

71295-1

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NO. 71295-1-I

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

ZELEKE KASSAHUN,

Appellant,

v.

FANAYE ASHAGARI,

Respondent.

COURT OF APPEALS
STATE OF WASHINGTON
2014 SEP -3 PM 3:13



BRIEF OF RESPONDENT

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ORIGINAL

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I. STATEMENT OF ISSUES

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II. STATEMENT OF FACTS

This case is an appeal from orders entered after trial in the dissolution of marriage of Fanaye Ashagari and Zeleke Kassahun. CP 494-548. Trial took place over eight days in July 2013. The court issued an oral ruling on July 26, 2013. RP10 946-982. Final orders were issued by the court on November 14, 2013. CP 442-448,468-476, 449-467. A corrected Order for Protection was entered on November 15, 2013. CP 489-493. Mr. Kassahun timely appealed. CP 494-548.

The parties met in Seattle in 1997, and were married on January 3, 1998. RP1 37, 39, CP 1033. The parties have three sons: Nathaniel (born on June 4, 2001), Mathew (born on February 27, 2003), and Andrew (born on June 13, 2006). CP 1032. Ms. Ashagari was 40 years old at the time of trial. CP 1033. She speaks Amharic as her first language, and while she does speak some English, she is not proficient. RP3 294-295. She is currently taking ESL classes. RP3 294. She completed the 12th grade in Ethiopia and after high school she took typing and seamstress classes. RP1 38. In the United States, prior to meeting Mr. Kassahun she worked in a fast food restaurant. RP1 38. After meeting Mr. Kassahun, he hired her to work at the gas station where he worked. RP1 40. After Nathaniel's birth, Mr. Kassahun directed Ms. Ashagari to stay at home to care for their children. RP1 76 Mr. Kassahun did not allow her to take ESL classes. RP8 836-837. Mr. Kassahun maintained strict control over the finances. RP 63-64, 77-87.

Mr. Kassahun was 56 years old at the time of trial. CP 1033. He spent six years at Leningrad University in the Soviet Union before coming to reside in the United States about 30 years ago. RP6 631-634, Ex. 111. In the early nineties he shot and killed a teenage boy after an incident of attempted shoplifting. *State v. Kassahun*, 78 Wn.2d 938, 900 P.2d 1109 (1995). After two trials, Mr. Kassahun agreed to a plea of manslaughter.

CP 67, CP 1034. During the marriage, Mr. Kassahun often told Ms. Ashagari that he had killed once and got away with it and he could do it again. CP 1038, RP3 270.

Prior to their marriage, Mr. Kassahun assaulted Ms. Ashagari after she disclosed to him the abuse she experienced at the hands of her former husband. RP1 41-44. After he apologized and promised that he would never hit her again she agreed to marry him. RP1 44. She described an incident early in their marriage when he pushed her down the stairs when he was drunk and she injured her back. RP1 58-59. Again, he apologized, and tried to justify his anger because she was not home when he got home from work. RP1 59. Ms. Ashagari described several other times Mr. Kassahun assaulted her, including the incident at a birthday party when Mr. Kassahun attacked her, put his hands on her throat and pushed her to the ground. RP2 229-230, RP5 414-420. Siefudin Hassen testified that it took three men to pull Mr. Kassahun away from her and these men had to keep him restrained to prevent him from repeating the attack. RP5 415-416. Liyou Demessie described locking the door and the children at the window in the house and chanting “fight, fight, fight.” RP5 424. On another occasion, Mr. Kassahun was drunk and angry and he destroyed property in the home, threw clothes and personal items over the home, and passed out on top of a pile of clothes. Ex. 2 (pg. 28-29), 4, RP3 255-259.

Ms. Ashagari explained that she was fearful of Mr. Kassahun during the marriage and continued to be after separation because of his violent behavior. RP3 269-270, RP8 823-824. During the marriage Mr. Kassahun routinely called Ms. Ashagari names such as stupid, prostitute, dumb, dirt, dung, dog, and worm. RP1 58, RP2 211-212, Ex. 1, Ex. 7. She recalled several incidences when he choked her. RP2 212, CP 1037, RP8 824, CP 1037. He threatened her saying she should be “fried with a bullet.” Ex. 6, CP 1038, RP2 235-237. He called her and left abusive and harassing messages on her voice mails. Ex. 7, RP2 232-235. During arguments he often pointed at her like he was pointing a gun. CP 1038. He threatened to kill her on numerous occasions. CP 1038, RP8 823-824. He also threatened to kill her sister, and required her to stop having contact with her sister. CP 1038. Ms. Ashagari explained that she was fearful of Mr. Kassahun during the marriage and continued to be after separation. RP3 269-270, RP8 823-824.

Mr. Kassahun often forced Ms. Ashagari to have sex with him. CP 1038, RP3 247-248. When she did not want to have sex with him he accused her of having affairs. RP3 247. He monitored her phone calls, voicemails, and phone records. RP2 123, RP2 225. He admitted that he hired a private detective to follow Ms. Ashagari and report about her whereabouts. RP2 121, RP4 330, 382, RP7 682, CP 1046. He was jealous

and possessive and accused her of having affairs throughout their marriage. RP2 220, RP1 32 (Pastor Rolfs), RP2 221-222 (Convenience Store Clerk), RP2 222 (Person at a wedding), RP2 223-225 (Person with whom Ms. Ashagari had frequent telephone conversations), RP2 227 (Parent of children's friend), Ex. 1. He admitted to following Ms. Ashagari in his car and questioning her about where she went when she was not at home. RP2 121. Ms. Ashagari testified that Mr. Kassahun followed her repeatedly. RP8 822. In the Family Court Services (FCS) parenting evaluation Nathaniel said that his father was often angry if they arrived home after their father did in the evening. CP 1047.

Gary Sarozek, Mr. Kassahun's domestic violence treatment therapist, testified that the treatment program identified the following risk factors in the lethality checklist upon Mr. Kassahun's enrollment: having access to the victim via the children, history of violence because of the manslaughter conviction, stalking behaviors, and "obsessive idolization of the partner." RP 326.

Mr. Kassahun drank constantly during the marriage, most often in the garage. Ex. 2, RP2 207, RP3 252-254, 260, CP 1039. Ms. Ashagari took pictures of him passed out at the foot of the stairs when she and the children had to step over him to get in the house. RP3 254, Ex. 2. He sprayed beer and whiskey on her face. RP3 249. After he ransacked the

home on one occasion, he passed out on a pile of clothes. RP3 255-260, Ex. 2. Ms. Ashagari's brother Yagil , who lived with the parties for a year and a half beginning in 2006, corroborated that Mr. Kassahun was often drinking in the home. RP5 440-442. Mr. Kassahun was arrested and charged with a DUI in March 2011. RP3 261-264, CP 1035. He pled to reckless driving. CP 1033.

Mr. Kassahun threatened Ms. Ashagari that if she ever brought their separation to court and sought a divorce he would kill her. RP3 269-270. He also told her that she would receive nothing in a divorce and would be destitute. RP3 273, RP1 71.

