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SUPREME COURT  
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No. 90635-1

**Court of Supreme Court  
Of the State of Washington**

In re the marriage of:

ROBERT E. UNDERWOOD

**Appellant**

and

KARA L. UNDERWOOD

**Respondent.**

RESPONDENT - KARA L.  
UNDERWOOD'S REPLY  
TO PETITIONER ROBERT E.  
UNDERWOOD'S PETITION  
FOR REVIEW

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COMES NOW, the Respondent, KARA L.  
UNDERWOOD, and hereby submits her Response to the  
Petition for Review to the Supreme Court filed by the  
Appellant, Robert E. Underwood.

For the record, Kara Underwood objects to the  
request of Robert Underwood. The court did not err in  
holding that a permanent restraining order should be  
entered.

Whether to grant, modify, or terminate a protection order is a matter of judicial discretion. The statute authorizing permanent protection orders provides: "[I]f ... the court finds that the respondent is likely to resume acts of violence[,] ...the court *may* either grant relief for a fixed period or enter a permanent order of protection." RCW 26.50.060(2) In the Matter of the Marriage of Robin M. Freeman, 169 Wn.2d 664, 671, 239 P.3d 557 (2010).

Washington's Domestic Violence Prevention Act (DVPA) defines domestic violence as "[p]hysical harm, bodily injury, assault, or *the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members....*" RCW 26.50.010(1). The legislature has articulated a clear public policy to protect domestic violence victims. See ch. 26.50 RCW; see also ch. 10.99 RCW (domestic violence official response act); 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. Freeman at 671-72

The legislature has authorized courts to make protection orders permanent in some circumstances: [I]f ... the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection. Freeman at 672.

Permanent protection orders can be permanent based on "past abuse and present fear" alone. Barber v. Barber, 136 Wash.App. 512, 150 P.3d 124 (2007), and Spence v. Kaminski, 103 Wash.App. 325, 12 P.3d 1030 (2000).

There was an ample material for the court to enter into a permanent restraining order in this instance.

Mr. Underwood's Petition for Review focuses on the court's use of the term "financial and emotional exploitation". However, Mr. Underwood fails to incorporate

into his motion or even consider the full opinion of the court of appeals which contains in part the following on this topic:

1. Here, the record supports a finding that Robert engaged in domestic violence because he inflicted "fear of imminent physical harm, bodily injury or assault." RCW 26.50.010(1). (Court of Appeals Decision, page 18.)
2. Kara testified that after Robert filed for divorce in 2006, he ran his truck into her moving van when she was trying to move her things out of the house and he threatened to kill a man, and she had a restraining order entered against him because of the incident. (Court of Appeals Decision, page 18.)
3. Kara also testified that during their marriage Robert "made me pay for a mistake that I made in the marriage, and that included an all night interrogation." RP at 208. (Court of Appeals Decision, page 18.)
4. In response to a question about whether Robert was an intimidating person, Kara responded, "When someone is posturing over you, spitting in your face, keeping you up all night long, throwing t[h]ings through windows, has weapons, is a ranger trained in the military, yes, he's a threatening person, intimidating person." RP at 207 -08. (Court of Appeals Decision, page 18.)
5. In 2012, Robert was charged with felony harassment for allegedly hiring a hit man to kill Kara. Kara testified that after hearing that Robert had threatened to have her killed, she feared for her safety and "absolutely was in fear of my life." RP at 202 -03. (Court of Appeals Decision, page 19.)

6. Kara testified that after hearing that Robert had threatened to have her killed, she feared for her safety and "absolutely was in fear of my life." RP at 202-03. (Court of Appeals Decision, page 19.)
7. She further testified, "I had my concerns about what [Robert] was going to do when he came here, based on his threats to me via email, saying I would pay. That when he got there, things were going to be different." RP at 203. (Court of Appeals Decision, page 19.)
8. For two years during the parties' separation, Robert sent threatening communications to Kara. (Court of Appeals Decision, page 19.)
9. Kara testified that "[a]fter two years of hearing that I was going to pay when he returned, he was returning the following month and I was very concerned, still am, about his state of mind and what he will do. RP at 206. (Court of Appeals Decision, page 19.)
10. There is ample evidence in the record that Robert had engaged in a history of domestic violence by inflicting fear of imminent physical harm, bodily injury, or assault. RCW 26.50.010(1). (Court of Appeals Decision, page 19.)
11. Here, the trial court's restriction on residential time due to domestic violence was a limiting factor under RCW 26.09.191(2)(a), not RCW 26.09.191(3). And here, unlike in *Katare I*, there is no ambiguity in the trial court's ruling. (Court of Appeals Decision, page 20.)
12. The trial court found that Robert had a history of domestic violence. That finding is supported by the record. (Court of Appeals Decision, page 20.)

