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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

ESTATE OF GARY FILION, P.R. LESTER FILION, Plaintiff/Respondent, vs. JULIE JOHNSON, et al., Defendant/Appellant.	CASE # 69830-3-I [King County Superior Court Case # 07-2-06353-6 SEA] APPELLANT'S REPLY BRIEF

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Reply to Filion's Introduction:

On its face, Filion's complaint establishes Johnson's unqualified immunity under RCW 4.24.510. The gravamen of Filion's original complaint (CP 3 – 4), amended complaint (CP 5 – 6), and second amended complaint (CP 11 - 12) against Johnson is that she called the police, reported a restraining order violation, and that the police either arrested Filion or attempted to arrest him, and that he was prosecuted for the restraining order violation. Filion's claims for civil damages in this case are based solely upon Johnson's August 1, 2006 communication with the 911 call center and the responding deputy sheriff on a matter of concern to law enforcement. (CP 4, lines 4 – 5, lines 9 – 10; CP 6, lines 4 – 6, lines 10 – 11; CP 12, lines 4 – 5, lines 9 - 10)

The December 19, 2012 Stipulated Judgment recites the facts which establish Johnson's immune under RCW 4.24.510:

> On August 1, 2006, before 4pm (and therefore before Mr. Filion's arrival at the Shoreline Property) he had been informed by real estate agent Pat Dornay during a telephone call that Julie Johnson would likely still be present at the Shoreline Property at 4pm (as she had not yet moved out).
>
> Ultimately, a short time after Mr. Filion arrived at 4pm, August 1, 2006 at the Shoreline residence with a moving truck and movers, he was told by a third party (who had come out of, or from, the Shoreline Residence) that Julie Johnson was present in the home and that she had called the police. Mr. Filion then left with his parents (whom he had also asked to be present at 4pm at the Shoreline Residence) without collecting his personal property.

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> Defendant Johnson did in fact call 911. In response to the call, an officer from the King County Sheriff's office came to the Shoreline Property and took a statement from Defendant Johnson. Thereafter, Mr. Filion was later charged with violation of the restraining order. After Mr. Filion hired a criminal defense attorney, the charges were dismissed. Plaintiff Filion then filed a civil action for malicious prosecution.
>
> (CP 450 line 23 to CP 451 line 10)

Filion's proposed Jury Instruction No. 1 filed on December 18, 2012, expressly states that his claims against Johnson are based on her communication with law enforcement. (CP 817 – 818)

Johnson has not needlessly prolonged this litigation:

Filion's brief begins by accusing Johnson of intransigently prolonging this litigation. But the record shows that Filion's efforts to end this litigation were conditioned upon his avoidance of liability for Johnson's expenses, reasonable attorney fees, and statutory damages under RCW 4.24.510. Filion's brief opens with this disingenuous statement:

> "Despite Filion's efforts to end this lawsuit by voluntarily dismissing his Complaint against his ex-wife Julie Johnson (the Defendant/Appellant), and then, after his death, his Estate's efforts obtain agreement to voluntarily dismiss the case, Julie Johnson will simply not let go – all in an effort to obtain sanctions and attorney's fees against Filion's Estate under Washington's anti-SLAPP statute, RCW 4.24.500 *et seq.*' (Filion's brief at page 1)

RCW 4.24.500 explicitly recognizes that

> "the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or

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> local agencies" and that "[t]he cost of defending against such suits can be severely burdensome."

Filion changed lawyers on April 14, 2009 (CP 647 – 648) and filed his first motion for dismissal on May 11, 2009. (CP 675 – 692, 693 – 697, 698 - 712) (See Johnson's response at CP 698 – 712) in reaction to Johnson's REQUEST FOR TRIAL DE NOVO which she filed and served on April 2, 2009. (CP 119 – 123; CP 665 – 669). Filion sought dismissal free of any obligation for Johnson's expenses, reasonable attorney fees, and statutory damages under RCW 4.24.510.

An order denying dismissal was entered on May 19, 2009 by the Honorable James A. Doerty, Judge, King County Superior Court. (CP 119 – 121 at CP 120 lines 21 – 22).

Filion filed his 2nd motion for dismissal at 4:15 p.m. on May 19, 2009 (CP 113 – 118), the very same day on which the order denying his 1st motion for dismissal (CP 675 – 692) was entered. Filion refiled his 2nd motion for dismissal on June 12, 2009. (CP 124 – 118, 756 – 772, 773 – 780, 798 - 803) (See Johnson's response at CP 781 – 795). An order granting Filion's 2nd motion for dismissal was signed on July 9, 2009 by a different judge, Honorable Timothy Bradshaw, King County Superior Court. (CP 130 – 131)

The Court of Appeals, Division I, reversed the dismissal on

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November 22, 2010, in appeal no. 63978-1-I. (CP 135 – 139; CP 804 – 808) Filion's Motion for Reconsideration of the reversal was denied on February 2, 2011 by the Order Granting Substitution and Denying Reconsideration at Appendix p. 11.