Jennifer Bercot of FCS conducted a parenting plan evaluation and recommended RCW 26.09.191 restrictions on the basis of Mr. Kassahun's history of domestic violence and a long term impairment resulting from alcohol that interfered with his performance of parenting functions. RP1 125, Ex. 1. In February 2013, the court entered a one year Order for Protection. Ex. 14. At trial, the court made an RCW 26.09.191 finding on the basis of a history of domestic violence. CP 472, 478. It entered a long term Order for Protection for Ms. Ashagari. CP 489-493. The court found that Mr. Kassahun's alcohol abuse was not merely situational, CP 468-476, and ordered that the father shall not consume any alcohol during his visits with the children or for eight hours prior to his visits. CP 484.

The court ordered Mr. Kassahun to complete State Certified Domestic Violence Treatment at Wellspring Family Services and the DV Dads program at Wellspring before he would begin having any overnight visitation with the children. CP 483-484. The court also ordered that the children could end a visit at any time if they feel afraid or threatened. CP 484.

In 1999, the parties purchased a home in Shoreline where they lived during their fourteen year marriage. RP1 67-68. They purchased a taxi cab license in 2000. RP1 86. They purchased the Abyssinia Market in 2002 with savings and equity from their home. RP1 82-83. During the marriage they purchased several cars, including a new Lexus in 2004 and a new Mercedes in 2010, putting \$20,000 down on the Mercedes from their savings. RP1 91-92, Ex. 25. They family ate out frequently, went on family trips, paid for tutoring and Kumon and enrolled the children in a variety of activities such as swimming, ice skating, and soccer. RP3 264-267. The family spent and saved a considerable amount of money. RP 88, 92, Ex. 54. In 2011, Mr. Kassahun withdrew the family's savings of \$187,000 and unilaterally decided to invest \$180,000 in another taxi cab license. Ex. 60, 103-107, RP1 89-91.

After Nathaniel was born, during the marriage and since separation, Mr. Kassahun was the sole source of financial support for the

family. RP6 545, 586-587. He ran the business owned by the parties, Abyssinia Market. RP6 547. The family also received income from a taxi cab license purchased in 2000 and the cab license Mr. Kassahun purchased in 2011, although it is unclear how much those investments made. Ex. 29-30. Mr. Kassahun used his business account for personal expenses for himself and for the family. He wrote checks to himself off the business accounts which he deposited in the joint account, his personal account, or sometimes cashed. RP6 539-540, Ex. 55. He used the business credit cards (Sam's Club Discover and Costco American Express) for personal expenses, and paid thousands of dollars each month on the running balances. RP6 541-555, Ex. 49, 56, 108, 109. Mr. Kassahun used credit cards to pay his legal fees. RP6 543-544. He took cash from the business accounts and cash sales that were not recorded on the books and he used cash to pay his employees \$24,000 per year. RP6 562-563. He used cash to pay personal expenses. RP6 565.

Mr. Kassahun began issuing checks to himself for a modest salary between 2010 or 2011. RP6 558-559, Ex. 112. He filed tax returns reflecting those paychecks only and income from one of the taxi cabs only. Ex. 29, 30. The tax returns reflect only minimal income from the cab. For instance, in 2011, the return reflects only \$755 in income from one of the cabs, and the other returns reflect income of usually less than

\$1000 for the year. Ex. 29, 30, RP6 600-601. He does not drive the cabs himself but leases them to other drivers who pay him a monthly sum. RP6 659-597. He claimed at trial to be receiving \$1000 a month per cab. RP6 595.¹ He testified he received cash payments from the drivers but provided no verification of this income and admitted that he keeps no records of this income. RP6 597-598. His reporting of his income was inconsistent and unreliable, \$6500 income in June 2013, RP6 591-592, \$5400 in August 2012, CP 104-109, \$3582 on Basic Health Application, RP6 605. The expenses reflected in the financial declarations and in the testimony and evidence presented are far greater than the income he reported.² CP 104-109, 506, Ex. 16, 29, 30, 49, 54, 55-56, 59, 67, 108-109, 123, 217-218, 221, RP1 96-100. RP6 537-556, 574-583, 590-595.

After Mr. Kassahun moved out of the family residence in September 2011, he continued to pay the household expenses and his personal expenses until Ms. Ashagari filed for divorce in July 2012. RP2 267, RP RP6 539. She waited to actually file for divorce and for a protection order because she feared what Mr. Kassahun might do upon

¹ In August 2012, after the dissolution action was filed he did not disclose the second cab and reported income of only \$900 per month from one cab. CP 104-109.

² For example, in 2003, he reported an adjusted gross income of merely \$907 for the entire year. RP1 99. At that time, the first mortgage payment was \$929.25 per month. RP1 100. Subsequent tax returns were similarly implausible. Ex. 29, 30.

receipt of the dissolution documents, and because she was certain that he would carry out his threat to stop supporting the family if she were to take the matter to court. CP 16. The expenses included the first and second mortgage, the car payments, insurance (both health and automobile), utilities, home security company, food, clothing, supplies, the children's activities, and all other expenses. RP2 267-269.

During the latter part of the marriage and after separation, Ms. Ashagari would write out checks for bills that came to the home, and give the bills with the checks to Mr. Kassahun. RP2 268-269. He would then put money into the parties' joint account to cover the amount of the bills and mail the bills. RP2 268-269. Prior to separation he gave her cash to purchase groceries, or gave her permission to use a credit card. RP1 77-78. After separation, he met her at Sam's Club or Costco twice a month where she would shop and he would pay for the groceries. RP3 267. Some bills, such as the second mortgage, were paid out of the business account. RP6 536. The first mortgage and the car payment for the Mercedes were paid directly out of the joint account. Ex. 54. Ms. Ashagari was not allowed to have any money of her own except for small amounts for personal expenses such as shampoo and other items. RP1 79. During the marriage, she had a Macy's card that she secretly used to purchase clothes and which she paid with the cash left over from what he had given her for

personal expenses. RP1 77. She testified that she kept this card secret because he would be angry with her for purchasing clothes without his permission. RP1 77-78. She did have an American Express card that she was allowed to use so long as Mr. Kassahun approved of the expenses. RP1 79. He used the business cards (American Express and Discover) to pay for meals out. RP1 80, Ex. 49, 108-109. Mr. Kassahun readily acknowledged that he always supported the family. Ex. 111, pg 11.

Prior to separation, the parties attempted to negotiate a peaceful end to their marriage with the help of members of the Ethiopian community. Mr. Kassahun did not want to utilize the court, and pressured Ms. Ashagari to speak only with these community members. One of these people is Tekatu Trunch, a close confidant and ally of Mr. Kassahun. During these meetings, Mr. Kassahun focused on his belief that Ms. Ashagari had been unfaithful, and that she did not deserve to leave the marriage with any property or support. RP3 270-274. He threatened to give her “nothing.” RP2 273. The parties separated for the final time on September 16, 2011. CP 469.

Ms. Ashagari was very fearful that if she filed for divorce, Mr. Kassahun would become violent with her, and that he would immediately suspend any support for the family. CP 16, RP3 269-270, 273, RP8 823-824. Ms. Ashagari filed for dissolution of the parties’ marriage on July 5,

2012. CP 1-10. At that time she filed a petition for an Order for Protection. CP 23-33. She obtained a temporary restraining order regarding financial restraints and a Temporary Order for Protection. CP 44-47, CP 40-43. After Mr. Kassahun was served, he immediately suspended support for the family until the court ordered him to pay child support, maintenance, and other household expenses on August 8, 2012. CP 122-145.

