, 753 (1999).

Illinois holds that the issues relating to an order of protection can be reviewable after the expiration of the order under the public interest exception to the mootness doctrine. *Whitten v. Whitten*, 292 Ill. App. 3d 780, 784 (1997). Whitten holds that the Domestic Violence Act addresses a "grave societal problem" and thus involves matters of public interest. The purposes of the Domestic Violence Act can only be accomplished if the courts properly apply the statutory requirements. Under *In re A Minor,* 127 Ill. 2d 247, 257 (1989), the question is public in nature, it is desirable to obtain an

authoritative determination for the purpose of guiding public officers, and it is likely that the question will generally recur.

North Carolina has determined that "appeals from expired domestic violence protective orders are not moot because of the stigma that is likely to attach to a person judicially determined to have committed domestic abuse." *Smith v. Smith*, 145 N.C. App. 434, 437, 549 S.E.2d 912, 914 (2001).

In California, the issuance of a domestic violence restraining order can affect future child custody decisions involving these parties even after its expiration, thus an appeal of an expired domestic violence restraining order is not moot. (See Fam. Code, § 3044, subd. (a) [rebuttable presumption against awarding custody to a parent found to have committed domestic violence within the preceding five years].)

A commentator has noted the evolving nature of the issue presented in this petition. "As the collateral consequences of court judgments gain increased recognition, courts in many states have modified traditional doctrinal approaches to mootness in order to give due regard to these repercussions. Missouri has not formally joined these states, yet a survey of recent mootness analyses within the state indicates that courts are seeking to allow for consideration of such consequences in spite of the doctrinal constraints. This tension has been most evident in appellate review of expired orders of protection for domestic violence, and the result has been vast inconsistency both in how courts approach the issue and how it is ultimately resolved." Zachary C. Howenstine, *Conforming Doctrine to Practice: Making for*

Collateral Consequences in the Missouri Mootness Analysis, 73 Mo. L. Rev. at 1 (2008).

VII. CONCLUSION

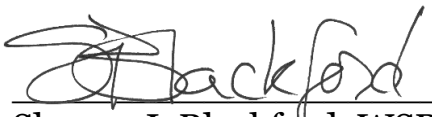
This Court should grant review to clarify Washington law on appellate review of expired DVPOs and to bring Washington practice into accord with the legislature's strongly expressed intent to "assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide." RCW 10.99.010.

//////////////////////////

I certify that this pleading is in 14 point Georgia font and contains 3,433 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

DATED this 30th day of November, 2023.

Respectfully submitted:



Sharon J. Blackford, WSBA 25331
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CERTIFICATION OF SERVICE

I, Peter Chadwick, certify that on the 30th day of November, 2023, I caused a true and correct copy of **Petition For Review** to be served on:

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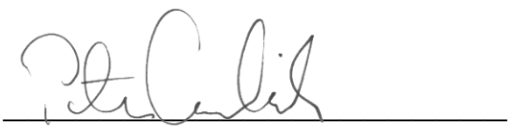
VIA the Court of Appeals eFiling Portal

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

SIGNED in Shoreline, Washington, this 30th day of November, 2023.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DAVID THACKER, Appellant, v. CRYSTAL SKOV, Respondent.	No. 84415-6-I DIVISION ONE UNPUBLISHED OPINION

FELDMAN, J. — David Thacker appeals the superior court's orders granting revision and terminating a domestic violence protection order (DVPO), which he had obtained from a commissioner, protecting him from his ex-wife, Crystal Skov. Resolution of this appeal has been delayed substantially because Thacker repeatedly requested additional time to file his designation of clerk's papers and appellate briefs. Consequently, absent revision and termination, the DVPO would have expired by now. Because reversal of the revision and termination orders would not provide effective relief to Thacker, we dismiss the appeal as moot. *Blackmon v. Blackmon*, 155 Wn. App. 715, 719, 230 P.3d 233 (2010) ("A case is moot if a court can no longer provide effective relief."). We likewise deny as moot Skov's agreed motion to strike Thacker's financial declaration.

Thacker claims the appeal is not moot because the superior court's revision and termination orders "will have significant collateral consequences in the parties' current parenting plan action." The parenting plan action is not before us. Further, Washington law is clear that the parenting plan action controls over the DVPO action. *Rodriguez v. Zavala*, 188 Wn.2d 586, 595 n.4, 398 P.3d 1071 (2017) ("provisions in [DVPOs] are subject to parenting plans"). For these reasons, we reject Thacker's collateral consequences argument.

Lastly, both parties request attorney fees on appeal. Under RAP 18.1, we may award attorney fees and costs to a party who prevails on appeal. *Aiken v. Aiken*, 187 Wn.2d 491, 506, 387 P.3d 680 (2017). To be a prevailing party, a party "must prevail on the merits." *Ryan v. Dep't Social & Health Services,* 171 Wn. App. 454, 476, 287 P.3d 629 (2012). Because we do not reach the merits in this appeal, we decline to award either party attorney fees on appeal.

Feldman, J.

WE CONCUR:

Díaz, J.

Mann, J.