Filion filed a Petition for Review by the Supreme Court, which was denied. (See July 16, 2011 Order Denying Petition for Review at Appendix p.12)

Filion's arguments below, on the prior appeal no. 63978-1-I, and on the present appeal, are marginal at best and in Johnson's view so unsupported by well-established law as to be frivolous, notwithstanding the trial court's agreement with his arguments. Filion has urged the same position throughout this case in the trial court and on appeal, apparently with the aim of oppressively wearing Johnson down to the point that she abandons her defense of immunity under RCW 4.24.510. Filion's efforts to "voluntarily" dismiss were conditioned upon Johnson abandoning her request for expenses, reasonable attorney fees, and statutory damages under RCW 4.24.510.

Johnson is aggrieved by the Arbitration Award:

Filion's argument that Johnson is not aggrieved by the arbitration award and, therefore, has no standing to file the Request for Trial de Novo or to pursue the present appeal has no merit. Although the arbitration

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award denies Filion's claims based on Johnson's establishment of statutory immunity under RCW 4.24.510, the award also denies Johnson's request for recovery of her expenses, reasonable attorney fees, and statutory damages. (CP 110 -111)

The term "aggrieved party" in MAR 7.1(a) is analogous to the term's usage in RAP 3.1. "Only an aggrieved party may seek review by the appellate court. RAP 3.1. Russell v. Maas, 166 Wn.App. 885, 891, 272 P.3d 273 (2012).

"When the word "aggrieved" appears in a statute, it refers to " 'a denial of some personal or property right, legal or equitable, or the imposition upon a party of a burden or obligation.' " Sheets v. Benevolent & Protective Order of Keglers, 34 Wash.2d 851, 854-55, 210 P.2d 690 (1949) (quoting 4 C.J.S. Appeal and Error § 173b(1). State v. G.A.H., 133 Wn.App. 567, 137 Pd.D. 66 (2006). The denial of expenses, reasonable attorney fees, and statutory damages under RCW 4.24.510 is a denial of "some personal or property right, legal or equitable, or the imposition upon a party of a burden or obligation" and, thus, Johnson is aggrieved by the award.

Filion did not appeal the trial court's decision that Johnson is an aggrieved party:

Filion's response (CP 731 – 742) to Johnson's April 14, 2009

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motion for an order that the court clerk file her Request for Trial de Novo (CP 649 – 674) asserts as follows that Johnson is not an aggrieved party:

> "In this case, the arbitrator's award clearly states, "Finding for Defendant Johnson." (See Decl. of Noah Davis and Exhibit C attached thereto). Since the arbitrator found in favor of Defendant Johnson, the only aggrieved party in this case is Plaintiff Filion and he has not filed a request for trial de novo. In short, because Defendant Johnson was the prevailing party under the arbitration award and because defendant Johnson had filed no counterclaims, she is not an aggrieved party and therefore she has no standing to appeal the award under MAR 7.1 or RCW 7.06.050. Defendant Johnson's status as a non-aggrieved party makes her request for a trial de novo a nullity under Wiley and also prevents her from meeting the strict compliance with MAR 7.1(a) requirement set by the Court in *Nevers*."
> (CP 738)

Johnson replied on May 18, 2009. (CP 743 – 751 at CP 746)

The trial court's May 19, 2009 order finds that Johnson's Request for Trial de Novo was timely and requires the court clerk to file it. CP 765 – 767) It thus necessarily establishes that Johnson is an aggrieved party. Filion has not appealed that order.

This court's unpublished opinion on appeal no. 63978-1-I stating that "The parties other contentions are without merit" (CP 136) is a rejection of Filion's assertion that Johnson is not an aggrieved party which Filion also argued in his brief on that appeal.,

Contrary to Filion's argument, Johnson did request an award of her expenses, reasonable attorney fees, and statutory damages under RCW

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4.24.510 in the trial court. See Johnson's October 24, 2008 CR 12(b)(6) motion to dismiss (CP 36 – 63); her February 6, 2009 brief for the arbitration hearing. (CP 704 – 708); her responses to Filion's several CR 41 motions to dismiss filed in April, May, and June 2009; her October 2012 Motion for Summary Judgment; and the December 19, 2012, Stipulated Judgment.