Mr. Kassahun claimed to be “destitute” in the fall of 2012. RP6 595. In February 2013, he leased a new Mercedes by paying \$1500 down and a monthly payment of \$624. Ex. 28. He spent thousands on dining out, Nordstrom purchases, cash withdrawals, credit cards and other expenses from his personal bank account. RP6 575-583, RP9 893, Ex. 123. He paid \$720 a month for supervised visitation. RP6 614. He paid for numerous activities for the children while on these visitations such as EMP, Snoqualmie Falls, shopping, King Tut exhibit, Whole Foods, and Skiing. RP8 809-810. He paid thousands per month from his personal bank account alone, not including the expenses charged to credit cards and paid for by the business, and money deposited into the joint account. CP 104-109, 506, Ex. 16, 29, 30, 49, 54, 55-56, 59, 67, 108-109, 123, 217-218, 221, RP1 96-100. RP6 537-556, 574-583, 590-595.

Mr. Kassahun claimed that he had to borrow money from his friend Taketu Truneh for the express purpose of paying his support obligations, but the promissory note he produced indicates that this “loan” required no payments and bore no interest, and was to be repaid by February 2014. Ex. 102. Mr. Kassahun used some of that money for his own personal expenses. RP6 568-573. He also testified that he used that money for attorney’s fees. RP6 573. Despite the fact that he testified that he had \$9000 of those funds remaining at the time of trial (RP6 573), he stopped paying his court ordered obligations for child support and maintenance during trial, claiming that the funds were gone. RP3 283, RP6 583.

He was ordered to pay \$5,634.72 in unpaid maintenance when the final orders were entered. CP497. The court entered an Order of Child Support based on its finding that his income was \$13,750. CP 524. It awarded maintenance to Ms. Ashagari in the amount of \$5000 per month for a period of four years. CP 499.

III. AUTHORITY AND ARGUMENT

A. **The trial court properly exercised its discretion when it imposed RCW 26.09.191 restrictions in the parenting plan.**

1. The trial court made clear and substantive findings to support RCW 26.09.191 restrictions in the parenting plan.

A trial court's rulings dealing with the provisions of a parenting plan are reviewed for abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362, 1366 (1997). A trial court only abuses its discretion if its decision is manifestly unreasonable, based on untenable grounds, or untenable reasons. *Littlefield*, 133 Wn.2d 39, 46-47. A court's decision is unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if an incorrect standard is applied or if the facts do not fall within the correct standard. *Id.* at 47. In this case, the trial court did not abuse its discretion because it applied the appropriate legal standards and its factual findings are thoroughly supported by the record.

RCW 26.09.191(2)(a) requires limitations in the parenting plan if the court finds that a parent “has engaged in a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.” The pertinent sections of RCW 26.50.010(1) define domestic violence as (1)

“[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members” or (2) “stalking.” *Id.* at (1)(a), (1)(c).

The Parenting Plan and the Findings of Fact and Conclusions of Law entered by the court clearly set forth findings of a history of domestic violence, other acts of domestic violence, and stalking. The court’s findings are further supported by the oral ruling. The findings are supported by substantial evidence in the evidentiary record and go beyond the minimal standards laid out by the Washington Supreme Court in *Labelle* which required that findings of fact be sufficient to indicate the factual basis for the court’s ultimate conclusions. *In Re Labelle*, 107 Wn.2d 196, 218, 728 P.2d 138 (1986). In *Labelle*, the Supreme Court required the findings of fact to be sufficient to indicate the factual basis for the court’s ultimate conclusions. *Labelle* was a case concerning involuntary commitment where the written findings of the court consisted of a preprinted standardized form that recited the statutory grounds and requisite findings for involuntary commitment. *Labelle*, 107 Wn.2d at 218. While the appellate court in *Labelle* decided the written findings were inadequate, they determined that the findings may be supplemented by the oral decision or record in future cases not involving involuntary commitment. *Id.* at 219-20. This decision is upheld in the Washington

Supreme Court decision *Matter of Marriage of Booth*, 114 Wn.2d 772, 791 P.2d 519 (1990).

The case at hand can be distinguished from *Lawrence* where the findings of fact and oral ruling were so incomplete that the appellate court could not determine how the trial court made its decision regarding primary residential placement of the party's child. *Lawrence v. Lawrence*, 105 Wn. App. 683, 686, 20 P.3d 972, 974 (2001). The trial court in *Lawrence* concluded that the child should live with the father and did not make any findings to indicate how this residential schedule was chosen. *Lawrence*, 105 Wn. App. at 685. In this case, the trial court laid out a sufficient factual basis for imposing RCW 26.09.191 restrictions on Mr. Kassahun in the parenting plan where it found a "history of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or fear of such harm." CP 478 The court further set forth its findings in the Findings of Fact and Conclusions of Law:

There is a history of domestic violence and a basis for RCW 26.09.191 restrictions. The father had the mother followed and monitored her phone records. The court finds that the father assaulted the mother at the birthday party in 2011, and that this was not an isolated incident. The evidence presented at trial satisfies the statutory definition of domestic violence. CP 472.

The trial court is not required under *Labelle* or *Booth* to exhaustively catalogue each and every instance of domestic violence when making RCW 26.09.191 findings.

This is not a case where the trial court neglected to make findings so that “the absence of a finding of fact in favor of the party with the burden of proof as to a disputed issue is the equivalent of a finding against the party on that issue.” *Yakima Police Patrolmen’s Ass’n v. City of Yakima*, 153 Wn. App. 541, 562, 222 P.3d 1217 (2009). In *Yakima*, an association of police officers sought judicial review of a Public Employment Relations Commission (“PERC”) decision arguing that PERC “failed to enter findings of fact” and so “it is impossible to know what PERC determined...” *Id.* at 551, 561. The Court of Appeals did not agree with the association because they interpreted PERC’s failure to adopt one party’s testimony as meaning that “the association did not meet its burden of proof.” *Id.* at 564. In this case, the trial court specifically found that “there is a history of domestic violence and a basis for RCW 26.09.191 restrictions” and these findings favor Ms. Ashagari. CP 472. As in *Labelle*, these findings of fact are sufficient to indicate the factual basis for the court’s ultimate conclusions and these findings are well supported by the record. *In Re Labelle*, 107 Wn.2d at 218-19.

2. The court's findings are supported by an evidentiary record which contains evidence of numerous instances of domestic violence and instances where Mr. Kassahun caused Ms. Ashagari to fear imminent physical harm, bodily injury or assault.

Substantial evidence in the record supports the trial court's findings with respect to domestic violence and stalking. The trial court reasonably based its decision on the evidence produced at trial such as the testimony regarding Mr. Kassahun's physical abuse of Ms. Ashagari; his possessiveness and jealousy; his anger towards Ms. Ashagari when she was not home on time; his excessive drinking; his following of Ms. Ashagari; his monitoring of Ms. Ashagari's phone records; the Family Court Services ("FCS") report; telephone harassment and name calling (telephone transcript); his threat that she should be "fried with a bullet" (video tape transcript); and the overall negative impact of his behavior on the household³. Jennifer Bercot, the FCS social worker who conducted a

³ Mr. Kassahun's anger toward Ms. Ashagari when she was not home on time: RP1 50, 58, RP2 210, 233.

