

70909-7

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CASE NO.70909-7

THE COURT OF APPEALS DIVISION ONE OF THE
STATE OF WASHINGTON

IN RE THE GUARDIANSHIP OF
DOROTHY MAY KERTIS
AN INCAPACITATED PERSON

BRIEF OF APPELLANT TERRY L. KERTIS

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INTRODUCTION

Appellant Terry L. Kertis is the son of Dorothy May Kertis. Appellee is Dianna Parish, the guardian of the estate and person of Dorothy May Kertis. Dorothy suffers from dementia. She is Terry's mother and she resides at Fidalgo Care Center and Rosario Assisted Living (hereafter "Fidalgo"). On May 27, 2010, the guardian had a temporary restraining order served on Terry, restraining him from having any contact with his mother. At the time, Terry's attorney had withdrawn and he could not afford another attorney. In June of 2010 and 2011, without alleging or proving domestic violence between Terry and Dorothy, the guardian obtained Domestic Violence Protection orders that continued the restraints. Finally, on June 11, 2013, after obtaining legal representation and filing his Motion to Terminate Restraining Orders Regarding Dorothy May Kertis (hereafter "Motion to Terminate"), Terry visited with his mother for one hour, supervised by Fidalgo. He has been visiting Dorothy for one hour every Tuesday since. Despite having protected liberty interests in their relationship, Dorothy and Terry were prevented from seeing or communicating with each other for more than three years. Terry

wants a relationship with Dorothy without restraints and conditions and, therefore, has appealed the denial of his Motion to Terminate.

ASSIGNMENTS OF ERROR

The trial court abused its discretion by finding that Terry had not established by a preponderance of the evidence that termination of the Domestic Violence Protect Order (hereafter DVPO*) is warranted.

Issues:

- Did the guardian follow the procedures for obtaining a DVPO?
- Were the guardian's petitions for DVPO's in 2010 and 2011 deficient in failing to allege or prove by competent evidence Domestic Violence between Terry and Dorothy?
- Did the 2010 and 2011 DVPO's violate Terry's constitutional rights to due process and equal protection of the laws
- Was the trial court bound by the 2010 and 2011 DVPO's as final judgments?
- Was the guardian's failure to allege and prove by competent evidence Domestic Violence between Terry and Dorothy a factor that the trial court should have considered?

-Are the Domestic Violence Protection Orders void for lack of subject matter jurisdiction?

-Did the trial court have a duty to increase visits between Terry and Dorothy?

STATEMENT OF THE CASE

Since the death of Terry's father in 2005 until her death July 11, 2009, Terry's sister Sandi Ross had been managing Dorothy's affairs. Cp 33. Sandi had the durable power of attorney for Dorothy and if she could not act, Terry was named as her successor. Cp. 33.

Sandi died on July 11, 2009. Cp. 33. On July 30, 2009, a guardianship petition was filed in Skagit County Superior Court by Dianna Parish requesting appointment as the guardian for Dorothy. Cp. 33-34 Terry opposed Ms. Parish and petitioned to be appointed guardian. Cp 138. Ms. Parish is Sandi's daughter and Dorothy's granddaughter. Cp. 34 Terry received the petition on August 8, 2009 and hired an attorney because of his concerns about Ms. Parish's actions. Cp 34 Between August 8, 2009 and the entry of a temporary restraining order on May 27, 2010, Terry tried to get information from Ms. Parrish, from her brother Richard Ross and from Sandi's husband, Gary Ross about many matters

including personal property that he had left in Dorothy's house; personal property that he was accused of stealing and about assets that he believes Dorothy owns but have not been accounted for. Cp 34. He was frustrated by the lack of information he received. Cp. 34.

On May 27, 2010, the guardian filed a Motion/Declaration for ExParte Restraining Order and Order to Show Cause (hereafter "Motion for Exparte Restraining Order") in Skagit County Superior Court. Cp 121-123. This Motion requested that Terry be restrained from disturbing the peace of Dorothy and Gary Ross, who is Guardian's father, and from entering on the grounds of Fidalgo Care Center and Rosario Assisted Living (hereafter "Fidalgo") and the home of Gary Ross.

The Honorable John Meyer, sitting on the Ex Parte Calendar signed the Ex Parte Restraining Order on May 27, 2010. Cp 124-27. That order restrained Terry from disturbing the peace of Dorothy and from coming on the Fidalgo grounds ; from disturbing the peace of Gary Ross and coming on the grounds of his home and from coming on the grounds of his mother's home. Cp 125. These restraints were accompanied by language that violation is a criminal offense under RCW 26.50 and will subject the violator to

arrest citing RCW 26.09.060. Cr 125. The order required Terry to appear on June 11, 2010 and show cause why the restraints "should not be continued in full force and effect pending final determination of this action." Cp 124.

The guardian's counsel served the Ex Parte Restraining Order on Terry at 4:45 pm on May 27, 2010. Cp 154. Later that evening, Terry walked to Fidalgo and tried to visit his mother. He was arrested by the Anacortes Police Department and charged by the city of Anacortes with violating the temporary restraining order. Cp. 154.

From May 27, 2010 until June 11, 2013, Terry did not see or visit his mother.

Judge Meyer also presided at the nine minute long show cause hearing on June 11, 2010. Rp(6-11-2010) p 3,8. The guardian's counsel informed the court of Terry's arrest on May 27th, 2010 for coming to Fidalgo and of "harassing calls to family members including Gary Ross." Rp(6-11-2010) p. 4. Judge Meyer denied counsel's request that Dianna Parish and Richard Ross be added to the order. Rp(6-11-2010) p.5. Terry informed the court that he had contacted lawyers to represent him but had been unsuccessful due to lack of money. Rp (6-11-2010) p.5. He then

repeated his concerns about theft of his parents' assets. Rp(6-11-2010) p.7 The court advised him to find a lawyer for his concerns and asked if he had any documentation in response to the restraining order. Rp(6-11-2010) p.8. Terry answered that he didn't that he "just showed up here." Rp(6-11-2010) p.8

In response, the Court signed the "Restraining Order" proposed by the guardian. That order contains findings that Terry "has engaged in conduct that places his mother at risk of psychological and physical harm" and that "he has engaged in conduct that constitutes harassment of Gary Ross, including threatening telephone calls". Cp 143. It restrained Terry from disturbing the peace of Dorothy and from coming on the Fidalgo grounds; from disturbing the peace of Gary Ross and coming on the grounds of his home and from coming on the grounds of Dorothy's home. Cp 143. Again, these restraints were accompanied by language that violation is a criminal offense under RCW 26.50 and will subject the violator to arrest citing RCW 26.09.060. Cp 143. The order expired on June 11, 2010, the same date it was signed. Cp.144. Counsel for the guardian went to the Ex-parte department and had another judge sign an order with the same terms but an expiration date of June 11, 2011. Cp. 147

On June 23, 2010 Terry went to Fidalgo to ask about the class that he had taken there and to visit other patients besides his mother that he knew. Cp. 155. He was arrested for violating the restraining order entered on June 11, 2010. Cp. 155.

In early August, 2010, he was arrested for throwing a rock through the windshield of the guardian's parked car. Cp. 156

After the "Restraining Order" was entered in Skagit County, the guardian and her brother Richard Ross obtained DVPOs in King County. These terminate in 2035. Cp. 34. Terry was not present when either of these orders were entered. He lives on acreage 3 1/2 miles or so from Anacortes, and has no car. Transportation is very difficult for him. Cp. 34-35

In late 2010 and early 2011, warrants were issued for violations of these restraining orders and Skagit County restraining orders, mostly because Terry used poor judgment and continued to make telephone calls to Ms. Parris and Mr. Ross. Cp. 35. He was arrested in early January 2011 on a warrant for telephone harassment and spent 1 month in jail. He learned about other warrants, and turned himself in to the authorities in Skagit and King counties because of the difficulties he had with transportation, with understanding the various legal proceedings and with keeping

everything straight. Cp 35. In all he spent more than 100 days in jail awaiting disposition on violations of the orders. He was finally released from the Regional Justice Center in King County on April 25, 2011 because of a plea agreement, which he has fulfilled. Cp 35.