RCW 4.24.510 is not in derogation of but, rather, codifies the common law; Malicious prosecution claims are not an exception to immunity under RCW 4.24.510;

Like the defendants in Dang v. Ehredt, 95 Wn.App. 670, 977 P.2d 29, 36 (1999), Johnson did nothing more than call 911 and speak with and sign the short statement hand-written by the responding deputy sheriff. (CP 226 – 230)

Dang v. Ehredt, supra, explains:

> Under common law, liability will not be imposed on a defendant who does nothing more than detail his or her version of the facts to a police officer and ask the officer for assistance, thus leaving it to the officer to determine the appropriate response. [citing McCord v. Tielsch, 14 Wash.App. 564, 566, 544 P.2d 56 (1975) which cites Parker v. Murphy, 47 Wash. 558, 92 P. 371 (1907)]
>
> The rule of nonliability has been codified:
>
> A person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency. A person prevailing upon the defense provided for in this section shall be entitled to recover

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> costs and reasonable attorneys' fees incurred in establishing the defense. [Footnote cites prior version of RCW 4.24.510]
>
> The statute was enacted in recognition of the fact that information provided by citizens concerning potential wrongdoing is vital to effective law enforcement, and that the threat of a civil action for damages could be a deterrent to citizens who wish to report such information to law enforcement agencies.

Johnson had no communication with law enforcement or the prosecuting authority after August 1, 2006. Filion does not assert and there is no evidence ortherwise.

Filion states at page 7 of his responding brief that:

> "Johnson did not report the exception to the restraining order nor the agreement by counsel to the date and time for the property exchange nor the fact that she was no longer to be residing at the home."

But there is no exception to the restraining order. No exception is stated within the four corners of the decree. If Filion truly believed there was an exception, why did he flee rather than remain and wait to give his version of the facts to the responding deputy sheriff? It is not known why the prosecutor dismissed the criminal case. The criminal case docket states only that the dismissal is "in the interests of justice" (CP 236).

The parties' dissolution decree is not ambiguous, inconsistent, or contradictory:

Filion's brief asserts that this is a case of *"recently divorced parties fighting over the language of their divorce decree"* and of Johnson using *"the anti-SLAPP statute as a malicious sword"*. In so stating, he displays

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confusion concerning the issues and a stubborn refusal to recognize that RCW 4.24.510's grant of unqualified immunity applies to Johnson's August 1, 2006 communication with law enforcement.

Filion argues the parties' dissolution decree is ambiguous and subject to interpretation because it states that

> "9. The following items shall be picked up by the Husband:
>
> [list of the particular items omitted] (CP 485)
>
> "10. The table leaves that belonged to the wife's father that will be returned to the Wife at the time that the Husband picks up his personal property from the Wife." (CP 485)

and that the parties are restrained and prohibited from

> "going onto the grounds of or entering the home, work place or school of the other party"
>
> "coming within or knowingly remaining within 500 feet of the home, work place or school of the other party, or the day care or school of these children listed above."
>
> (CP 217 l. 18 to CP 218 l. 16)

This combination of language is not unusual in decrees for dissolution of marriage. What is unusual in this case is Filion's strained interpretation of the decree. Most family law lawyers understand that both provisions must be given effect, particularly the restraining provisions which protect a party from prohibited acts of the other party. The decree does not state that Filion may retrieve his personal property in a manner that violates the restraining order. The decree contains no language that

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suspends the restraining order such that Filion may come within 500 feet or upon the premises of Johnson's home to pick up his personal property. It is absurd to construe the decree as protecting the parties and at the same time as exposing them to the danger from which it purports to protect them.

Violations of Restraining Orders are matters of public concern:

Filion argues that violations of restraining orders in family law cases are not matters of public concern but, instead, are purely private matters. Even if that were true, Johnson would still be immune under RCW 4.24.510 from civil liability for Filion's claims. RCW 4.24.510 does not limit the scope of its immunity protection to matters of public concern.

Contrary to Filion's argument, such violations are indeed matters of public concern. RCW 26.50.110 provides that violation of the dissolution decree's restraining order, which is entered under RCW 26.09.050, is a criminal offense and requires arrest of the violator:

> (1)(a) Whenever an order is granted under* * * chapter * * * 26.09 RCW * * * and the respondent or person to be restrained knows of the order, **a violation of any of the following provisions of the order is a gross misdemeanor**, except as provided in subsections (4) and (5) of this section:
>
> **(ii) A provision excluding the person from a residence, workplace, school, or day care;**
>
> **(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;**

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(2) **A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under * * * chapter 26.09 * * * RCW, * * * that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order.** Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) **A violation of an order issued under** this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, **26.09**, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, **shall also constitute contempt of court, and is subject to the penalties prescribed by law.**

[Emphasis in **bold** added]

RCW 10.99.010 states the Legislature's policy regarding protection from domestic violence. Appendix p. 7

RCW 10.99.020(5)(r) provides that violation of a restraining order is a crime of domestic violence.