Mr. Kassahun's drinking: RP1 45, 46, 47, RP2 122, 124, 125, 128, 158, 216, 230, 237, RP3 249, 251-55, 257-58, 260-64, RP5 440-42, 449-50, 503, RP7 679, 693, 719-20, 722, RP8 793.

Mr. Kassahun's following of Ms. Ashagari RP1 43, RP2 121, 133, 154, 192, 193, 196, 220-21, RP4 330, 339-40, 387-88, RP7 683, 687, RP8 774, 822.

Mr. Kassahun's monitoring of Ms. Ashagari's phone records: RP1 155, RP2 225-26, RP4 340, RP7 691-92, 758, RP8 773.

Mr. Kassahun's physical abuse of Ms. Ashagari: RP1 41,42,43, 44, 57, 58, 59, RP2 122, 126, 133, 168, 169, 170, 212-13, 218, 228-30, RP3 247, 249-52, RP3, 312, RP4 343,352, 386, 390-92, RP5 415, 419, RP7 694, 702

Family Court Services Report RP2, 121-125, 128, 133, Ex. 1

Phone Transcript : RP2 232-34, Ex. 7

parenting plan evaluation, stated that based on her interviews with both parties, collateral contacts, and a review of the court file and other evidence that “it would be appropriate to include restrictions for [a] history of domestic violence...” RP2 125, CP 1055. Additionally, when asked about the lethality assessment in this case, Ms. Bercot responded that: “the lethality risk factors that were present included: choking, stalking, substance abuse, violence in the presence of the children, violence towards the child, a history of violence. The severity of the violence or the frequency for duration [sic] was significant, sort of obsessive types of behavior, threats to kill the mother.” RP2 133.

Gary Sarozek, Mr. Kassahun’s therapist from Wellspring Family Services Domestic Violence Treatment Program, also described the lethality checklist conducted by the program upon Mr. Kassahun’s enrollment. Among the risk factors identified were: having access to the victim via the children, a history of violence because of the manslaughter conviction, and stalking behaviors, as well as “centrality of the partner” which Mr. Sarozek described as “obsessive idolization of the partner.” RP4 326. Mr. Sarozek, believed that Mr. Kassahun likely battered Ms. Ashagari based on Mr. Kassahun’s self report, homework, and admissions during group discussion. RP4 434.

Videotape Transcript: RP2 235-38, RP4 357-58, 376, Ex. 6

Furthermore, in imposing the restrictions, the court noted that it was “particularly impressed [and] persuaded [by] Nathaniel’s comment about his father’s drinking and anger” as described in the FCS report. RP10 952, CP 1047-1048.

The findings of the court are also supported by Ms. Ashagari’s testimony that Mr. Kassahun’s actions caused her to fear him. RP10 951-52, RP2 195, 210, 214, 231, RP8 823. Ms. Ashagari’s fear was so great that she called the police on January 3, 2011. RP2 195, 196. Because Mr. Kassahun inflicted this fear upon Ms. Ashagari, his fear inducing actions satisfy the statutory definition of domestic violence. RCW 26.50.010(1)(a).

Mr. Kassahun’s antiquated characterization of what he considered to be the expected behavior of domestic violence survivors is unsupported by the facts of this case or by any authority on domestic violence. RP9 925-926, Opening Brief of Appellant. Ms. Ashagari’s fear was ongoing, despite the fact that she continued living with Mr. Kassahun, as demonstrated through her testimony. RP10 951-52, RP2 195, 210, 214, 231, RP8 823. Social science shows that a domestic violence survivor may use a variety of strategies to cope with the ongoing fear of future harm and reprisals. Ganely, Ann Ph.D, DV: The What, Why and Who, as Relevant to Criminal and Civil Court DV Cases, DV Manual For Judges,

Washington State Administrative Offices of the Courts, 2006. p. 2-28-2-31. Domestic violence survivors may minimize or deny the abuse because of community barriers, fear of retaliation, or a desire to avoid admitting that their partners are abusing them. *Id.* at 2-28, 2-29. Domestic violence survivors might remain with the perpetrator because they fear an escalation of the violence if they leave or try to get help. *Id.* at 2-29, 2-32-2-33. They remain for economic reasons also. *Id.* At 2-33. Therefore, “rather than viewing the domestic violence victim’s behavior as either masochistic, or crazy, or ‘in denial’, or indicating that there really was no violence, it should be viewed as a normal response to violence and as contributing to the adult victim’s survival....” *Id.* at 2-31. Despite ample corroborative testimony from several witnesses and admissions by Mr. Kassahun, his position simply is to call Ms. Ashagari a liar, to minimize and excuse his behavior, or to blame his behavior entirely on her. Opening Brief of Appellant,⁴ RP9 900-934.

⁴ Mr. Kassahun places great emphasis on an order that was entered when Ms. Ashagari attempted to obtain an Order for Protection against her first husband. Opening Brief of Appellant, pages 7-10. That order does not mean that domestic violence never occurred in her relationship with her first husband, but more importantly it is altogether irrelevant to the court’s inquiry into the domestic violence that occurred in her relationship with Mr. Kassahun. Mr. Kassahun misleadingly weaves quotes from this order through his argument in his opening brief (pages 29-30) as if it were a record of the events in the instant case. It is not. In this case, the court found Ms. Ashagari’s account of her relationship with Mr. Kassahun credible and that a preponderance of the evidence supported RCW 26.09.191 findings and the entry of a long term Order for Protection. Credibility

The trial court based its decision using the applicable legal standard. RCW 26.09.191(1)(c). The record in this case supplies substantial evidence to support the trial court's determination that the domestic violence suffered by Ms. Ashagari was real, that it caused her to fear imminent physical harm, bodily injury or assault and that the RCW 26.09.191 restrictions were proper.

3. RCW 26.09.191 restrictions are proper because the trial court found that Mr. Kassahun assaulted Ms. Ashagari at a birthday party.

The court shall impose restrictions under RCW 26.09.191(1)(c) if a parent has "engaged in a history of acts of DV...or an assault" The court in *Caven* stated that a "plain and ordinary reading of the language in RCW 26.09.191(1)(c) leads to the conclusion that the two phrases should be interpreted as alternatives to each other and not as modifiers." *In re Marriage of Caven*, 136 Wn.2d 800, 807, 966 P.2d 1247 (1998). Even if the court only considered the birthday party assault, a single assault can act as an independent basis to impose restrictions pursuant to RCW 26.09.191(1)(c). CP 472.

An assault can be the sole basis for restrictions if it causes grievous bodily harm or the fear of such harm." *In re Marriage of Caven*, 136

determinations lie firmly in the realm of the trial court. *In re Marriage of Fiorito*, 112 Wn. App. 657, 667, 50 P.3d 298 (2002).