On June 2, 2011, the Guardian filed a motion to shorten time and a Petition for Renewal and Modification of Protection Order requesting that the court "renew and modify restraining orders entered June 11, 2010 by making them more specific as to the restraints and by making them effective for more than one year. Cp 9. It was accompanied by a declaration signed by both the guardian and the standby guardian, which focused on Terry's actions toward them for which he spent more than 100 days in jail. CP 10-18.

At the hearing Terry submitted an 11 page handwritten statement written by his wife who stated "we have no money for an attorney and are doing the best we could." Rp (6/10/2011) p3. He admitted making a mistake in calling Dianna Parish and Rick Parish (Cp 156) and the frustration he felt in having his mother taken away from him. "I've lost the last year and that is the longest I have ever

endured. These are her last years and I should have a right to see her.” Cp 148.

At the hearing Terry asked for more time. Instead, the Honorable Susan Cook recessed to read his statement. Rp(6-10-2011) p. 5-8. After the recess, the guardian's counsel pointed out that the guardian and Richard Ross have 25 year protective orders against Terry and that the care facility asked to keep Terry from coming onto the premises. Rp(.6/10/2011) p 9 Terry responded “I have a loving relationship with my mother...I would not harm my mother. You can leave that restraining order against the Ross family” Rp (6/10/2011).p. 9-10 Counsel for the guardian asked for the order to last 5 years and Terry pointed out that Dorothy may not live that long. Rp 6/10/2011 p.10-12. The guardian's counsel promised to allow Mr. Kertis to see his mother when she begins to decline so that he is not deprived from contact with his mom for the rest of her life. Rp 6/11/2011 p.12.

Judge Cook signed the order with the finding “Terry Lee Kertis continues to engage in conduct that places his mother Dorothy May Kertis at risk of psychological and physical harm”. Cp19-22. Again the “Restraining Order” included warnings under

RCW 26.50 and RCW 9A.36. He was restrained from the following actions:

“causing physical harm, bodily injury, assault and from molesting, harassing, threatening or stalking Dorothy” Cp 20;

‘harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260 and using telephonic, audiovisual, or other electronic means to monitor the actions, locations or wire or electronic communication of Dorothy May Kertis; Cp. 20 and

“coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by Terry Kertis’ lawyer with Dorothy.”cp20

He was also excluded from Fidalgo and Dorothy’s home and was prohibited from coming within 500 feet of Fidalgo and her home. Cp 20-21. To the typed language that the order shall expire on June 20, 2016, Judge Cook added that the order “may be lifted or modified by further Court order. Cp 22.

From February 2011 through October 2011, Terry participated in and completed an alcohol relapse program in Anacortes. Cp35, 69. He also received a mental health assessment on July 28, 2011 that concluded that mental health treatment was not warranted. Cp 68. The assessment also confirmed that Terry was dealing with grief over losing his sister and his right to see his mother. Cp 68.

Terry applied for legal assistance from the Skagit Volunteer Lawyer Program in May 2012. Cp162 He met the requirements for indigency and the program director attempted to find him a volunteer lawyer. Cp 162 Finally, May 17, 2013 he obtained a lawyer to represent him and on May 22, 2013 the Motion to Terminate Restraining Orders Regarding Dorothy May Kertis (hereafter "Motion to Terminate") was filed in Skagit County Superior Court. Cp 163, 25-32.

The Motion to Terminate was supported by Terry's declaration. Cp 33-37. In that declaration he admitted that he did not use his best judgment in handling his frustration by continuing to make telephone calls to the guardian and her brother. Cp 35. He admitted having spent more than 100 days in jail awaiting disposition on violations of the restraining orders that were issued in Skagit and King counties because he could not drive and had no way to get to the court hearings. Cp 35 Terry affirmed that he must use lawful means to make his objections to actions by the guardian rather than making telephone calls. Cp.36

Before the hearing on that motion, Terry and the guardian reached an agreement to modify the restraining order so that he could visit his mother with supervision once a week on Tuesday

from 3 to 4 pm. Cp 38-41. After 8 weeks, if there were no problems, the guardian and Fidalgo would consider increasing the visitation. Cp 40. The order continued the DVPO entered in 2011 except for one hour of visitation. Cp 40. The order was entered on June 4, 2013.

Joyce Panzero accompanied Terry on five of the eleven visits he had before the orders were entered that this appeal concerns. Cp 118-9. Dorothy has dementia and sleeps quite a bit. For the visits she was awakened and put in an upright wheel chair that was uncomfortable because her head would not stay on the headrest and would lean awkwardly forward. Cp 119. Because of the disruption to his mother and to allow her to be more comfortable, Terry asked Joe Sladich Executive Director of Fidalgo to move the visit to dinnertime or to have the visit occur in Dorothy's room. Cp 119. Mr, Sladich replied that these changes were not possible. He also "remarked on how much Terry had changed and was such a totally different person from three years ago." Cp 119. The level of supervision by Fidalgo had diminished since Terry's first visit June 11, 2013. Cp.119. At all times, Terry was gentle and loving toward his mother. Cp.119.

As the eighth visit neared, Terry renewed his Motion to Terminate for August 2, 2013. Cp25. The guardian had rejected Terry's requests for small, reasonable changes in the visits. Cp 70-71, 87-88. In addition to Ms. Panzero's declaration, Terry submitted two declarations, another one by him and one by his wife Tina to document his visits. Terry and his mother have re-established their relationship that had essentially ended three years earlier with the temporary restraining order. Cp 64. His visits have lifted his mother's spirits so much that she urges him to stay at the end of his hour when he has to go. Cp 64. Terry's wife Tina was not prevented from visiting Dorothy and visited her every week since she was moved to Fidalgo. Cp 74. Tina noticed the changes in Dorothy from Terry's visits. During visits without Terry, Dorothy would scowl and make angry sounds. When Terry visits, she smiles, her eyes light up and she sings. She is happy. Cp 74-75.

The guardian and the standby guardian submitted declarations opposing Terry's Motion to Terminate. These declarations clearly show that the guardian is unwilling to consider additional visitation by Terry. Cp 47-60 The guardian acknowledged the visits have gone well but claimed Terry violated

the agreement. Cp.48. She stated that additional supervised time would be unfair to the other Fidalgo residents. Cp 49.

Richard Ross also submitted a declaration. He claimed Terry tried to skirt or ignore the Agreed Order by asking for changes. Cp 52. He stated that all the DVPO's in this case "were not based on the premise Mr. Kertis committed or planned to commit a willful act of physical violence against his mother. The concern was a near universal fear regarding Mr. Kertis's unwillingness or inability to control his aberrant behavior thus placing his mother and others at risk of both physical and emotional harm." Cp. 53-54 He then repeated his previous statements about Terry's previous violations of restraining orders, and threats against the guardian and her family. He added Terry's objections in the guardianship, criticism of Terry's alcohol treatment, untrue allegations of drug abuse, and increasing requests by Terry to see Dorothy. Cp. 56, 58,59.

The guardian submitted a letter from Fidalgo, which was signed by Laura Willingham, Toni Bolo and Joe Sladich but not signed under penalty of perjury. Cp. 62-63. They admit that Terry has been prompt and congenial for all of his visits. Cp. 62. But even after three years, Fidalgo still opposed Terry's visits with his mother. Cp. 63. Fidalgo brought up two incidents that had nothing

to do with Terry. One involved his wife Tina, who is not subject to any restraining orders, and occurred after Terry had left Fidalgo. Cp. 62, 75. She had given Dorothy a vase before she was moved and wanted to see if she still had the vase. Cp. 75. The other involved an offer by a care worker Eric that he was going to contact Laura Willingham about moving the visits to dinnertime when Dorothy would be more awake. Fidalgo incorrectly asserted that Terry initiated this effort to change the visitation time. Cp.62, 66.