(5) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

(r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);

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Washington's strong public policy of protecting victims of domestic violence from their abusers is discussed at length in Danny v. Laidlaw Transit Services, Inc., 193 P.3d 128, 165 Wn.2d 200 (2008):

> ¶ 11 Legislative Expression of Public Policy. As early as 1979, the legislature recognized that domestic violence is a community problem that accounts for a "significant percentage" of violent crimes in the nation and is disruptive to [165 Wn.2d 209] "personal and community life." RCW 70.123.010. * * *
>
> [165 Wn.2d 212]
>
> ¶ 17 In addition to facilitating domestic violence victims in their escape, the legislature has also emphasized the importance of prosecuting domestic violence perpetrators. The legislature has emphasized that crime victims have a "civic and moral duty "to" fully and voluntarily cooperate with law enforcement and prosecutorial agencies." RCW 7.69.010 (emphasis added). In 1996, the legislature recognized the difficulty domestic violence victims face when reporting abuse and declared it a gross misdemeanor for a domestic violence perpetrator to interfere in the victim's reporting of the abuse. RCW 9A.36.150. The legislature has also made violation of a protection order under the DVPA a crime. RCW 26.50.110. The legislature has treated domestic violence as a serious crime against society, imposed harsh penalties, and denied earned early release time for domestic violence offenders. RCW 9.94A.728. In an effort to prevent perpetrators from engaging in further violence, the legislature has created domestic violence treatment programs for abusers and provided [193 P.3d 134] courts with the ability to order a perpetrator into treatment. RCW 26.50.150.
>
> [165 Wn.2d 213]
>
> ¶ 19 The legislature's consistent pronouncements over the last 30 years evince a clear public policy to prevent domestic violence - a policy the legislature has sought to further by taking clear, concrete actions to encourage domestic violence victims to end abuse, leave their abusers, protect their children, and cooperate with law enforcement and prosecution efforts to hold the abuser accountable. The legislature has created means for domestic

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> violence victims to obtain civil and criminal protection from abuse, established shelters and funded social and legal services aimed at helping victims leave their abusers, established treatment programs for batterers, created an address confidentiality system to ensure the safety of victims, and guaranteed protection to victims exercising their duty to cooperate with law enforcement. The legislature's creation of means to prevent, escape, and end abuse is indicative of its overall policy of preventing domestic violence. This public policy is even more pronounced when a parent seeks, with the aid of law enforcement and child protective services, to protect his or her children from abuse.[3]
>
> [165 Wn.2d 214]
>
> ¶ 20 The legislature's articulated policy is " truly public" in nature. Sedlacek, 145 Wash.2d at 389, 36 P.3d 1014. The legislature has repeatedly and unequivocally declared that domestic violence is an immense problem that impacts entire communities. [citations omitted]

Filion cites Banks v. Nordstrom, Inc., 57 Wash.App. 251, 264 787 P.2d 953, *review denied,* 115 Wash.2d 1008, 797 P.2d 511 (1990) for the proposition that "malicious prosecution cases are not matters of public concern". The case does not stand for that proposition.

Persons protected by a judicial restraining order have no authority to suspend the restraining order's protections.

The three-year restraining order which had been in effect for only 61 days when Filion violated it on August 1, 2006 (CP 211 – 213) was entered for the protection of Johnson and her children. [See ¶ 2.8 (CP 16), ¶ 2.9 (CP 19), and ¶ 2.13 (CP 20) of the dissolution court's Findings of Fact and Conclusions of Law.]

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Filion argues, without reference to any supporting authority, that correspondence between the parties' lawyers suspended the restraining order such that Filion was allowed on August 1, 2006 to personally come within 500 feet of and upon the grounds of Johnson's home to pick up some personal property. But a lawyer has no authority to waive or suspend the protection established by a superior court restraining order. A a protected party's consent a defense to a criminal charge based on violation of a restraining order. If the protected party's consent is not a defense, it follows that the protected party's lawyer's consent is likewise not a defense. That said, neither Johnson nor her dissolution lawyer Mark Olson gave Filion permission to come within 500 feet or upon the grounds of Johnson's home in violation of the restraining order.

Johnson did not waive or suspend the protection of the restraining order. She told the parties' realtor if he comes to her home she will call the police. The realtor told Filion that Johnson said "He better not come" to her home that afternoon. (Declaration of realtor Pat Dornay, CP 198 – 202)

The case of State v. Sanchez, 166 Wn.App. 304, 271 P.3d 264 (2012), confirms Washington's strong policy to "protect and empower victims against their abusers" and holds that a protected party cannot waive the provisions of a restraining order:

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> ¶ 11 Washington has a strong public policy against domestic violence and has enacted chapter 26.50 RCW to protect and empower victims against their abusers. Laws of 1992, ch. 111, § 1; State v. Dejarlais, 136 Wash.2d 939, 944, 969 P.2d 90 (1998). To that end, our courts have recognized that a protected party cannot waive the provisions of a domestic violence protection order or otherwise consent to contact in the face of a contrary court order. Dejarlais, 136 Wash.2d at 943-946, 969 P.2d 90. Modifications of a protection order are a matter for the trial court; modifications of the public policy are for the legislature. Id. at 945-946, 969 P.2d 90. (166 Wn.App. 309)

Gary Filion knew he was restrained from coming within 500 feet or upon the grounds of Johnson's home. That Filion's lawyer, Johnson's lawyer, or both might have misconstrued the dissolution decree does not render Filion's August 1, 2006 entry upon the grounds of Johnson's home lawful, or Johnson's August 1, 2006 call to 911 and police report as made in bad faith.