Wn.2d at 802. In this case, the trial court found that the assault “inflicted fear of imminent physical harm or bodily injury or assault.” RP10 952. Ms. Ashagari also testified that she was “scared” of her husband after the assault at the birthday party in 2011, so she spent the night at her mother’s house. RP2 231. In making the ruling that the assault caused Ms. Ashagari to fear imminent physical harm or bodily injury, the court determined that Ms. Ashagari’s testimony of her fear was credible. Because, the trial court found that Mr. Kassahun assaulted Ms. Ashagari and noted in its oral ruling that this incident inflicted fear of imminent physical harm, these findings are “sufficiently specific to permit meaningful review” and are “sufficient to indicate the factual basis for the ultimate conclusion” that RCW 26.09.191 restrictions on Mr. Kassahun are proper. CP 472, RP10 952, *Labelle*, 107 Wn.2d at 218-19.

4. The restrictions imposed by the court were reasonably calculated to protect the children and the mother from further harm.

Additionally, the limitations imposed by the court are “reasonably calculated to protect the child from the physical, . . . emotional abuse or harm that could result if the child has contact with the parent requesting residential time” RCW 26.09.191(m)(i). Prior to completion of domestic violence treatment, Mr. Kassahun has six hours of unsupervised visits with his children every Sunday and on many holidays. CP 478, 480. After

completion of domestic violence treatment and completion of the DV Dad's program at Wellspring the father's visitation increases to include Saturday's from 10am-Sunday's at 6pm every other weekend and alternating winter and spring breaks with the children as well as a week of vacation with them in the summers. CP 478-80. Also in phase two, holidays that are on a Friday or Monday will allow the parent with whom the children are residing to have the children the entire weekend. CP 480. The orders here are narrowly tailored to protect the children from their father's continued anger and violence by increasing the father's residential time after he demonstrates, through successful domestic violence treatment and the DV Dad's Program, that he has gained a comprehensive understanding of his domestically violent behaviors and how his behaviors impact his family. The orders also are "reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time" because they limit the interaction Ms. Ashagari will have with Mr. Kassahun, and hold him accountable for his behaviors and attitudes by requiring him to attend domestic violence treatment. RCW 26.09.191(m)(i).

B. The trial courts entry of a Permanent Protection Order was proper because the trial court found that acts of domestic violence are likely to resume.

The entry of a domestic violence protection order is reviewed for abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50, 52 (2002).

1. Mr. Kassahun was afforded due process.

Mr. Kassahun was afforded more than the required due process of adequate notice and ability to be heard. Due process is flexible and can accommodate situations requiring differing levels of protection. *Gourley v. Gourley*, 158 Wn. 2d. 460, 467, 145 P.3d 1185 (2006). When the first Order for Protection was issued in February 26, 2013, Mr Kassahun chose not to appear and contest the order. CP 294. Mr Kassahun later participated in a full dissolution trial at which he had the opportunity to put on multiple witnesses, testify himself for nearly two days, cross examine Ms. Ashagari, the parenting plan evaluator, his Wellspring therapist Gary Sarozeck and other witnesses. Mr. Kassahun was granted far more due process than the Respondent Gourley who the Supreme Court of Washington determined was not improperly denied the opportunity to cross examine his daughter who had accused him of sexual abuse. *Gourley*, 158 Wash. 2d. at 470. The trial court, in this case, fully investigated the history of domestic violence and the credibility of Ms.

Ashagari's fear of future violence, and gave Mr. Kassahun every opportunity to make his case.

2. The record supports entry of a long-term Order for Protection.

The entry of a continuing, long term Order for Protection was supported by the findings and the record. In this case, the trial court found that Mr. Kassahun is likely to resume acts of domestic violence when the order expires as required by RCW 26.50.060(2). RP10 954. As Mr. Kassahun points out in his brief, the court of appeals in *City of Seattle* stated that "there is nothing in chapter 26.50 RCW requiring that the issuing court's finding as to further acts of DV appear on the face of the protection order" and "there is no requirement that the order contain the issuing court's finding required by RCW 26.50.060(2) as a condition for making the order permanent." *City of Seattle v. May*, 151 Wn. App. 694, 668, 699, 213 P.3d 945 (2009). The first page of the protection order in this case states that a "permanent DV Order for Protection should be entered on behalf of the petitioner." CP 471. Under *Labelle*, this finding for a permanent Order for Protection may "be supplemented by the trial court's oral decision or statements in the record" *Labelle*, 107 Wn.2d at 219-20.

The oral ruling further explains the basis for entry of this permanent Order of Protection. Specifically, the trial judge states "that

acts of domestic violence are likely to resume .” RP10 954. These findings are all that are required, under *City of Seattle*, for a permanent Order of Protection to be appropriate. Beyond specifying the types of relief provided, the order is required only to specify the date it expires (if at all), the type and date of service of process used, and a notice of the criminal penalties resulting from violation of the order. RCW 26.50.035(1)(c); .060(6). The trial court fulfilled these requirements.

3. The *Freeman* case is not applicable.

Mr. Kassahun’s reliance on *In re Marriage of Freeman*, 169 Wn.2d 664, 674, 239 P.3d 557 (2010) is misplaced. The *Freeman* case differs from this case because it involved children that were included in the Order of Protection. The initial full protection order entered in a stand-alone proceeding is effective for a fixed period, not to exceed one year if contact with the perpetrator's children is addressed. RCW 26.50.060(2). This length-of-time provision does not apply to this case because the children are not covered by the protection order entered at trial. Even if the children were to be included in the order, the court has the authority to order relief for longer than one year under RCW 26.09, 26.26, or 26.10. RCW 26.50.060(2).

This case differs from *Freeman* because it did not involve the modification or termination of an Order for Protection lasting longer than

two years. Even if the *Freeman* modification/termination standards applied, *Freeman* would require Mr. Kassahun to bear the burden of proving he will not commit future acts of domestic violence and that Ms. Ashagari's fear is unreasonable. *Freeman*, 169 Wn.2d 664 at 674 Mr. Kassahun's testimony and exhibits failed to meet that burden and cannot meet that burden under the *Freeman* standards.

The *Freeman* case involves strikingly different facts. In that case, Mr. Freeman sought to terminate a permanent Order for Protection in 2006. Since entry of the original order in 1998, Mr. Freeman had left Washington State and lived in another state, had never violated the protection order, had no criminal record, had no contact with his ex-wife or her children in over 10 years, had no known issues with drugs or alcohol and his health had suffered from war injuries and an amputation of his arm. *Id.* at 676. Unlike in *Freeman*, Ms. Ashagari and Mr. Kassahun share young children together and will be required to have ongoing contact and communication regarding the children, Mr. Kassahun lives in Washington State and has access to Ms. Ashagari, Mr. Kassahun has a violent criminal record, and a history of alcohol abuse. CP 3, 4, 90, 472. Unlike the ex-wife in *Freeman*, the evidentiary record in this case demonstrates that Ms. Ashagari's fear of Mr. Kassahun is reasonable and that Mr. Kassahun has not met his burden of showing that he no longer

poses a threat to Ms. Ashagari. He never contested the entry of a protection order in the first place. Ex. 14.