13. We affirm the trial court's finding of domestic violence based on evidence that Robert inflicted fear of imminent physical harm, bodily injury, or assault. (Court of Appeals Decision, page 20.)

There was even more information available to the court of appeals for their opinion to include the following:

In the Spring of 2012 Kara's work building went into lock down after Robert was released from jail and was confined to JBLM after being charged with Felony Harassment as MES was worried about Kara's safety and that of her fellow employees. (RP 97, 234) Kara was later laid off as of March 23, 2012 in a letter stating that MES received credible information that her life and the lives of her children were in immediate danger. (RP 97CP Exhibit 11)

Robert immediately made his displeasure known publically to the ruling of the judge in his Facebook posting that provided in part as follows:

"You know the country has gone to s\*\*\* when a cheating wife can just move the kids away from their father and the G\*\* D\*\* court system only gives the father 3 weeks in the summer, even when he lives far way (sic). I don't know what I am fighting for? To have some liberal judge screw me over. Way to go KARA, you are a b\*\*\*\*."

(CP Cover Sheet for Facebook Posting by Mr. Underwood filed. 6/18/2010)

By trial, Kara and the girls had been in counseling for 2 ½ years to deal with Robert's onslaught of harassment and emotional abuse via Facebook, text, phone, email and in person. (RP 159)

Robert engages in mind games with the girls and attempts to manipulate them. (RP 159-161) The girls were humiliated by their father's behavior and they firmly asked Robert to discontinue his character assassination of all involved, much of which Robert and his sister have publically waged in open forums such as Facebook. (RP 162, CP Exhibit 99) The girls blocked their father from their Facebook accounts at varying times. (RP 163, 181-182) They asked Robert to stop his inappropriate behavior. (CP 133)

James (Guardian ad Litem) describes Robert as being obsessed with this divorce action which has caused the girls to become very frustrated with Robert because he would not stop attempting to enlist them as a team member, would not stop denigrating their mother in emails,

Facebook, phone calls, face to face, and they thought that Robert became a different person, one that they were apprehensive about. (RP 394) James described being called out to a hotel to visit the girls in September 2010 after Robert frightened them by crying, pounding on the dashboard, and ranting about their mother trying to take them away from him. (RP 396) The girls were frightened and wanted to end the visit. (RP 396)

By trial the girls were requesting a break from Robert, from his drama, his harassment, his threats, his continued bullying and manipulation. (RP 702)

Communication with Robert to Kara varied from being aggressive and threatening to apologetic. (RP 184) Kara and the girls were in counseling for 2 ½ years to deal with Robert's onslaught of harassment and emotional abuse via Facebook, text, phone, email and in person. (RP 159, 162) Kara was getting several threatening emails or contacts from Robert on a daily basis, and eventually had to stop responding. (RP 184-185) By way of example, Robert sent Kara an email dated December 20, 2010 which included the following statements (CP 100, page 18):

- You should be afraid, as you are and as you have the DuPont, Tacoma folks believing you are.
- You might even be afraid I will snap and come after you.
- There is no rock big enough for you to hide under when I get there.
- You can run but you can't hide
- You will then pay the price you deserve.

The frequency of the correspondence did not lessen when Robert was in Afghanistan. (RP 185) Kara would get text, emails and phone calls from Robert frequently, even in the middle of the night. (RP 190, CP 132-141, CP Exhibit 100) Robert made threats about what he was going to do when he arrived in Pierce County, that Kara would pay, the gloves were coming off, that he would air her dirty laundry by contact local news media, among other things. (RP 203, 206-207, CP Exhibit 100, page 6, 12-19)

Kara describes Robert as a threatening person as during the marriage he would posture over her, spit in her face, keep her up all night, throw things out the window, he kept her in a home in the country that was isolated, he had weapons, was a ranger trained in the military and was an intimidating person. (RP 208) Further, during the marriage her email accounts, phone, bank accounts, everything, was monitored by Robert. (RP 208-210) Kara detailed when