The RCW 4.24.510 defense of immunity and its provision for recovery of expenses, reasonable attorney fees, and statutory damages is not a counterclaim:

The defense of immunity under RCW 4.24.510 cannot stand on its own. Absent a claim such as Fillion's, the RCW 4.24.510 immunity defense and right to recover expenses, reasonable attorney fees, and statutory damages do not arise. Thus, it is a defense rather than a counterclaim.

Filion's brief agrees, stating at p. 23, "[a]n affirmative defense is a 'matter asserted by defendant which, assuming the complaint to be true,

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constitutes a defense to it (citation omitted)" and "An affirmative defense undermines the validity of a claim, while a counterclaim is a separate and distinct claim for relief. (citation omitted)."

Filion cites no authority holding that the RCW 4.24.510 immunity defense is a counterclaim. Washington case law consistently holds that the RCW 4.24.510 immunity claim is an affirmative defense. See Doe v. Gonzaga Univ., 99 Wn.App. 338, 351, 992 P.2d 545 (2000) (reasoning that defendant's immunity claim under former RCW 4.24.510 was an affirmative defense that could not be raised for the first time on appeal), aff'd in part, rev'd in part on other grounds, 143 Wn.2d 687, 24 P.3d 390 (2001), cert. granted in part, 534 U.S. 1103, rev'd in part, 536 U.S. 273, 122 S.Ct. 2268, 153 L.Ed.2d 309 (2002); Port of Longview v. Int'l Raw Materials, Ltd., 96 Wn.App. 431, 435-36, 979 P.2d 917 (1999) (also reasoning that an immunity claim under former RCW 4.24.510 is an affirmative defense).

Johnson did not waive her RCW 4.24.510 immunity defense:

As shown, Johnson has consistently asserted her defense of immunity under RCW 4.24.510. She raised the defense on October 24, 2008 in her CR 12(b)(6) motion to dismiss (CP 36 – 63), filed more than four years before the December 19, 2012 trial de novo and well before the

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2009 mandatory arbitration hearing. The immunity defense is the basis on which the arbitrator denied Filion's claims. (See Arbitration Award at CP 110 -111 and Johnson's brief for the mandatory arbitration hearing at CP 704 – 708). The defense was asserted in response to Filion's April, May, and June 2009 motions for voluntary dismissal, was addressed by both parties in their briefing on the prior appeal no. 63978-1-I, and in Filion's Petition for Review, Supreme Court case no. 83733-4. It is the basis for Johnson's October 2012 motion for summary judgment (CP 173 – 185). The December 19, 2012 Stipulated Judgment recognizes it as her defense to Filion's claims (CP 443 – 449)

Yet, Filion persists in arguing that Johnson waived the immunity defense because it is not recited in a document labeled "Answer". Filion's waiver argument is based on a strict reading of CR 8(c). Our Supreme Court explicitly endorsed a flexible reading of CR 8(c) in Mahoney v. Tingley, 85 Wn.2d 95, 529 P.2d 1068 (1975), where the court explained that the underlying policy of CR 8(c) is to avoid surprise, and "federal courts have determined that the affirmative defense requirement is not absolute. Where a failure to plead a defense affirmatively does not affect the substantial rights of the parties, the noncompliance will be considered harmless." Mahoney, 85 Wn.2d at 100. Therefore, the court reasoned, "objection to a failure to comply with the rule is waived where there is

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written and oral argument to the court without objection on the legal issues raised in connection with the defense." Mahoney, 85 Wn.2d at 100.

In Bernsen v. Big Bend Electric Cooperative, Inc., 68 Wn.App. 427, 842 P.2d 1047 (1993), this court affirmed the trial court's decision that the defense of failure to mitigate had not been waived by the defendant even though it was not raised in the pleadings. Bernsen, 68 Wn.App. at 434 ("[I]f the substantial rights of a party have not been affected, noncompliance is considered harmless and the defense is not waived."). Likewise, in Hogan v. Sacred Heart Medical Center, 101 Wn.App. 43, 2 P.3d 968 (2000), the court concluded that the defendant had not waived its ability to assert release as an affirmative defense, despite failing to raise it in the pleadings. Hogan, 101 Wn.App. at 54-55. Because the plaintiff demonstrated neither surprise nor prejudice from the defendant's delay in asserting the defense, the court reasoned that "the failure to affirmatively plead release did not affect substantial rights of [the plaintiff]." Hogan, 101 Wn.App. at 55.

Johnson was not dilatory in raising the defense. Her assertion of the defense is consistent with her prior behavior. Filion was not ambushed by the defense but, rather, has briefed it multiple times throughout this case. Johnson did not misdirect Filion away from the immunity defense at any time or in any way whatsoever. She asserted the defense before any

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significant expenditure of time and money in connection with Filion's claims against her. Up to the point in time when Johnson raised the immunity defense, most of the activity in this case had between Filion and defendant Mark Olson, Johnson's dissolution lawyer, on his efforts to blame Olson for Filion's misadventure on August 1, 2006.