At the hearing on the motion before the Honorable Judge Meyer, counsel for the Guardian handed up to the court some emails and the Court allowed Terry to respond in writing to these submissions on or before August 14, 2013. Rp.(8-2-2013) p.20 Judge Meyer had also asked whether without a restraining order, the guardian has the right to restrict Terry's access to this mother. Rp.(8-2-2013) p. 8. On August 14, 2013, Terry filed a Reply to Documents and to Court's Query that responded to the emails and Judge Meyer's question. Cp. 76-91.

On August 15, 2013 Judge Meyer signed the Order on Motion to Terminate Restraining Order, finding that "the respondent (Terry) has not established by a preponderance of the evidence that termination of the order is warranted". Cp. 94. The court also

held that the “Court cannot look behind the original restraining order issued herein as it was not appealed and becomes a verity. There is insufficient evidence to find a substantial change in circumstances. Nonetheless, the Court sympathizes with Mr. Kertis’ situation and encourages the guardian to endeavor to expand visitation as justified.” Cp. 95.

Terry filed a Motion to Reconsider Order on Motion to Terminate Restraining Order (hereafter “Motion to Reconsider”) and argued that the Skagit Superior Court was without subject matter jurisdiction to enter the restraining orders under the Domestic Violence Protection Act and that he had shown a substantial change in circumstances. CP 96-106. At the time of the filing of the Motion to Reconsider, Terry had visited his mother 11 times without incident. Cp. 102. Judge Meyer denied the motion to reconsider and found that “[t]he Court had jurisdiction to enter the original restraining order and to subsequently renew the restraining order based upon Mr. Kertis ‘inflicting fear of imminent physical harm or bodily injury’ on his mother, as voiced by his mother’s guardian, who stands in his mother’s shoes.” Cp. 108. He also found that “Mr. Kertis engaged in conduct that placed his mother at risk of emotional and psychological harm as well as physical harm, which

in itself would have warranted the guardian seeking restrictions on Mr. Kerti's contact with his mother, even if it were not by means of a restraining order." Cp 108. The court added "[t]his motion for Reconsideration, furthermore, is a collateral attack on the original orders herein and, also, is untimely." Cp 109.

On September 12, 2013 Terry filed the Notice of Appeal from the Order on Motion to Terminate Restraining Order. Cp. 111-113. On September 20, 2013, he filed an Amended Notice of Appeal to include the Order on Motion for Reconsideration entered on September 11, 2013. Cp. 114-115.

ARGUMENT

The trial court abused its discretion by finding that Terry had not established by a preponderance of the evidence that termination of the DVPO is warranted.

Terry filed his Motion to Terminate in accordance with RCW 26.50.130(2). The decision to grant or deny a motion to terminate or modify a DVPO is reviewed for abuse of discretion. In Re Marriage of Freeman, 169 Wn.2d 164, 239 P3d 557(2010). Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised

on untenable grounds, or for untenable reasons." In Re Marriage of Freeman, *supra*, at 672, citing State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The procedure set forth in RCW 26.50.130(2) requires a party to file affidavits in support of a motion to modify or terminate and requires the court to determine adequate cause.¹ If the court determines there is adequate cause, the court then sets a hearing. Terry did submit declarations with facts relevant to a change in circumstances justifying termination of the DVPO. Judge Meyer appears to have skipped the adequate cause step in the process.

Under RCW 26.50.130(3)(a), Terry as the moving party bears the burden of proving that more likely than not he will not resume acts of domestic violence against Dorothy. In Re Marriage of Freeman, *supra*, at 673-74. A court hearing the motion must determine "whether there has been a "substantial change in

¹ Counsel found no case defining "adequate cause" in RCW 26,50.130 and cites case law defining adequate cause for modification of a parenting plan. "A first step for a court when deciding whether adequate cause exists for modification of a parenting plan is to examine the affidavits submitted in support of the request to determine if they show a prima facie case...A prima facie case for modification requires the facts in the supporting affidavits, if proven, be "relevant to the grounds for modification" and "not merely cumulative or impeaching." A party is entitled to a full evidentiary hearing when adequate cause is shown. " Marriage of Flynn, 94 Wn.App. 185, 189-91, 972 P.2d 500 (1999).

circumstances" by considering only factors which address whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order." RCW 26.50.130(3)(b)(emphasis added).

RCW 26.50.130(3)(c) provides a list of factors that a court may consider in determining whether there has a substantial change in circumstances:

1. **Whether the respondent has committed or threatened domestic violence, sexual assault, stalking or other violent acts since the protection order was entered;**
2. **Whether the respondent has violated the terms of the protection order and the time since the entry of the order;**
3. **Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;**
4. **Whether the respondent has been convicted of criminal activity since the protection order was entered;**
5. **Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in the entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;**
6. Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;
7. Whether the petitioner consents to terminating the protection order;
8. Whether the respondent or petitioner has relocated to an area more distant from the other party;
9. Other factors relating to a substantial change in circumstances.

Terry has presented unrefuted evidence of a substantial change in circumstances such that it is more likely than not that he will not resume acts of domestic violence to his mother. He has not

violated the June 10, 2011 "Restraining Order" nor has he violated any other restraining orders since August, 2010. Cp12-16. He has obtained a mental health evaluation by Licensed Mental Health Counselor on July 28, 2011. Cp. 68. It shows that he was feeling stress due to grief, loss, finances and unemployment. Cp. 68 It also shows that the Licensed Mental Health Counselor did not recommend treatment and gave a good prognosis. Cp. 68.

Terry has completed an 8 ½ month long alcohol relapse treatment. Cp. 69. This factor should be weighed more heavily because his addiction to alcohol in 2010 accounts for much of the behavior that led to the guardian's initial motion for temporary restraining order. Cp. 35-36. Also, spending more than 100 days in jail changed Terry and caused him to cease harassment of the guardian and standby guardian. Terry has apologized for his past actions and has learned to address his concerns about the guardianship to the courts. Cp. 33, 36.

The change in Terry is very obvious. He has been courteous and respectful to the staff at Fidalgo during the 11 visits he had before Judge Meyer ruled. Cp. 62, 101-102. Fidalgo has acknowledged that Terry's visits with Dorothy have gone well, without incident. Cp. 62. The Administrator of Fidalgo

acknowledged the positive change in Mr. Kertis's behavior. Cp. 119. Terry has demonstrated his love and compassion for his mother during these weekly visits. Cp118-120, 64-65, 75. There is no more he can do to show he has changed.

An important factor in determining whether Mr. Kertis will resume acts of domestic violence against Dorothy is that he did not commit acts of domestic violence against her in the first place. When the DVPOs were entered in 2010 and 2011, Terry appeared pro se. His lawyer had withdrawn and he had tried to engage another lawyer. Had he been represented, the courts would not have entered the DVPOs, and he would not have been arrested and prosecuted for going to Fidalgo. Terry is now represented by an attorney. His objection and arguments have been presented properly in compliance with the rules and expectations of the courts.

The guardian did not follow the procedures for obtaining DVPO's.

The Washington legislature has declared "that the family unit is a fundamental resource of American life which should be nurtured." RCW 13.34.020. Only when a child's right to conditions of basic nurture, health or safety is jeopardized, can the state

intervene. RCW 13.34.020. The same is true with a parent and an adult child. Each is free to associate with the other unless there is domestic violence or abuse. See RCW 26.50, 74.34. Court Rules and the Domestic Violence Protection Act (RCW 26.50) establish the procedures a petitioner must comply with before a court can end a relationship between a parent and an adult child.

At no point in this proceeding did the guardian comply with those procedures. In her first Motion/Declaration for ExParte Restraining Order and Order to Show Cause (hereafter "Motion for Exparte Restraining Order") on May 27, 2010, she petitioned for restraining orders for both the guardian's father, Gary Ross and Dorothy. Joining these claims violated CR 18 because these two causes of action arose out of different occurrences and involve different questions of law and fact. The guardian's motion and the 2010 Restraining Order were based on harassing telephone calls to Gary Ross and Terry's conduct at Fidalgo and accusations of theft. Cp. 122, Rp (6-11-2010) p. 4. The motion was incorrectly filed in the guardianship as a guardianship matter. Mr. Ross received a personal benefit that had nothing to do with Dorothy or the guardianship. Throughout the course of this case, the guardian has

violated 26.50.035 (1) by not using the standard petition and order for protection forms. See Forms DV-1.015 and 3.015 in appendix.