Even if the burden of proof belonged to Ms. Ashagari, she has met this burden. The trial court record contains substantial evidence to support the entry of a long term Order of Protection under both *Freeman* and *Spence v. Kaminski*, 101 Wn.App. 325, 12 P.3d 1030 (2000).⁵ In *Spence*, the court found that the total history of the couple's relationship, which included threats and violence along with an ongoing custody struggle, supported the victim's belief that she was at risk of imminent physical harm. Like the victim in *Spence*, Ms. Ashagari's fear of imminent physical harm is supported by the evidentiary record which substantially shows a violent relationship history with Mr. Kassahun.

C. The trial court properly exercised its discretion when it found that the appellant's income was \$13,750 for the purposes of child support and maintenance and which is supported by substantial evidence, both direct and circumstantial, of all the income available to the appellant.

Trial court decisions in dissolution proceedings will seldom be changed on appeal. *In re Marriage of Booth*, 114 Wn.2d. 722, 776, 791

⁵ For the sake of brevity the citation to the record will not be repeated again in this section as it is set forth in detail in the Statement of Facts and the previous section, see footnote no. 3.

P.2d 519 (1990). Such decisions will be upheld unless they demonstrate a manifest abuse of discretion. *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985). A court's decision is unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if an incorrect standard is applied or if the facts do not fall within the correct standard. *Littlefield*, 133 Wn.2d 39, at 47.

The trial in this matter took place over a period of eight days. There were 15 witnesses, and nearly 150 exhibits. The court considered all the testimony and evidence and arrived at a reasonable conclusion regarding Mr. Kassahun's income. The court explained how it arrived at its conclusion in its oral ruling. The method employed by the court was rational and one of several ways of looking at the evidence in the record. Most importantly, the record contains ample evidence to support the trial court's conclusion. Based on all the evidence available to it, the trial court properly exercised its discretion when it determined that Mr. Kassahun's income was \$13,750 per month and its decision should be upheld.

1. The trial court properly exercised its discretion when it made the determination of child support taking into account all sources of income.

A trial court's determination of child support is reviewed for abuse of discretion. *In re Marriage of Fiorito*, 112 Wn.App. 657, 663–64, 50 P.3d 298 (2002). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds, including an erroneous view of the law. *Fiorito*, 112 Wn.App. at 663–64, 50 P.3d 298.

All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. RCW 26.19.071(1). The court's analysis of income begins with tax returns and wage statements, but "other sufficient verification" must be looked at for income that does not appear on tax return or wage statements. RCW 26.19.071(2). The statute requires the court to consider ALL sources of income, and sets forth a long list of types of income which must be included in the calculation of gross monthly income, beginning with salaries and wages, and including "Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation." RCW 26.19.071(3).

A parent's monthly gross income is determined by considering all income. RCW 26.19.071(1). "Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source ...". RCW 26.19.071(3). A trial court's failure to include all sources of income not excluded by statute is

reversible error. *See In re Marriage of LaDouceur*, 58 Wn.App. 12, 16, 791 P.2d 253 (1990).

In re Marriage of Bucklin, 70 Wn. App. 837, 840, 855 P.2d 1197, 1199 (1993).

Most of the income Mr. Kassahun received does not appear on his tax returns because he does not truthfully report his income.⁶ The court could not reconcile the tax returns, both personal and business, or the valuation of the business by Mr. Kassahun's expert with the "reality of this family's economic situation." RP10 949. The court considered all the income of Mr. Kassahun, including his salary from the business, the cash and draws taken from the business, and the money earned from the taxi cab licenses. The court also considered the fact that the parties had a history of saving a considerable amount of money during the marriage on top of the household expenses. The record shows the family made many major purchases during the marriage, ate out often at restaurants and traveled extensively. During the marriage and after separation Mr. Kassahun routinely used business and personal credit cards for personal expenses and made substantial monthly payments on those credit cards.

The sworn statement of the parties in their financial declarations is also a reasonable measure from which the court can gauge the expenses of the parties and the resources available to the parties to pay those expenses.

⁶ Mr. Kassahun also failed to comply with KCLFR 10.

It is an uncontested fact that prior to separation, and during separation Mr. Kassahun paid all the expenses of both parties. RP2 209, RP 3 267-269, RP6 539, 545, Ex. 111, pg. 11. It is reasonable to conclude that he can continue to do so after the divorce.

After Nathaniel was born, Ms. Ashagari did not work outside the home. RP1 75. After the parties separated and Mr. Kassahun moved out he continued to pay the household expenses for Ms. Ashagari and the children, as well as his own his own expenses. RP 2 267, RP6 539. Mr. Kassahun spent \$8000 to furnish his apartment after he moved out of the family home. RP6 609. These expenses far exceed the income he reported on his tax returns and the income he claimed to receive. Ex. 16, 29, 30, CP 104-109, RP 96-100. Even after he claimed to be destitute, he found the resources to lease a Mercedes, (Ex. 28) and spend thousands of dollars a month on personal expenses from his personal bank account. RP6 575-583, Ex. 59, 123⁷ Mr. Kassahun has not shown that the court abused its

⁷ Mr. Kassahun claimed that he was forced to borrow money to pay the maintenance and child support that were ordered by the court in August 2012. RP6 566-573, Ex. 102. This claim was made despite the fact that he paid the expenses of the household and his own personal expenses for the previous ten months voluntarily and without fail, and only stopped when the divorce was filed. The "loan" was not a loan. It required no interest and no payments. The "Promissory Note" terms require repayment in full by February 2014. Ex.102. If it was truly a loan Mr. Kassahun clearly anticipated being able to repay it within a very short time frame. The appellant admitted that he used these funds for purposes other than payment of child support and maintenance; he regularly took large amounts of cash from the proceeds when obtaining the cashier's checks for child support and maintenance. RP6 566-573. He stated that reserved \$9000 of the funds for payment of his attorney's fees. RP6 573.

discretion in ascertaining that Mr. Kassahun's income was \$13,750 a month after an evaluation of all the evidence before it.

Case law prior to the enactment of RCW 26.19 also supports a trial court's use of discretion when setting child support. In considering appeals regarding the setting of child support we have relied on the rule that trial court decisions in dissolution proceedings will seldom be changed on appeal. The spouse who challenges such decisions must show the trial court manifestly abused its discretion. When there is no abuse of discretion, we have upheld the trial court. *In re Marriage of Landry*, 103 Wash.2d 807, 699 P.2d 214 (1985).

Matter of Marriage of Booth, 114 Wash. 2d 772, 776, 791 P.2d 519, 521 (1990).

Mr. Kassahun's reliance on *In re Marriage of Sacco*, 114 Wn.2d 1, 784 P.2d 1266 (1990) does not support his contention that the court did not provide findings which enable the appellate court to conduct a meaningful review. In *Sacco*, the Washington Supreme Court found fault with the trial court because it did not fill out standard child support worksheets in compliance with RCW 26.19.020 or discuss the results of the standard calculation in its decree. The trial court in *Sacco* did not set forth a basis for deviation from what the standard calculation would have been if it had completed worksheets. In the instant case the court made a specific finding of Mr. Kassahun's income in its findings of fact, based on the complete record before it, and completed a child support worksheet as

developed by the Washington State Child Support Commission and adopted by the Legislature as required by RCW 26.09.020. The child support calculation does not deviate from the standard calculation.