Johnson' defense is based on RCW 4.24.510; RCW 4.24.525 does not apply to this case:

Filion's lawsuit against Johnson was filed February 21, 2007, more than three years before enactment of RCW 4.24.525 in 2010 (Appendix pp. 3 – 6). RCW 4.24.525 does not purport to change the scope of RCW 4.24.510. Whereas RCW 4.24.510 grants unqualified immunity against claims for civil liability which are based on communications with government agencies, such as in the present case, RCW 4.24.525 applies to "any claim, however characterized, that is based on an action involving public participation and petition". RCW 4.24.525(2)

Filion's argument that the immunity protection under RCW 4.24.510 only applies when a communication to a government agency involves a substantive issue of some public interest or social significance was addressed in the case of Lowe v. Rowe, 173 Wn.App. 253, 294 P.3rd 6 (2012) where the court explained that:

> ¶ 16 The 2002 legislation did have its own intent section, which clearly identified SLAPP actions as the target of the

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> expanded statute, and identified those cases in terms of actions taken against individuals who had communicated " on a substantive issue of some public interest." LAWS OF 2002, ch. 232, § 1. Citing this language, **Mr. Lowe argues that the dispute between the two men did not present an issue of public interest and, therefore, the anti-SLAPP statutes do not reach this case.**
>
> ¶ 17 This argument ignores both the stated intent codified in RCW 4.24.500 to protect individuals and the operative language of subsection 510 that an individual who communicates to local government is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization.
>
> The language of the section broadly grants immunity for civil liability for communications to an agency concerning a matter " reasonably of concern to that agency." **There is no doubt that enforcement of the state criminal laws is a matter of concern for the Columbia County Sheriff's Office**. Mr. Rowe's communication, asking that the agency notify Mr. Lowe he was no longer welcome on the Rowe property, was clearly a matter within the concerns of that agency.
>
> (Emphasis in **bold** added)

Disagreement regarding the facts underlying a report to a government agency does not affect immunity under RCW 4.24.510:

There is no requirement that a report or communication to a government agency be in good faith in order for the person who makes the report to be immune from civil liability under RCW 4.24.510. A finding of bad faith only affects the availability of statutory damages. Bailey v. State, 147 Wn. App. 251, 262, 191 P.3d 1285 (2008). RCW 4.24.510 only grants immunity from civil liability. Those who make false reports remain subject to non-civil penalties.

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Sundry comments regarding Filion's brief:

Page 34 of Filion's brief misquotes the case of Right-Price Recreation v. Connells Prairie, 46 P.3d 789, 146 Wn.2d 370 (2002) as follows:

> Thus, in *Right-Price Recreation v. Connells Prairie,* the Washington Supreme Court made clear that the Anti-SLAPP statute **only "applies** when a communication to influence a governmental action results 'in (a) a civil complaint or counterclaim (b) filed against nongovernment individuals or organizations . . . or **(c) a substantive issue of some public interest or social significance**.' " 146 Wn.2d 370, 382, 46 P.3d. 789 (2002)
>
> (citations omitted but emphasis added)

The segment within quotation marks is not found in the *Right-Price* opinion. Rather, the *Right-Price* opinion states:

> The citizens' groups characterize Right-Price's suit against them as a Strategic Lawsuit Against Public Participation (SLAPP). A SLAPP **primarily involves** "communications made to influence a governmental action or outcome." George W. Pring & Penelope Canan, SLAPPs: Getting Sued for Speaking Out 8 (1996). The communications result "in (a) a civil complaint or counterclaim (b) filed against nongovernment individuals or organizations ... or (c) a substantive issue of some public interest or social significance." *Id.* at 8-9.
>
> (emphasis in **bold** added)

The *Right-Price* decision does not limit claims of immunity under RCW 4.24.510 to claims involving "a substantive issue of some public interest or social significance".

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Footnote 33 on page 44 of Filion's brief inaccurately extracts one sentence out of context from the case of Segaline v. State Dept. of Labor and Industries, 238 P.3d 1107, 169 Wn.2d 467, 474 (2010) as follows:

> See Segaline v. State Dept. of Labor and Industries , 238 P.3d 1107, 169 Wn.2d 467, 474 (Wash. 2010) ("The State's assertion that our decision there opened the floodgates for any entity to claim immunity under RCW 4.24.510 ignores the intent of the statute, which is to protect free speech rights.")

The issue in *Segaline* was whether "a government agency that reports information to another government agency is a 'person' under RCW 4.24.510". The court held it is not. *Segaline* does not stand for the proposition that immunity under RCW 4.24.510 is limited to protection of public speech.