The Temporary Restraining Order signed by Judge Meyer on May 27, 2010 is clearly a DVOP, which is enforced by criminal prosecution under RCW 26.50.110. cp 19-22, 142-144. However, the guardian's Motion for Exparte Restraining Order looks more like a motion for a common law restraining order, than a Petition for Order of Protection required by RCW 26.50.035(1). Compare Form DV-1.015 in the appendix. Nowhere does the term "domestic violence" appear in the motion. Cp.121-123.

This motion and the Petition for Renewal the guardian filed in 2011 follow a pattern. Cp 7-9, 121-23. First, they do not contain any allegation of Domestic Violence between Terry and Dorothy. Second, they recite the claim that Terry's conduct toward others places his mother at risk of psychological and physical harm. Third, they are supported by a mountain of irrelevant factual allegations of Terry's conduct toward other people besides Dorothy; of repeated allegations from other declarations; and of lay opinions of Terry's character, relationship with his mother; and his problems. Much is based on second, third or fourth hearsay. The guardian's premise is that because Terry acted badly toward her, her family and others,

Dorothy is at risk and should not see or have any relationship with Terry. Where is the logic, science, or expert opinion supporting this premise?

The guardian's petitions for DVPO's in 2010 and 2011 were deficient in failing to allege or prove with competent evidence Domestic Violence between Terry and Dorothy.

The Domestic Violence Protection Act requires a person seeking a DVPO to file a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.²

RCW 26.50.020(1)(a). The Act defines domestic violence.

"Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. RCW 26.50.010(1).

As shown previously, the guardian did not allege any acts of domestic violence between Terry and Dorothy. The supporting

² The act does not expressly allow a guardian to petition for relief for an incapacitated person. See DV-1.015 in appendix.

declarations follow the pattern The guardian repeats the same comments made by Laura Willingham. She also claims that Terry has made "inappropriate comments" to his mother and has generally acted "inappropriately." Cp 129-30. These are her conclusions: how can a fact finder assess those conclusions?

The Declaration by Richard Ross repeats Ms. Willingham's comments and is not based on his personal knowledge. He relates second or third hearsay comments from staff at two care facilities; Fidalgo and Mountainview Adult Family Home. Cp 136-141. In fact, Terry had been concerned about the care Dorothy was receiving at Mountainview and contacted DSHS with his concerns. Mountainview Adult Family Home was closed as a result of his information and the DSHS investigation and Dorothy was moved to Fidalgo. Cp 65. Mr. Ross alleges (1) unsubstantiated accusation of theft by Terry of his mother's rings; (2) Terry's attempts to get medical information about Dorothy; (3) Terry asking to take his mother to the beach ; and (3) Terry's claim that boat and vehicles and other property belong to him. Cp 138-139.

The Declaration by Laura Willingham, RSC of Fidalgo, is also not based on her personal knowledge and contains hearsay statements by others. It alleges the following. (1) after Terry's

visits, Dorothy demonstrated increased agitation and behavior; (2) Terry drew mustaches on Ross family pictures in Dorothy's room; (3) Terry handed out cigarettes to other residents; (3) Terry cut up an apple and handed a piece to a resident who had swallowing issues; (4) Terry dropped off a pair of scissors and utility knife that his mother needed (5) Terry tried to visit his mother after hours; and (6) Terry disagreed with Fidalgo's requiring him to visit his mother in a public area. Cp. 133-135.

At the hearing on the show cause return date June 11, 2010, counsel for the guardian informed the court that Terry had been arrested on May 27, 2010, the day he received the temporary restraining order, for coming to the Fidalgo. Rp(6-11-2010) p3. He also said that Gary Ross had received "harassing calls" from Terry. Rp(6-11-2010) p4. How could the court determine whether the "harassing calls" meets the definition of domestic violence?

None of the allegations made by the guardian prove **physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault between Terry and Dorothy.** Yet, Judge Meyer signed the Domestic Violence Protection Order submitted by the guardian. Cp 142-144.

A year later, the Guardian petitioned to have the restraining orders modified and extended five years. It is unclear whether Judge Cook was aware of the facts the guardian alleged to obtain the 2010 Restraining Order. Cp 7-9; rp(6-10-2011)pp 8-12. The guardian submitted pages of allegations about telephone calls, restraining order violations, malicious mischief and threats that Terry made to the guardian and standby guardian. Cp.7-18. In none of this paperwork was there ever any proof of **physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault between Terry and Dorothy.** RCW 26.50.010(1).

The only allegations relating to Dorothy are set out below and are clearly double or triple hearsay;

“August 4 2010: Dorothy’s care home reports to Guardian that Mr. Kertis made a hostile call to the home which, among other statements, included Mr. Kertis announcing he was going to remove Dorothy from the facility.” Cp12

“November 5 2010: As Dorothy’s guardian, Dianna was contacted by The Veterans Administration in regard to Dorothy’s VA Pension. Earlier in 2010 Mr. Kertis attempted to fraudulently gain full access to Dorothy’s VA data.” Cp13-14

“November 30, 2010: As Dorothy’s Guardian, Dianna Parrish was contacted by Fidalgo Care Center. On an Anacortes outing, residents and staff in a Fidalgo Care van were approached by Mr. Kertis. He demanded to see his mother, leaving only after being told Dorothy was not in the van.” Cp.14

None of these actions violated the DVPO that had been entered in 2010. Cp. 142-147. Nor do they prove **physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault between Terry and Dorothy.** What they probably do document is Terry’s alcohol problem, and his frustration and stress over losing Sandi and Dorothy. CP 68, 69

Like the 2010 “Restraining Order”, the “Restraining Order” entered June 10, 2011 is not based on and does not contain the required finding of Domestic Violence. Cp 19-22. Compare DV 3.015 in Appendix.

Because the Domestic Violence Protection Act is in derogation of common law, it must be strictly construed. See Wichert v. Cardwell, 117 Wn.2d 148, 153-54, 812 P.2d 858 (1991). **“Domestic Violence means physical 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 terms physical harm, bodily injury, assault and infliction of fear of imminent physical harm, bodily injury or assault describe **intentional acts**. The guardian has admitted that the restraining orders “were not based on the premise that Terry committed or planned to commit a willful act of physical violence against his mother.” Cp 53. Instead she claims they were based on his “aberrant behavior, thus placing his mother and others at risk of both physical and emotional harm”. Cp 54. Quite simply this does not cut it. In this country, you cannot deprive a person of his freedom because someone thinks he might be a risk to someone else.

In the Order on Terry’s Motion for Reconsideration that the guardian presented and that Judge Meyer signed, is a finding that the original restraining order was based on “Mr. Kertis inflicting fear of imminent physical harm or bodily injury” on his mother, as voiced by his mother’s guardian, who stands in his mother’s shoes.” Cp.108. The guardian cites no authority or reasoning for this finding, and it is clearly an after the fact attempt to justify the guardian’s actions. A guardian does not stand in the incapacitated person’s shoes. That concept relates to other areas of the law

such as insurance law. There were absolutely no threats of physical harm or bodily injury by Terry against Dorothy. Does the guardian mean that Mr. Terry's conduct and threats to the guardian are magically transformed into threats to Dorothy? There is no logic or authority for this finding.³

In 2010 and 2011, judges Meyer and Cook did not find intentional acts of domestic violence between Terry and Dorothy. Instead, they found that Terry "engages in conduct that places Dorothy at risk of psychological and physical harm". Cp 20, 143, 144. They should not have signed the DVPO's. These orders constitute state action and implicate Terry's constitutional rights to due process and equal protection under the Constitution.

The DVPOs entered by the trial courts violate Terry's rights to due process and equal protection under the Constitution.

