FILED
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

No. 324184-III

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

In re:

BJC, Appellant

and

NIMSHA ASIA GOINS, Respondent

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE JUDGE PRICE

RESPONSE BRIEF

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I

STATEMENT OF THE CASE

A Petition for Sexual Assault Protection Order was filed with Spokane Superior Court on March 5, 2014 by Ms. Coyle on behalf of her minor son, BJC. (CP 1-7). Judge Price initially signed a Temporary Sexual Assault Protection Order which stated that BJC's parent was appointed as a guardian ad litem for the proceeding and set a hearing for March 18, 2014. (CP 12-14). A hearing did take place on March 18, 2014 before the Honorable Judge Price in which Ms. Coyle testified on behalf of her minor son. (RP 1-84). After review of the pleadings filed and the testimony, Judge Price denied entry of a Sexual Assault Protection Order and made a specific finding that, "the Petition is completely non-meritorious." (CP 99-101). In that Order, the court also ruled that "Marlo Coyle ... is deemed to be a vexatious litigant and she shall not be allowed to file any motions or petitions in Spokane County Superior court, District or Municipal Court without first receiving permission from Judge Price (Department #5). This shall be in effect for 24 months from the entry of this order." (CP 100). It is from this order that the current appeal follows.

Ms. Coyle, on appeal, does not contest Paragraphs 3, 4 or 5 of the Order filed on March 18, 2014. (CP 101). These Paragraphs stated that, "3. CR11 sanctions are imposed against Petition in this amount of $1,200.00 in attorney fees based on the Court's oral ruling. 4. Marlo Coyle is hereby ordered to refrain from contacting, harassing in any way or posting any further comments on her facebook/ write about Asia Goins in anyway. If she does, Asia Goins can file an anti-harassment petition that will be heard by Judge Price in Dept. #5 exclusively. 5. The Court's oral ruling is incorporated in this Order by reference." (CP 101).

II
ARGUMENT

To begin, it should be noted that Ms. Coyle does not assign error to any findings of fact, or the facts in general for that matter. As such, all findings of fact in this case should be accepted by the Court of Appeals as verities on appeal. Riley v. Rhay, 76 Wn.2d 32, 33, 454 P.2d 820 (1969). It should also be noted that the Court of Appeals does not substitute its judgment for that of the superior courts and defers to the superior court's findings of fact. See In re Marriage of Dodd, 120 Wn.App. 638, 645, 86 P.3d 801 (2004). The court made a finding that, "The Court

dismissed the Petition with prejudice and makes a finding that the Petition is completely non-meritorious." (CP 99).

RESPONSE TO APPELLANT'S ASSIGNMENTS OF ERROR NO. 1, 2 and 3

Under the Sexual Assault Protection Order Act, RCW 7.90, the relevant statutes clearly set out the bases upon which such a protection order may be granted. In this case, Ms. Coyle filed a petition for a Sexual Assault Protection Order (SAPO) on behalf of her minor child. According to RCW 7.90.030, a petition for a SAPO may be filed by a person on behalf of a minor child "who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration..." RCW 7.90.030(1)(b). The definitions of "nonconsensual", "sexual conduct", and "sexual penetration" are clearly defined in RCW 7.90.010. The burden of proving the defined conduct is on the petitioner and must be proven by a preponderance of the evidence. RCW 7.90.090.

Judge Price carefully compared the allegations presented by Ms. Coyle on behalf of her son with the language of RCW 7.90. (RP 71). Ms. Coyle's assertion that Judge Price did not follow the statutory requirements of RCW 7.90 is completely erroneous and without support. The fact is that "sexual conduct" under RCW 7.90.010(4) does require

specific acts, none of which were alleged in Ms. Coyle's petition. Judge Price even stated that, "it's not even alleged in the declaration that was filed in any way." (RP 71).

Ms. Coyle argues that the allegation that Mr. Goins "followed him into the restroom, he popped his head over the stall [and] asked to see his penis" met the definition of RCW 7.90.010(4)(d) – i.e. "Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others." Even if taken at face value this allegation does not indicate that any force was used, that any part of the child was displayed to the respondent or anyone else, or that there was any purpose of arousal or sexual gratification involved. Ms. Coyle's arguments are completely without merit, just as Judge Price found. (CP 99).

Similarly, Ms. Coyle's arguments on appeal that Judge Price incorrectly allowed evidence concerning her reputation are misplaced. RCW 7.90.080(1)(a) specifically states that in proceedings for a SAPO, "the prior sexual activity or the reputation of the petitioner is inadmissible except: ... as evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent upon the issue of whether the petitioner consented to the

sexual conduct with respect to which the offense is alleged." First, Ms. Coyle is the petition *on behalf of* her minor child. Even though Ms. Coyle is filing on behalf of her minor child it is still the minor child to whom it is alleged harm occurred and who would be protected in a SAPO. (RP 1). In fact, it is the child who is listed as the Petitioner in the Petition for SAPO that was filed by Ms. Coyle. (RP 1). Second, the court correctly did not allow any evidence to be presented as to the prior sexual activity or reputation of the child. Nothing in the record or in Ms. Coyle's appeal points to any inappropriate evidence regarding the child's past sexual activity or reputation having been considered by Judge Price.