Robert would go into a rage it involved yelling, screaming, cussing and stomping around, at times with the girls present. (RP 210-211) The girls were present for approximately 50% of these rage filled tantrums. (RP 211)

Robert was known to keep Kara up all night and interrogate her. (RP 208-209) One time prior to the filing of the dissolution Robert read Kara's journals and proceeded to berate her and called her a number of highly inappropriate names while interrogating her. (RP 209) At this time they were living in an isolated area and Kara was forced to seek aid by running to the neighbor's house. (RP 209) Robert monitored Kara's every move; her email accounts, her phones, every dollar she spent, every moment of her day was controlled by Robert. (RP 208) Robert even received email notifications when she spent money. (RP 208)

Kara relayed to the GAL early in the case that she was a victim of domestic violence in the marriage as it related to issues involving anger, manipulation, control, and rage, as well as some physical violence. (RP 442) While the dissolution was pending, Robert posted on his

Facebook page a strange yet threatening article about a man that got 30 years in prison for killing his child and strangling his wife. (CP Exhibit 98, page 10)

In relation to Robert's charges for felony harassment in March 2012, Robert's commanding officer, Colonel Reed, provided information in a police report that indicated he was concerned that Robert was about ready to snap. (RP 674-675) Colonel Reed also included in the report that he "believes that Underwood very well may lash out against the courts and anyone in authority in this situation." (RP 674-675)

Even back in 2006 when Kara filed for divorce the first time, Robert broke into her house and he ran his truck into the moving van that she had hired to move her from the family home. (RP 207) Robert threatened to kill a mutual friend involved and ended up having a restraining order obtained against him. (RP 207)

There was ample evidence to support the entry of a permanent restraining order in this case as outlined by the statute. Clearly the record demonstrated by clear, cogent

and convincing evidence that a permanent restraining order was necessary in order to protect Ms. Underwood.

The ruling of the trial court and court of appeals should stand. There is no reason to remand this issue. The record is replete with sufficient information to justify the ruling of the court on this issue.

Finally, this Petition was filed at the beginning of my two week vacation out of the office, leaving me little time to respond by the deadline. Rather than request a continuance, an abbreviated response is being submitted now.

DATED this 4<sup>TH</sup> day of September, 2014

FAUBION, REEDER, FRALEY  
& COOK, P.S.



REBECCA K. REEDER, WSBA #25079  
Of Attorneys for KARA UNDERWOOD  
5920 100<sup>TH</sup> Street SW #25  
Lakewood, WA 98499

**DECLARATION OF SERVICE**

THE UNDERSIGNED, hereby declares:

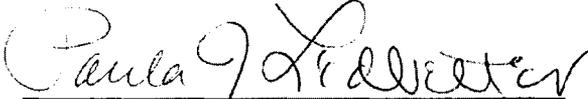
That I am a citizen of the United States, over the age of 18 years, not a party to the above-entitled action, competent to be a witness therein and was at all times herein mentioned.

That on September 4th, 2014, I arranged for service of the foregoing Reply to Petition for Review to the Supreme Court via email and to the parties of this action as follows:

Emily J. Tsai Attorney for Appellant 2101 – 4 <sup>th</sup> Ave #1560 Seattle, WA 98121	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> US Mail <input type="checkbox"/> Overnight mail
James Cathcart PO Box 64697 University Place, WA 98464-0697	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Overnight mail

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

Signed at Lakewood, Washington this 4th day of September, 2014.

  
PAULA J. LEDBETTER



**OFFICE RECEPTIONIST, CLERK**

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**To:** Paula Ledbetter  
**Subject:** RE: Underwood

Rec'd 9/4/14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Paula Ledbetter [mailto:pledbetter@fjr-law.com]  
**Sent:** Thursday, September 04, 2014 9:22 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Paula Ledbetter; Rebecca Reeder  
**Subject:** Underwood

Attached please find for filing is:

Respondent – Kara L. Underwood’s Reply to Petitioner Robert E. Underwood’s Petition for Review

Being filed by attorney Rebecca K. Reeder, WSBA #25079.  
5920 – 100<sup>th</sup> St SW #25  
Lakewood, WA 98499  
Phone: 253-581-0660  
Fax: 253-581-0895  
Ms Reeder’s email: [rreeder@fjr-law.com](mailto:rreeder@fjr-law.com)

Should you require anything further, please advise and thank you.

9/4/14

FAUBION, REEDER, FRALEY & COOK P.S.

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