In Spense v. Kaminski, 103 Wn.App. 325, 12 P.3d 1030 (2000), in answer to Mr. Kaminski claim that DVPO violates due process and equal protection in not being based on a recent act of

³ Also by entering this finding, Judge Meyer looked behind the original restraining order, something he said he could not do when he denied Terry's Motion to Terminate Restraining Orders.

domestic violence⁴, the court held that a history of domestic violence between Spense and Kaminski and Spense's current credible fear of future acts of domestic violence satisfied due process and equal protection.

"Determining the degree of procedural due process afforded in a particular case requires a balancing of the private interest to be protected, the risk of erroneous deprivation of that interest, and the government's interest in maintaining the procedures. State v. Lee, 82 Wash.App. 298, 312-13, 917 P.2d 159 (1996) (citing Morris v. Blaker, 118 Wash.2d 133, 144-45, 821 P.2d 482 (1992)), *aff'd*, 135 Wash.2d 369, 957 P.2d 741 (1998). As discussed above, the protection order here does not intrude on a substantial privacy interest of Mr. Kaminski. The hearing investigating the history of domestic violence and the credibility of Ms. Spence's fear of future violence creates minimal risk that Mr. Kaminski's liberty would be erroneously deprived. Finally, the Legislature has shown that it has a strong interest in preventing domestic violence. A requirement that the victim must wait until further threatened acts actually occur Before seeking [12 P.3d 1036] a protection order would undermine that intent.

Equal Protection. The principle of equal protection requires that all persons similarly situated with respect to the legitimate purposes of the law must receive like treatment. Davis v. Department of Licensing, 137 Wash.2d 957, 972, 977 P.2d 554 (1999). Mr. Kaminski contends that the court's failure to find a recent act of domestic violence prevents the court from recognizing a basis to logically distinguish between those who should have an order entered against them and those who should not. His argument essentially challenges the sufficiency of the evidence, which was discussed above. Further, the legitimate purpose of the Domestic Violence Prevention Act--to prevent domestic violence--is rationally related to the issuance of a protection order based on a

⁴ The court cited State v. Lee, 82 Wn.App. 298, 312, 917 P.2d 159 (1996), *aff'd* 135 Wn. 2d 369, 957 P.2d 741(1998) which held "[t]he State's threat of criminal sanction for following the person after being given actual notice that the person does not want to be contacted is sufficient "state action" to trigger due process analysis." State v. Lee at 312.

respondent's history of domestic violence and the petitioner's demonstrated fear of future acts of domestic violence.” (emphasis added) Spense v. Kaminski , 103 Wn.App. at 335-36.

In this case, the lack of proof of any history of domestic violence between Terry and Dorothy to support the DVPO's violates Terry's rights to due process and equal protection.

The trial court was not bound by the Restraining Orders entered in this case because they were not final judgments.

Apparently Judge Meyer based his decisions on the Motion to Terminate and Motion to Reconsider on the final judgment rule. He held the “court cannot look behind the original restraining order as it was not appealed and becomes a verity.”⁵ Cp 95. He also held the Motion to Reconsider was a collateral attack on the original orders and is untimely. Cp 109. Both of these holdings come from the same error of law, namely that the Restraining Orders entered in 2010 and 2011 are final judgments.

Clearly, Terry's motions are not collateral attacks. Terry raised the issue of the validity of the DVPO's directly as allowed by RCW 26.50.130 instead of collaterally in a prosecution for violating those same orders.

⁵ The 2010 DVPO has the finding that Terry “engages in conduct that places Dorothy at risk of psychological and physical harm”. Even if it is a verity it is still insufficient to justify issuing a DVPO.

The guardian obtained DVPO's without alleging or proving domestic violence. At best, she showed facts that would support an injunction requiring Terry to abide by Fidalgo's rules. Motions to dissolve or modify such common law injunctions may be made at any time RCW 7.40.180. The same is true for Domestic Violence Protection Orders. See RCW 26.50.130.

Whether the Domestic Violence Protection Order is appealed makes no difference.

“A court of equity has inherent power to modify or vacate a permanent preventive injunction where a change in circumstances demonstrates that continuance of the injunction will be unjust or inequitable or no longer necessary...A preventive injunction is fundamentally different from another other judgment or decree.” State ex rel Bradford, 36 Wn.2d 664, 675-76, 220 P.2d 305 (1950).

“A court of equitable jurisdiction has the intrinsic or inherent power to dissolve, vacate or modify its injunctions.” 42 AmJur2nd §283 at 865.

“Generally a court may modify or dissolve an injunction, whether permanent or preliminary or issued on the consent of the parties based upon changed circumstances.

A change in circumstances includes both a change in the applicable law, whether statutory or decisional, and a change in the facts of the case.

The courts have generally held that the change in circumstances must be sufficiently significant or compelling to make modification of the injunctions just and equitable or to make the injunction in its original form inequitable; or longer justified; or wrong, inequitable or unjust.” (emphasis added) 42 AmJur 2d §287 at 869. See also, Restatement of Judgments 2d, “Changed Conditions” § 73, p. 197, 198.

The failure to allege and prove by competent evidence Domestic Violence between Terry and Dorothy is an important factor that the trial court should have considered.

RCW 26.50.130(3)(a) requires Terry to prove there has been a **substantial** change in circumstances such that he is not likely to **resume acts** of domestic violence against Dorothy. There is no bright line rule for what is a substantial change in circumstance. The rules on injunctions cited above call for a balancing of the change in circumstances against whether the injunction is rendered wrong, inequitable or unjust. Therefore, a court must look behind an injunction order to determine whether under the existing circumstances, it is wrong, inequitable or unjust. Judge Meyer apparently did not.

That is exactly what the superior court commissioner and the appellate court did in In re Marriage of Freeman, 169 Wn.2d 664, 239 P.3d 557 (2010). During a dissolution of marriage proceeding, the wife alleged she was in fear of imminent physical harm because of two incidents and the court issued a permanent DVOP. Eight years later, the ex-husband moved to dissolve the DVOP based on his having lived out of state since the entry of the DVOP without any violations. The ex-wife contended that she was still in fear of

of imminent harm from the ex-husband. The commissioner reviewed the original incidents and denied the husband's motion.

On appeal the Washington Supreme Court also reviewed the two incidents. Based on that review and on the ex-husband's relocation, career goals and compliance with the protection order, the Court determined that the ex-wife's claimed current fear of imminent harm was unreasonable and the ex-husband had met his burden to prove that he will more likely than not refrain from future acts of domestic violence against the ex-wife or her children.

In this case, Judge Meyer was required to consider whether the original Domestic Violence Protection Order was invalid because the guardian failed to allege and prove by competent evidence Domestic Violence between Terry and Dorothy. This is a factor that bears on the question of whether Terry will resume acts of domestic violence against Dorothy in the future. Logically, if he did not commit domestic violence against Dorothy in 2010 when the guardian began this process, there is no tenable reason to conclude that he will commit domestic violence against her in the future.

Furthermore, Washington courts require anyone claiming that a Domestic Violence Protection Order is invalid to bring a

motion to modify under RCW 26.50.130. In Seattle v. May, 171 Wn.2d 847, 256 P.3d 1161 (2011), the Washington Supreme Court held that Mr. May could not attack the validity of the domestic violence protection order in his prosecution for violating the order. “May might earnestly believe that the order is invalid, but his remedy is to seek modification of the order by the court that issued it; he is not free to violate the order with impunity.” Seattle v. May, at 857. See also, State v. Miller, 156 Wn.2d 23, 32 (footnote 4), 123 P.3d 827 (2005).

To turn a blind eye to Terry's claims and to continue restraints against Terry and his and Dorothy's relationship is wrong and inequitable especially in view of proof of his positive changes. **The DVPOs entered in 2010 and 2011 are void for lack of subject matter jurisdiction.**

CR 60(b)(5) allows a trial court to relieve Terry from these restraining orders on the basis that these are “void”. Terry submits that the DVPO's entered in this case are void for lack of subject matter jurisdiction.