Likewise, the court's analysis in *Stout* does not support the appellant's argument. *State ex. rel. Stout v. Stout*, 89 Wn.App. 118, 948 P.2d. 851 (1997). In *Stout* the court refused to deviate from the standard calculation thus reducing Stouts income below the minimum needs standard. Unlike in *Stout*, the court has significant evidence that contradicts what Mr. Kassahun reported on his income tax returns and his testimony about his income. The evidence available to the court at trial indicates that Mr. Kassahun's income is substantially greater than what he reports, and the court's determination of his income is reasonably based on both direct and circumstantial evidence when considering the amount of large expenditures he made during the marriage and after separation.

The lack of more specific and detailed findings of how the court arrived at its conclusion that Mr. Kassahun's income was \$13,750 is not required by the statute and is not error. Even if this court finds that more specific finding could have or should have been made to support its determination of Mr. Kassahun's income, the error would be harmless.

The trial court's entry of general, rather than specific, findings does not automatically require vacation of the trial court's order if evidence in the record supports it. *In re*

Marriage of Booth, 114 Wash.2d 772, 777, 791 P.2d 519 (1990).

In this case, the court evaluated the evidence and came to a conclusion as to Mr. Kassahun's income using all the evidence available to it. The fact that the record is confusing is due to Mr. Kassahun's failure to accurately report his income on his tax returns, and his reluctance to be forthright about how much income he takes from the business, in wages, cash, draws, and use of company credit cards. There is ample evidence, both direct and circumstantial for the court to come to the reasonable conclusion that Mr. Kassahun's income is \$13,750 per month. CP 104-109, 506, Ex. 16, 29, 30, 49, 54, 55-56, 59, 67, 108-109, 123, 217-218, 221, RP1 96-100. RP6 537-556, 574-583, 590-595. Given the confusing nature of the record, the inaccuracy of Mr. Kassahun's self-reporting of his income, and the credibility determinations that the court had to make in reaching its finding, the determination of Mr. Kassahun's income is an assessment best made by the trial court judge who had the opportunity to listen to testimony over eight days and review the substantial number of exhibits. Its decision is best left undisturbed by the appellate court.

2. Substantial evidence supports the trial court's finding that Mr. Kassahun's income was \$13,750.

The court's findings must be supported by substantial evidence. *In Re Marriage of Shumacher*, 100 Wn.App. 208, 997 P.2d 399 (2000). In *Shumacher*, the court imputed income.

The evidence in the record includes both parties' financial declarations, bank statements for the individual accounts of the parties, the joint account used to pay the household expenses both before and after separation, the business accounts, credit card statements, business records, copies of checks written to Mr. Kassahun from the business in addition to his paychecks, testimony of cash taken from the business for personal expenses. CP 104-109, 506, Ex. 16, 29, 30, 49, 54, 55-56, 59, 67, 108-109, 123, 217-218, 221, RP1 96-100. RP6 537-556, 574-583, 590-595. The court did not find the testimony as to Mr. Kassahun's income of Kessler, a financial expert hired by Mr. Kassahun to evaluate the business, credible. RP10 966. Mr. Kessler did not take into account the cash that Mr. Kassahun was actually drawing from the company, nor did he review Mr. Kassahun's bank records, or the credit card records. RP7 743-746.

A trial court's findings of fact will not be reversed if supported by substantial evidence. *Bering v. Share*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986). Substantial evidence exists if a rational fair-minded person would be convinced of it. *Id.* Even if there are several reasonable explanations of the evidence, it is substantial if it reasonably supports the

finding. *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 713, 732 P.2d 974 (1987). And circumstantial evidence is as good as direct evidence. *State v. Gosby*, 85 Wn.2d 758, 766-67, 539 P.2d 690 (1975).

Rogers Potato v. Countrywide Potato, 152 Wn.2d 387, 97 P.3d 745 (2004).

The evidence shows that the taxi cab licenses produced income in excess of what was reported on the tax returns. Ex. 29-30, RP6 597-598, RP10 949. In addition, the parties were able to save a substantial amount of funds during the marriage, some of which were used to purchase the taxi cab licenses. Ex. 60, 103-107, RP1 89-91, RP10 949. In addition to the checks written from the business account for his salary, Mr. Kassahun regularly drew from the business account, used business credit cards and took cash from the business for personal use. Ex. 49, 55-56, 108-109, RP6 539-555, RP10 949. After separation, Mr. Kassahun paid all the expenses for his own household and the household of Ms. Ashagari and the children. RP2 267, RP6 539. He continued to use credit cards for personal expenditures such as food, clothing, restaurants and travel. RP6 537-556. The preponderance of the evidence, circumstantial and direct, supports the trial court's findings that "Mr. Kassahun has an earning capacity and financial resources that greatly exceed what he claims ..." and that his income is "\$13,750." CP 506.

3. The court properly considered the statutory factors in the determination of maintenance.

The trial courts determination of maintenance is reviewed for an abuse of discretion. A court does not abuse its discretion in a maintenance award if it considers all the statutory factors of RCW 26.09.090.

RCW 26.09.090 includes a nonexclusive list of relevant factors including the financial resources of the party seeking maintenance; the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life and other circumstances; the standard of living established during the marriage; the duration of the marriage; the age and physical and emotional condition of the spouse seeking maintenance; and the ability of the spouse from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse seeking maintenance.

Lukoskie v. Kim, 114 Wn. App. 1015 (2002).

The court explicitly considered the statutory factors in its ruling and in its findings. CP 468-476.

Mr. Kassahun has an earning capacity and financial resources that greatly exceed what he claims and which is sufficient to support Ms. Ashagari as she obtains the necessary training and experience to earn a living wage. Ms. Ashagari has few job skills. She worked as a clerk in a convenience store for a short time prior to birth of the parties first child. While Ms. Ashagari could obtain a job immediately, such employment would be of low wage and

the cost of day care would be greater than what she could earn. Maintenance is necessary to allow Ms. Ashagari to complete her ESL training and to obtain further training as a nurses aid or something so that she can make a reasonable amount of money.

The court finds that Mr. Kassahun's income is \$13,750. Maintenance should be ordered in the amount of \$5000 per month, payable on the first of each month. This obligation shall begin on July 1, 2013 and last for a period of four years.

The court has considered the statutory factors for an award of maintenance under RCW 26.09.090, including financial resources of the party seeking maintenance; her ability to meet her needs independently; the time necessary for her to acquire sufficient education or training; the standard of the marriage; the duration of the marriage; the age, physical and emotional condition of both parties; and the ability of Mr. Kassahun to meet his financial obligations while meeting those of the spouse. CP 471.

The *Washburn* case cited by Mr. Kassahun, involved the consideration of a maintenance award when one spouse supported the other spouse while he or she obtains a professional degree. *In re Marriage of Washburn* , 101 Wn.2d 168, 677 P.2d 152 (1984). The factual circumstances of the marriage between Mr. Kassahun and Ms. Ashagari are quite different. In this case, Mr. Kassahun supported the family during the marriage and two households during separation prior to Ms. Ashagari filing for divorce without difficulty. In any circumstances however, the trial court exercises broad discretionary powers when awarding

maintenance. Its disposition will only be overturned upon a showing of manifest abuse of discretion. *Washburn*, at 179. The *Washburn* court referenced RCW 29.09.090 highlighting the fact that the statute “places emphasis on the justness of an award, not its method of calculation.”