Filion incorrectly cites the case of Valdez-Zontek v. Eastmont School Dist., 154 Wn.App. 147, 167, 225 P.3d 339, (2010) for the proposition that "false statements to third parties have been found to invalidate the immunity of 4.24.500 et seq and quotes the case as follows:

> "[T]he fact that district officials 'broadcast' false statements to numerous individuals deprived district of immunity under RCW 4.24.510"
> (Page 44 of Filion's brief)

That proposition is not found in the *Valdez-Zontek* decision. Ms Valdez-Zontek prevailed on a defamation claim against school district which had raised several defenses, including the defense of immunity

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under RCW 4.24.510. The immunity statute was found inapplicable not because the false statements had been broadcast to third parties, but because school district employees had "broadcast non-privileged and provably false statements about the alleged affair to numerous individuals" who are not government employees. The defendants' defamatory communications to non-government individuals were not privileged. The claims based on those non-privileged communications were not subject to the defense of immunity under RCW 4.24.510. The opinion states that

> "The purpose of the statute [RCW 4.24.510] is to protect citizens who provide information to government agencies by providing a defense for retaliatory lawsuits. A citizen prevailing on the defense is entitled to attorney fees and a statutory penalty. *Eugster v. The City of Spokane,* 139 Wash.App. 21, 26-27, 156 P.3d 912 (2007). The statute protects solely communications of reasonable concern to the agency. *Gontmakher v. The City of Bellevue,* 120 Wash.App. 365, 372, 85 P.3d 926 (2004). Thus, the statute does not provide immunity for other acts that are not based upon the communications. *Id.*
>
> [154 Wn.App. at 167]

Filion's reliance on the memorandum decision on motion to strike in the U.S. District Court, Eastern District of Washington, case of Fielder v. Sterling Park Homeowners Association, No. C11-1688, W.D. WA (Seattle, December 10, 2012) (Order on Motion to Dismiss and Motion for Attorney Fees, Costs, and Statutory Penalty, Ricardo S. Martinez, Judge)

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is misplaced. It deals with a special motion to strike under RCW 4.24.525 and not with a claim of immunity under RCW 4.24.510 such as Johnson's.

The case of Reid v. Dalton, 124 Wn.App. 133, 100 P.3d 349 (2004) is inapposite. In Reid, plaintiff asserted immunity from defendant's claim for costs and attorney fees under the frivolous litigation statute, RCW 4.84.185, citing RCW 4.24.510 as authority on the theory that "every lawsuit ever filed is immune because a lawsuit is a complaint filed with the court (a government agency) on a matter of interest to the court (a lawsuit)." (124 Wn.App at 126) The court rejected plaintiff's argument.

EXPENSES, ATTORNEY FEES, STATUTORY DAMAGES

Johnson should be awarded her expenses and reasonable attorney fees in the trial court and on appeal and $10,000 statutory damages, all under RCW 4.24.510. See RAP 18.1; RCW 4.24.510; Lowe v. Rowe. 173 Wn. App. 253, 264, 294 P.3d 6 (2012).

CONCLUSION

Filion concedes that his lawsuit against Johnson in this case is based on Johnson's August 1, 2006 privileged communications with law enforcement.

That Johnson's immunity defense is not stated in a document labeled "Answer" is of no significance. Filion addressed Johnson's immunity defense numerous times throughout this case. Filion was not

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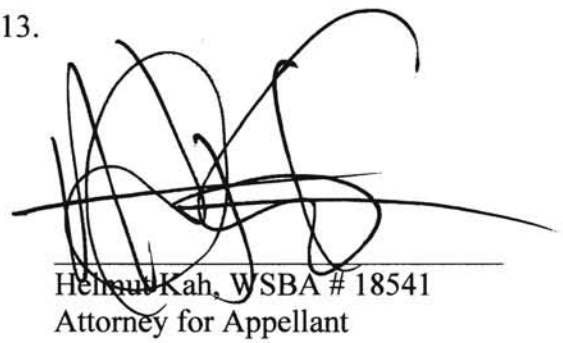
ambushed and cannot honestly claim either surprise or prejudice due to the time when or the manner in which Johnson asserted the defense.

The operative statute, RCW 4.24.510 is not, as Filion asserts, in derogation of the common law but, rather, codifies the common law.

Because Johnson is immune from Filion's claims, his complaint and claims against Johnson should be dismissed, the judgment for attorney fees and expenses in favor of Filion against Johnson should be reversed, and Johnson should be awarded her expenses, reasonable attorney fees, and statutory damages under RCW 4.24.510.

The court should grant the relief requested by Johnson's opening brief.

DATED: December 8, 2013.



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INDEX TO APPENDIX

APPENDIX

(Appellant's Reply Brief)

RCW 4.24.500
Good faith communication to government agency — Legislative findings — Purpose.

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

[1989 c 234 § 1.]

APPENDIX RCW 4.24.500 (1989 c 234 § 1)

RCW 4.24.510

Communication to government agency or self-regulatory organization — Immunity from civil liability.

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

[2002 c 232 § 2; 1999 c 54 § 1; 1989 c 234 § 2.]