“A judgment is void if entered by a court without jurisdiction of the parties or subject matter jurisdiction or if entered by a court which lacks the inherent power to enter the particular order

involved.” Long v. Harrold, 76 Wh.App. 317, 319, 884 P.2d 934 (1994). In Long v. Harrold, the issue presented was whether a judgment based on a settlement agreement was void. The Court of Appeals focused on CR 2A as the authority for entry of a stipulated settlement and judgment, and noted that rule requires either a written agreement signed by the parties or the parties’ assent to the agreement in open court on the record. Mrs. Long did not sign the settlement agreement nor did she agree to the settlement on the record in open court, the court. “Since the prerequisites of CR 2A were not met, the court had no authority to enter the agreement as a judgment...Therefore, the judgment was void.” Long v. Harrold, at 319.

The three orders that were entered in this case suffer from the same defect: the courts had no subject matter jurisdiction or inherent power to enter them. The courts certainly had jurisdiction to enter an ordinary restraining order enforced by civil contempt sanction; but not enhanced domestic violence protection restraining orders. With RCW 26.50 the legislature created a new cause of action for the prevention of domestic violence, where the restraining orders are enforced by criminal sanction.

"The Domestic Violence Prevention Act, RCW 26.50, authorizes a victim of domestic violence to petition the court for an order for protection. RCW 26.50.030(1). **The petition for relief must allege "the existence of domestic violence" and must be accompanied by an affidavit under oath that states specific facts and circumstances supporting relief.** RCW 26.50.030(1)." Spense v. Kaminski, 103 Wn.App. 325, 330, 12 P.3d 1030 (2000). Without such a petition, the guardian did not trigger the court's authority and power to enter a DVPO.

Counsel is aware of courts and commentators who have questioned the notion that the legislature can create procedural requirements that are jurisdictional. But that is exactly what the legislature did with regard to domestic violence. Without the legislation requiring a petition alleging domestic violence, a trial court has no inherent power to enter a DVPO. If that court goes ahead and enters an invalid DVPO that is not based on an allegation and competent proof of **domestic violence**, another person like Terry could be prosecuted and convicted of its violation, without the recourse of a motion to vacate the conviction. This is not what the legislature intended, nor is it just.

The trial court had a duty to terminate the 2011 “Restraining Order” and/or expand visits between Terry and Dorothy.

During the hearing on Terry’s Motion to Terminate on August 2, 2013 Judge Meyer asked whether, without a restraining order, the guardian has the right to restrict Terry’s access to his mother. Rp(8-2-2013) p.8 Cp. 76-91. Clearly, the guardian does not have the right to do what she did in this case-terminate Dorothy’s and Terry’s relationship.

"Although governed by statute, guardianships are equitable creations of the courts and it is the court that retains ultimate responsibility for protecting the ward's person and estate." In re Guardianship of Hallauer, 44 Wn.App 795, 797, 723 P.2d 1161(1986). The court having jurisdiction of a guardianship matter is said to be the superior guardian of the ward, while the person appointed guardian is deemed to be an officer of the court. SeaFirst v. Brommers, 89 Wn. 2nd 190, 200, 570 P.2d 1035 (1977).

"Thus, while the guardian has the authority to "assert the incapacitated person's rights and best interests," RCW 11.92.043(4), it remains at all times the responsibility of the court to make the decision as to the ward's best interest. Ingram, 102 Wn.2d 827,842 689 P.2d 1363 (1984). **The goal of a guardianship is to do what the ward would do, if the ward were competent to make the decision in question. *Id.* at 838.**" In re Guardianship of Lamb, 173 Wn. 2d 173, 191 (footnote 13) 265 P2d 876 (2011)(emphasis added).

RCW Chapters 11.88 and 11.92 list more specific duties for the guardian. RCW 11.88.005 sets out the duty that both the court and guardian have: the duty to restrict Dorothy’s “liberty and autonomy only to the “minimum extent necessary to adequately

provide for her health and safety, or to adequately manage her financial affairs." (emphasis added) In particular RCW 11.92.043(4) states a guardian's duties include the responsibility "to care for and maintain the incapacitated person in the setting **least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, [and to] assert the incapacitated person's rights and best interests...**".

The King County Bar Association has published a "Family and Volunteer Guardian's Handbook" that gives guidance to non-professional guardians in interpreting these statutes. Cp. 83-87.

The Handbook provides as follows:

A Guardian may not unnecessarily or unreasonably restrict the Protected Person's social or sex life, by, for instance, imposing conditions on movement or access to friends or relatives of the Protected Person, unless abuse or exploitation may be occurring. Cp 85-86

With regard to choosing the least restrictive environment for the protected person, the Handbook gives the guardian the affirmative duty to **"ensure that the Protected Person is able to receive visitors and communicate with friends and family."**

Cp.87.⁶

⁶ The laws governing Fidalgo Care Center contained in Chapter 70.129 of the Revised Code of Washington reflect the same principle of restricting Dorothy's liberty and autonomy only to the "minimum extent necessary". See RCW

By choosing to exclude Terry from Fidalgo and preventing him from having a relationship with his mother, the guardian violated her duties to Dorothy. She could have petitioned for orders requiring Terry to abide by reasonable rules to answer Fidalgo's concerns with respect to other residents. Instead, she unreasonably restricted Dorothy's social life and she failed to ensure that Dorothy was able to communicate with her only living child. She chose a course of conduct that resulted in an overly restrictive environment for Dorothy. The declarations of Terry, Tina Kertis and Joyce Panzero demonstrate that Dorothy enjoys Terry's visits. Cp.64-69, 74-75, 118-120. She is at the end of her life and should be able to enjoy unlimited contact with her son.

The court is ultimately responsible to do what Dorothy would do if she were competent. The guardian is stymied by her own animosity toward Terry, obvious conflicts of interest, and opposition to more visits. Cp 47-50. Judge Meyer had the duty to protect Dorothy's interest in her relationship with her son.⁷ As an

70.129.140; WAC 388.97.0900(resident has the right to interact with members of the community both inside and outside the facility and make choices about aspects of his or her life in the facility that are significant to the resident.)

⁷ Because of the harm to Dorothy's relationship with Terry done by the 2011 and 2010 Restraining Orders, appointing a guardian ad litem in 2010 or 2011 would have been advisable.

alternative to termination, Terry asked Judge Meyer to expand visitation. Cp 73, 114. Judge Meyer commented that he "sympathizes with Mr. Kertis and encourages the guardian to endeavor to expand visitation as justified." Cp 95. Judge Meyer should have done what Dorothy would have done had she been competent and able-allow Terry to visit her as often as he can. There are no tenable grounds to continue restricting Terry from visiting his mother. He has always professed his love for his mother and has treated her with kindness. Cp 118-9; 74-75; 64; rp 6/10/2011 p.10.

CONCLUSION

Terry asks that this court reverse the trial court and terminate the "Restraining Order" entered June 10, 2011 and the "Agreed Order" entered June 4, 2013. Judge Meyer had no tenable reason for denying Terry's Motion to Terminate. These orders and previous DVPOs are invalid. Although the guardian did not in any way comply with the Domestic Violence Protection Act, Terry has complied with the act and has shown by a preponderance of the evidence that there has been a substantial change in circumstances such that he is not likely to resume further acts of domestic violence against Dorothy if the order is terminated. His

conduct in 2009 and 2010 was certainly affected by his problems with alcohol, for which he engaged in eight and a half months of treatment. He spent more than 100 days in jail, mostly for pretrial detention and has had plenty of time to reflect on his actions. He has been visiting his mother once a week since June 11, 2013 without incident. The changes in his behavior have been noted by Fidalgo. Most importantly, he has demonstrated love and compassion for his mother. Dorothy enjoys his visits. If she could testify, she would ask for more visits by Terry

What is the future if the restraining orders are terminated? Fidalgo has duties to protect Dorothy and to allow her contact with Terry. Terry will follow its visiting rules, knowing staff will be on the lookout for any deviation. DVPO's protect the guardian and her brother and father. Terry will not violate those orders, which promise additional jail. He will visit Dorothy more frequently as Dorothy's condition declines and as the guardian had promised in 2011. Most importantly, Dorothy will enjoy his visits.