Washburn at 182.

In addition to the finding that Mr. Kassahun has earnings of \$13,750, the court also noted that it awarded him all the income producing property, the mini mart Abyssinia Market, and the two taxi cabs.⁸ The maintenance award is for a discrete period of time of four years, to allow Ms. Ashagari to complete her English as a Second Language Classes and to enroll in a program to earn her nursing assistant license. CP 471. The court noted that the cost of day care at this time would be greater than what she could earn at minimum wage. CP 471. Ms. Ashagari was a stay at home mom for 14 years raising the parties children while their father worked from early in the morning to late at night every day. CP 1033. She was not allowed to work outside the home. RP1 40. Her only work history was at minimum wage or near minimum wage at convenience store and fast food clerk jobs. CP 471. She does not speak English fluently. The

⁸ Mr. Kassahun claimed at trial that the taxi cab licenses each only produce \$1000 per month. Mr. Kassahun never provided any records to support that claim, and admitted that he receives cash from the drivers. RP6 597-598. It strains credulity that in 2011, Mr. Kassahun would invest the family fortune of \$180,000 on a taxi cab license that only brings in \$12,000 per year. He only reports a small fraction of that income on his tax returns. Ex. 29-30.

award of maintenance is just and equitable. Mr. Kassahun has the ability to pay maintenance and Ms. Ashagari has a need for maintenance to support herself and the children for four years while she obtains the necessary training to enter the job market after fourteen years as a stay at home mom.

IV. ATTORNEY'S FEES

Mr. Kassahun should be ordered to pay attorney's fees to Ms. Ashagari under RCW 26.09.140 because she has the need and he has the ability to pay such fees. Fees should also be awarded because the issues raised in his appeal, at least with respect to the entry of RCW 26.09.191 findings and the Order for Protection, are without merit.

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

RCW 26.09.140

Mr. Kassahun has a monthly income of \$13,750, and has historically saved thousands of dollars in addition to paying the family expenses. Ms. Ashagari has no ability to pay for attorney's fees because the income she receives in child support and maintenance is entirely devoted to expenses for the household and the children.

Even though the Respondent is represented by the Northwest Justice Project (NJP), and receives legal services free of charge, she is entitled to recovery of attorney's fees, just like any other litigant. NJP is publicly funded and incurs costs for the representation of its clients. NJP attorneys are paid salaries based on years of experience. Expenses related to free civil legal services include not only the cost of providing an attorney, but also the opportunity costs of reduced availability to represent other clients in a climate of scarce resources and significant demand for representation in family law cases.

The Northwest Justice Project, a state and federally-funded civil legal services provider, is permitted by the Legal Services Corporation ("LSC") and the Office of Civil Legal Aid ("OCLA") to pursue attorney's fees in cases where such fees are authorized by statute or case law. As a condition of representation, Ms. Ashagari agreed to assign any attorney's fees recovered as part of the action to NJP.

The plain language of RCW 26.09.140 provides for payment of

costs incurred, including reasonable attorney's fees, not actual attorney's fees incurred or paid. "Reasonable attorney's fees" is a term of art and is differentiated from fees actually paid or incurred. It is not determined based on the amount of fees actually incurred. See *Fetzer v. Weeks*, 122 Wn.2d 141, 859 P.2d 1210 (1993). In awarding reasonable attorney fees, absent any expressed statutory direction, Washington courts commonly use the "lodestar" method to calculate the award. *Bowers v. TransAmerica*, 100 Wn.2d 581, 594, 675 P.2d 193, 202 (1983). The lodestar method first looks at the number of hours reasonably expended to obtain the result, multiplied by a reasonable hourly rate. *Id.* Indeed, the "reasonable hourly rate should be computed for each attorney, and each attorney's hourly rate may well vary with each type of work involved in the litigation." *Id.*

Regardless of the method of calculation of a fee award under RCW 26.09.140, in no event does the statute require actual payment of fees to obtain an award. The statute does not require that the petitioner have paid attorney's fees out of her own pocket to a private attorney in order to be awarded fees, nor does the statute carve out an exception for litigants who receive free legal representation. There is no support in the statute or any case law for such a presumption. On the contrary, reported case law affirms that historically, Washington courts do not distinguish between

paid private attorneys and providers of free civil legal representation in awarding attorney's fees where fees are authorized by statute.

Tofte v. Department of Social and Health Services, 85 Wn.2d 161, 531 P.2d 808 (1975) is the lead case on point. In that case, the Supreme Court held that the fundamental underpinning of the statutory provision authorizing the fee award is determinative and the petitioner's representation by a non-profit legal aid program was irrelevant to whether the successful litigant was entitled to attorney's fees. *Tofte*, 85 Wn.2d at 165 (citing California case holding that successful fee applicant represented by legal aid program was not required to actually incur an attorney fee to be eligible for an award). Hence, the court must look to the "fundamental underpinning of the fee award provision" in order to determine whether a litigant, in this case the respondent, is entitled to a "reasonable attorney's fees" award. *Id.*

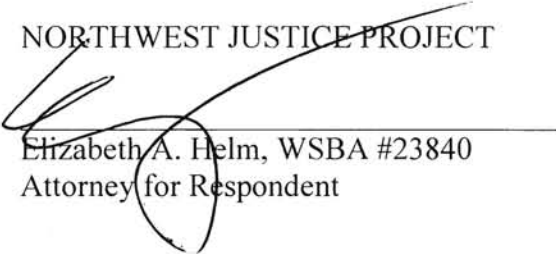
V. CONCLUSION

The courts factual findings and the record support the entry of a final parenting plan in this matter that contains RCW 26.09.191 findings due to a "history of domestic violence." Mr. Kassahun's claim that the record does not support such limitations and that the court made no findings to support the limitations is without merit. The court's entry of a long term Order for Protection is similarly supported by a substantial

record, findings in the order itself, and the court's oral finding that "acts of domestic violence are likely to resume." RP10 954. Mr. Kassahun's claim that the record does not contain evidence of domestic violence and that the court made no findings to support the entry of a long term Order for Protection is without merit. The court's findings with respect to Mr. Kassahun's income and its basis for entry of a child support order based on that income and the order of maintenance is based on an analysis of all his income and the evidence available to the trial court to ascertain his income in accordance with applicable law. The court properly considered the statutory factors supporting the entry of a maintenance award. The respondent's claim that the court failed to make findings to support the entry of a maintenance award is without merit. The trial court's decision on these issues should be affirmed.

DATED this 3rd day of September, 2014.

NORTHWEST JUSTICE PROJECT


Elizabeth A. Helm, WSBA #23840
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that on September 3, 2014, I caused a true and correct copy of this Brief of Respondent to be served on C. Nelson Berry III, counsel for Appellant, by ABC Legal Messenger.

DATED this 3rd day of September, 2014.

Charlene Marshall-Hitch

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