Notes:

Intent -- 2002 c 232: "Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

Although Washington state adopted the first modern anti-SLAPP law in 1989, that law has, in practice, failed to set forth clear rules for early dismissal review. Since that time, the United States supreme court has made it clear that, as long as the petitioning is aimed at procuring favorable government action, result, product, or outcome, it is protected and the case should be dismissed. Chapter 232, Laws of 2002 amends Washington law to bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making." [2002 c 232 § 1.]

RCW 4.24.525

Public participation lawsuits — Special motion to strike claim — Damages, costs, attorneys' fees, other relief — Definitions.

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place

open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

[2010 c 118 § 2.]

Notes:

Findings -- Purpose -- 2010 c 118: "(1) The legislature finds and declares that:

(a) It is concerned about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;

(b) Such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;

(c) The costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;

(d) It is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process; and

(e) An expedited judicial review would avoid the potential for abuse in these cases.

(2) The purposes of this act are to:

(a) Strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(b) Establish an efficient, uniform, and comprehensive method for speedy adjudication of strategic lawsuits against public participation; and

(c) Provide for attorneys' fees, costs, and additional relief where appropriate." [2010 c 118 § 1.]

Application -- Construction -- 2010 c 118: "This act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts." [2010 c 118 § 3.]

Short title -- 2010 c 118: "This act may be cited as the Washington Act Limiting Strategic Lawsuits Against Public Participation." [2010 c 118 § 4.]

RCW 10.99.010
Purpose — Intent.

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. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

[1979 ex.s. c 105 § 1.]

RCW 26.09.050

Decrees — Contents — Restraining orders — Enforcement — Notice of termination or modification of restraining order.

(1) In entering a decree of dissolution of marriage or domestic partnership, legal separation, or declaration of invalidity, the court shall determine the marital or domestic partnership status of the parties, make provision for a parenting plan for any minor child of the marriage or domestic partnership, make provision for the support of any child of the marriage or domestic partnership entitled to support, consider or approve provision for the maintenance of either spouse or either domestic partner, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders including the provisions contained in RCW 9.41.800, make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW, and make provision for the change of name of any party.

(2) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(3) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section, in addition to the law enforcement information sheet or proof of service of the order, be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(4) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

[2008 c 6 § 1008; 2000 c 119 § 6; 1995 c 93 § 2; 1994 sp.s. c 7 § 451; 1989 c 375 § 29; 1987 c 460 § 5; 1973 1st ex.s. c 157 § 5.]

Notes:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Application -- 2000 c 119: See note following RCW 26.50.021.

Finding -- Intent -- Severability -- 1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date -- 1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

RCW 26.50.110
Violation of order — Penalties.

(1)(a) Whenever an order is granted under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an

order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

[2013 c 84 § 31. Prior: 2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

Notes:

Finding -- Intent -- 2009 c 439: See note following RCW 26.50.060.

Findings -- 2009 c 288: See note following RCW 9.94A.637.

Finding -- Intent -- 2007 c 173: "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2007 c 173 § 1.]

Short title -- 2006 c 138: See RCW 7.90.900.

Application -- 2000 c 119: See note following RCW 26.50.021.

Severability -- 1995 c 246: See note following RCW 26.50.010.

Finding -- 1991 c 301: See note following RCW 10.99.020.

Violation of order protecting vulnerable adult: RCW 74.34.145.

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

LESTER E. FILION, as Personal Representative of the Estate of GARY FILION, Respondent, v. JULIE JOHNSON, Appellant.	)	No. 63978-1-I ORDER GRANTING SUBSTITUTION AND DENYING MOTION FOR RECONSIDERATION

Lester Filion, as personal representative of the Estate of Gary Filion, filed a motion seeking substitution for respondent Gary Filion, who died August 29, 2010. The court has considered the motion and has determined it should be granted in accordance with RAP 3.2.

Respondent Lester Filion also filed a motion for reconsideration of the court's opinion entered November 22, 2010. The court has considered the motion and determined it should be denied.

Now therefore, it is hereby

ORDERED that the motion for substitution is granted. It is further

ORDERED that the motion for reconsideration is denied.

Done this 2nd day of February, 2011.

FOR THE PANEL:

Schindler, J

THE SUPREME COURT OF WASHINGTON

LESTER E. FILION, as Personal Representative of the ESTATE OF GARY FILION,

Petitioner,

v.

JULIE JOHNSON,

Respondent.

NO. 85733-4

ORDER

C/A NO. 63978-1-I

E/M

FILED
SUPREME COURT
STATE OF WASHINGTON
2011 JUL 12 P 2:43
BY RONALD R. CARPENTER
CLERK

Department I of the Court, composed of Chief Justice Madsen and Justices C. Johnson, Chambers, Fairhurst and Stephens, considered at its July 12, 2011, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 12th day of July, 2011.

For the Court

Madsen, C.J.
CHIEF JUSTICE