Respectfully submitted this ~~10th~~ day of December, 2013


Nancy Freg

APPENDIX

<p>Court of Washington</p>	
<p>For</p>	
<p>Petitioner _____</p>	<p>No.</p>
<p>vs.</p>	<p>Petition for Order for Protection (PTORPRT)</p>
<p>Respondent _____</p>	

<p>1. <input type="checkbox"/> I am a victim of domestic violence committed by the respondent.</p> <p><input type="checkbox"/> A member of my family or household is a victim of domestic violence committed by the respondent.</p> <p><input type="checkbox"/> I am a <input type="checkbox"/> guardian <input type="checkbox"/> guardian ad litem <input type="checkbox"/> next friend of a minor who is 13 to 15 years of age and is a victim of domestic violence in a dating relationship with a person age 16 or older. The name of the minor victim is _____. This person's identifying information is provided in paragraph 5 below.</p>		
<p>2. <input type="checkbox"/> The victim lives in this county.</p> <p><input type="checkbox"/> The victim left their residence because of abuse and this is the county of their new or former residence.</p>		
<p>3. The victim's age is:</p> <p><input type="checkbox"/> Under 16 <input type="checkbox"/> 16 or 17 <input type="checkbox"/> 18 or over</p>	<p>Respondent's age is:</p> <p><input type="checkbox"/> Under 16 <input type="checkbox"/> 16 or 17 <input type="checkbox"/> 18 or over</p>	
<p>4. The victim's relationship with the respondent is:</p> <p><input type="checkbox"/> spouse or former spouse</p> <p><input type="checkbox"/> parent of a common child</p> <p><input type="checkbox"/> current or former cohabitant as intimate partner, including current or former registered domestic partner</p>	<p><input type="checkbox"/> current or former dating relationship</p> <p><input type="checkbox"/> stepparent or stepchild</p> <p><input type="checkbox"/> current or former cohabitant as roommate</p>	<p><input type="checkbox"/> in-law</p> <p><input type="checkbox"/> parent or child</p> <p><input type="checkbox"/> blood relation other than parent or child</p>

5. Identification of Minors (if applicable) No Minors involved.

Name (First, Middle Initial, Last)	Age	Race	Sex	How Related to		Resides with
				Petitioner	Respondent	

6. Other court cases or other restraining, protection or no-contact orders involving me, the minors and the respondent:

Case Name			
Case Number			
Court/County			

Check the box for each type of relief you are requesting, for each type of order you need.

Temp: I Request a **Temporary Order for Protection, effective until the hearing**, because **an Emergency Exists** as described in the statement below. A temporary protection order should be issued immediately without notice to the respondent, to avoid irreparable injury.

Full: I Request a **“full” Order for Protection**, following a hearing.

Temp
↓

Full
↓

¹ **Restrain** respondent from causing any physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking
 me the minors named in paragraph 5 above these minors only:

(If the court orders this relief, and the respondent is your spouse or former spouse, the parent of a common child, or a current or former cohabitant as intimate partner, including a current or former registered domestic partner, the respondent will be prohibited from possessing a firearm or ammunition under federal law for the duration of this order. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)

² **Restrain** respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, locations, or wire or electronic communication of me the minors named in paragraph 5 above only the minors listed below; members of the victim’s household listed below the victim’s adult children listed below:

Temp ↓	Full ↓	Temporary Order, effective until a hearing. Full Order, effective following a hearing.
<input type="checkbox"/>	<input type="checkbox"/>	³ Restrain respondent from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing of court documents, with <input type="checkbox"/> me <input type="checkbox"/> the minors named in paragraph 5 above, subject to any court-ordered visitation <input type="checkbox"/> these minors only, subject to any court-ordered visitation:
<input type="checkbox"/>	<input type="checkbox"/>	⁴ Exclude respondent from <input type="checkbox"/> our shared residence <input type="checkbox"/> my residence <input type="checkbox"/> my workplace <input type="checkbox"/> my school <input type="checkbox"/> the residence, day care, or school of <input type="checkbox"/> the minors named in paragraph 5 above <input type="checkbox"/> these minors only: <input type="checkbox"/> other: You have a right to keep your residential address confidential.
<input type="checkbox"/>	<input type="checkbox"/>	⁵ Direct respondent to vacate our shared residence and restore it to me.
<input type="checkbox"/>	<input type="checkbox"/>	⁶ Prohibit respondent from knowingly coming within, or knowingly remaining within _____ (distance) of <input type="checkbox"/> our shared residence <input type="checkbox"/> my residence <input type="checkbox"/> my workplace <input type="checkbox"/> my school <input type="checkbox"/> the day care or school of <input type="checkbox"/> the minors named in paragraph 5 above. <input type="checkbox"/> these minors only: <input type="checkbox"/> other:
<input type="checkbox"/>	<input type="checkbox"/>	⁷ Grant me possession of essential personal belongings, including the following:
<input type="checkbox"/>	<input type="checkbox"/>	⁸ Grant me use of the following vehicle: Year, Make & Model _____ License No. _____
<input type="checkbox"/>	<input type="checkbox"/>	⁹ Other:
N/A	<input type="checkbox"/>	¹⁰ Direct the respondent to participate in appropriate treatment or counseling services.
N/A	<input type="checkbox"/>	¹¹ Require the respondent to pay the fees and costs of this action.
N/A	<input type="checkbox"/>	¹² Remain Effective longer than one year because respondent is likely to resume acts of domestic violence against me if the order expires in a year.
		Check the following only if you are requesting protection involving pets.
N/A	<input type="checkbox"/>	¹³ Grant me exclusive custody and control of the following pet(s) owned, possessed, leased, kept, or held by me, respondent, or a minor child residing with either me or the respondent. (Specify name of pet and type of animal.): _____

N/A	<input type="checkbox"/>	¹⁴ Prohibit respondent from interfering with my efforts to remove the pet(s) named above.
N/A	<input type="checkbox"/>	¹⁵ Prohibit respondent from knowingly coming within, or knowingly remaining within _____ (distance) of the following locations where the pet(s) are regularly found: <input type="checkbox"/> petitioner's residence (You have a right to keep your residential address confidential.) <input type="checkbox"/> _____ Park <input type="checkbox"/> other: _____
Check the following only if you are requesting protection involving a minor:		
<input type="checkbox"/>	<input type="checkbox"/>	¹⁶ Subject to any court-ordered visitation, Grant me the care, custody and control of <input type="checkbox"/> the minors named in paragraph 5 above <input type="checkbox"/> these minors only:
<input type="checkbox"/>	<input type="checkbox"/>	¹⁷ Restrain respondent from interfering with my physical or legal custody of <input type="checkbox"/> the minors named in paragraph 5 above <input type="checkbox"/> these minors only:
<input type="checkbox"/>	<input type="checkbox"/>	¹⁸ Restrain the respondent from removing from the state: <input type="checkbox"/> the minors named in paragraph 5 above <input type="checkbox"/> these minors only:

Request for Special Assistance From Law Enforcement Agencies:

I request the court order the appropriate law enforcement agency to assist me in obtaining:

- Possession of my residence. Possession of the vehicle designated above.
- Possession of my essential personal belongings at the shared residence respondent's residence other location _____.
- Custody of the minors named in paragraph 5 above these minors only (if applicable):

Other: _____.

“Domestic violence” means physical harm, bodily injury, assault, including sexual assault, stalking, **Or** inflicting fear of imminent physical harm, bodily injury or assault between family or household members.

Statement: The respondent has committed acts of domestic violence as follows. (Describe specific acts of domestic violence and their approximate dates, beginning with the most recent act. You may want to include police responses.)

Describe the most recent violent act, fear or threat of violence, and why the temporary order should be entered today without notice to the respondent: _____

Describe the past incidents where you experienced violence, where you were afraid of injury or where the respondent threatened to harm or kill you:

Describe any violence or threats towards children:

Describe any stalking behavior by respondent, including use of telephonic, audiovisual or electronic means to harass or monitor:

Describe medical treatment you received and for what:

Describe any threats of suicide or suicidal behavior by the respondent:

Does the respondent own or possess firearms? Yes No

Does the respondent use firearms, weapons or objects to threaten or harm you? Please describe:

If you are requesting that the protection order lasts longer than one year, describe the reasons why:

Other:

(Continue on separate page if necessary.)

Check box if substance abuse is involved: alcohol drugs other

Personal service cannot be made upon respondent within the state of Washington.

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

Dated: _____ at _____, Washington.

Signature of Petitioner

You have a right to keep your residential address confidential. If you have one, please provide an address, other than your residence, where you may receive legal documents: _____

For Court of Washington

Order for Protection

Petitioner (First, Middle, Last Name) **DOB**
 v.
 Respondent (First, Middle, Last Name) **DOB**

No.
 Court Address _____
 Telephone Number: () _____
 (Clerk's Action Required) (ORPRT)

Names of Minors: No Minors Involved

First	Middle	Last	Age
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Respondent Identifiers

Sex	Race	Hair
Height	Weight	Eyes

Respondent's Distinguishing Features:

Caution: Access to weapons: yes no unknown

The Court Finds Based Upon the Court Record:

The court has jurisdiction over the parties, the minors, and the subject matter and respondent has been provided with reasonable notice and an opportunity to be heard. Notice of this hearing was served on the respondent by
 personal service service by mail pursuant to court order service by publication pursuant to court order
 other _____

This order is issued in accordance with the Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.

Respondent's relationship to the petitioner is:
 spouse or former spouse current or former dating relationship in-law parent or child
 parent of a common child stepparent or stepchild blood relation other than parent or child
 current or former cohabitant as intimate partner, current or former cohabitant as roommate
 including current or former registered domestic partner

Respondent committed domestic violence as defined in RCW 26.50.010 and represents a credible threat to the physical safety of petitioner; the court concludes as a matter of law the relief below shall be granted.

Court Order Summary:

- Respondent is restrained from committing acts of abuse as listed in restraint provisions 1 and 2, on page 2.
- No-contact provisions apply as set forth on the following pages.
- Additional provisions are listed on the following pages.

The terms of this order shall be effective immediately and for one year from today's date, unless stated otherwise here (date):

It is Ordered:

1. Respondent is **Restrained** from causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking petitioner the minors named in the table above these minors only:

(If the respondent's relationship to the petitioner is that of spouse or former spouse, parent of a common child, or former or current cohabitant as intimate partner, including current or former registered domestic partner, then effective immediately, and continuing as long as this protection order is in effect, **the respondent may not possess a firearm or ammunition.** 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)

2. Respondent is **Restrained** from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, locations, or wire or electronic communication of petitioner the minors named in the table above only the minors listed below members of the victim's household listed below the victim's adult children listed below:

3. Respondent is **Restrained** from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by Respondent's lawyer(s) with petitioner the minors named in the table above these minors only:

If both parties are in the same location, respondent shall leave.

4. Respondent is **Excluded** from petitioner's residence workplace school; the day care or school of the minors named in the table above these minors only:

Other

Petitioner's address is confidential. Petitioner waives confidentiality of the address which is:

5. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately **Vacate** the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.

This address is confidential. Petitioner waives confidentiality of this address which is:

6. Respondent is **Prohibited** from knowingly coming within, or knowingly remaining within _____ (distance) of: petitioner's residence workplace school; the day care or school of the minors named in the table on page one these minors only:

Other:

7. Petitioner shall have possession of essential personal belongings, including the following:

<input type="checkbox"/> 8. Petitioner is granted use of the following vehicle: Year, Make & Model _____ License No. _____
<input type="checkbox"/> 9. Other: _____
<input type="checkbox"/> 10. Respondent shall participate in treatment and counseling as follows: <input type="checkbox"/> domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: _____ <input type="checkbox"/> parenting classes at: _____ <input type="checkbox"/> drug/alcohol treatment at: _____ <input type="checkbox"/> other: _____
<input type="checkbox"/> 11. Petitioner is granted judgment against respondent as provided in the Judgment, WPF DV 3.030.
<input type="checkbox"/> 12. Parties shall return to court on _____, at _____ .m. for review.
Complete only if the protection ordered involves pets:
<input type="checkbox"/> 13. Petitioner shall have exclusive custody and control of the following pet(s) owned, possessed, leased, kept, or held by petitioner, respondent, or a minor child residing with either the petitioner or the respondent. (Specify name of pet and type of animal.): _____
<input type="checkbox"/> 14. Respondent is Prohibited from interfering with the protected person's efforts to remove the pet(s) named above.
<input type="checkbox"/> 15. Respondent is Prohibited from knowingly coming within, or knowingly remaining within _____ (distance) of the following locations where the pet(s) are regularly found: <input type="checkbox"/> petitioner's residence (You have a right to keep your residential address confidential.) <input type="checkbox"/> _____ Park <input type="checkbox"/> other: _____
Complete only if the protection ordered involves minors: This state <input type="checkbox"/> has exclusive continuing jurisdiction; <input type="checkbox"/> is the home state; <input type="checkbox"/> has temporary emergency jurisdiction <input type="checkbox"/> that may become final jurisdiction under RCW 26.27.231(2); <input type="checkbox"/> other: _____
<input type="checkbox"/> 16. Petitioner is Granted the temporary care, custody, and control of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
<input type="checkbox"/> 17. Respondent is Restrained from interfering with petitioner's physical or legal custody of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
<input type="checkbox"/> 18. Respondent is Restrained from removing from the state <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:

19. The respondent will be allowed visitations as follows: _____

Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.

If the person with whom the child resides a majority of the time plans to relocate the child, that person must comply with the notice requirements of the Child Relocation Act. Persons entitled to time with the child under a court order may object to the proposed relocation. See RCW 26.09, RCW 26.10 or RCW 26.26 for more information.

Warnings to the Respondent: A violation of provisions 1 through 6 of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject you to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C. §§ 2261, 2261A, or 2262.

A violation of provisions 1 through 6, 14, or 15 of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if you have at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74 RCW.

If you are convicted of an offense of domestic violence, you will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

WACIC Data Entry

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to _____ County Sheriff's Office
 City Police Department **Where Petitioner Lives** which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

Service

- The clerk of the court shall also forward a copy of this order on or before the next judicial day to _____ County Sheriff's Office City Police Department **Where Respondent Lives** which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.
- Petitioner shall serve this order by mail publication.
- Petitioner shall make private arrangements for service of this order.
- Respondent appeared and was informed of the order by the court; further service is not required.

Law enforcement shall assist petitioner in obtaining:

- Possession of petitioner's residence personal belongings located at: the shared residence respondent's residence other: _____
- Custody of the above-named minors, including taking physical custody for delivery to petitioner.
- Possession of the vehicle designated in paragraph 7, above.
- Other: _____

Other: _____

This Order is in Effect Until the Expiration Date on Page One.

If the duration of this order exceeds one year, the court finds that an order of one year or less will be insufficient to prevent further acts of domestic violence.

Dated: _____ at _____ a.m./p.m.

Presented by:

Judge/Commissioner
 I acknowledge receipt of a copy of this Order:

 Petitioner Date

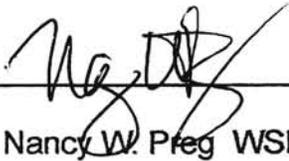
 Respondent Date

The petitioner or petitioner's lawyer must complete a Law Enforcement Information Sheet (LEIS).

CERTIFICATE OF MAILING

I certify and declare under penalty of perjury under the laws of the State of Washington I mailed a copy of the Brief of Appellant Terry L. Kertis to Appellee's attorney of record, Dewey Weddle, 909 7th Street, Anacortes, WA. 98221 postage prepaid on December 10, 2013.

Signed



Nancy W. Preg WSBA 7009