RCW 7.90.040(2) does allow a minor child who is under eighteen years of age and sixteen years of age or older to seek relief under RCW 7.90 without the assistance of a guardian or next friend. However, this doesn't mean that when a petition is filed pursuant to RCW 7.90.030(1)(b) by a person on behalf of a minor child that the minor child is required to testify as Ms. Coyle seems to imply. Ms. Coyle presents absolutely no legal support for her contention that "the legislature must have intended that a 16 year old should be in the hearing and at least allowed to testify to see if his or her story rings true." (Appellant's Brief 7). Ms. Coyle did not request appointment of a guardian ad litem for her

son at any time, nor did she give any indication that a guardian ad litem might be appropriate for her son. Although the court "may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent" under RCW 7.90.040(4), nothing was presented to indicate that such an appointment was necessary as the minor child was having the petition presented for him by Ms. Coyle. However, the Temporary Sexual Assault Protection Order specifically states that, "Petitioner's parent ... [is] bringing this action and [is] appointed as the petitioner's guardian ad litem for this proceeding." (CP 12). This issue is being raised for the first time on appeal with absolutely no legal support. Additionally, Judge Price did explain to Ms. Coyle why her minor child was not involved in the hearing. (RP 82).

Judge Price did not avoid focusing on Ms. Coyle's allegations concerning her minor son. Judge Price denied Mr. Goins' initial motion to dismiss specifically so he could hear full argument from Ms. Coyle as there was minimal information given in the declaration supporting the petition. (RP 9). When Judge Price made his oral findings concerning the petition he first addressed the merits of the SAPO before addressing the issues related to Ms. Coyle's history of vexatious litigation. (RP 66-72).

It is difficult to respond to Ms. Coyle's allegation that the court allowed irrelevant evidence to be considered. Ms. Coyle fails to state on appeal with specificity what evidence she deems was irrelevant. Apparently, her claims of irrelevant evidence relate to any information concerning her prior history as a litigant although nothing is specifically noted as being of issue and no findings of fact are assigned error on appeal. The trial court did not improperly consider irrelevant evidence to the detriment of the petitioner's case. Judge Price denied the petition for a SAPO on its merits separately and before turning to the issue of Ms. Coyle's vexatious litigation. (RP 66-72; CP 99-101). It was within Judge Price's discretion to consider evidence concerning Ms. Coyle's litigious past and subsequently place reasonable restrictions on her use of court system. See Marriage of Giordano, 57 Wn.App. 74, 787 P.2d 51 (1990).

RESPONSE TO APPELLANT'S ASSIGNMENT OF ERROR NO. 4

A trial court's order limiting a party's access to the courts is reviewed for abuse of discretion. Bay v. Jensen, 147 Wn.App. 641, 657, 196 P.3d 753 (2008) citing In re Marriage of Giordano, 57 Wn.App. 74, 78, 787 P.2d 51 (1990). Essentially, "[t]here is no absolute and unlimited constitutional right of access to courts. All that is required is a reasonable

right of access – a reasonable opportunity to be heard." Marriage of Giordano, 57 Wn.App. 74, 77, 787 P.2d 51 (1990) citing Ciccarelli v. Carey Canadian Mines, Ltd., 757 F.2d 548, 554 (3d Cir. 1985). As such, a court may in its discretion, "place reasonable restrictions on any litigant who abuses the judicial process." Id. at 78. Injunctive relief may be appropriate if there is "a specific and detailed showing of a pattern of abusive and frivolous litigation." Whatcom County v. Kane, 31 Wn.App. 250, 253, 640 P.2d 1075 (1981). However, when considering such a remedy, "the trial court must be careful not to issue a more comprehensive injunction than is necessary to remedy proven abuses, and if appropriate the court should consider less drastic remedies." Id. at 253.

Judge Price referenced the pattern of abusive and frivolous litigation that Ms. Coyle had engaged in over the years, not just related directly to Mr. Goins but to her litigiousness in general. Judge Price referenced that Ms. Coyle had filed "21 separate requests for protective orders over the years." (RP 77). Directly related to Ms. Coyle's litigation involving Mr. Goins, Judge Price specifically referenced that, "it's clear that Ms. Coyle absolutely has an agenda here, and that agenda is, without question, against everyone and anyone who has had what I'm

going to suggest is the audacity to disagree with her. And it does appear that Mr. Goins is at the top of that list." (RP 73). Judge Price referred also to the court order signed by Commissioner Jolicoeur in a separate case which found Ms. Coyle in contempt and told Ms. Coyle she "was close to being declared a vexatious litigator" in that matter. (RP 75).

Just as in Marriage of Giordano, the trial court's ruling in this case did not amount to a total denial of Ms. Coyle's access to the courts. In fact, she was not forestalled at all from filing in the Spokane County courts, she was merely required to first receive permission from Judge Price for 24 months from the date of the order. (CP 100). Judge Price did not abuse his discretion when he ordered Ms. Coyle's future access to the courts would be subject to review. As previously held, "a trial court may place reasonable restrictions on a party who abuses the court process so long as the party can still access the court to present a new and independent matter." Bay v. Jensen, 147 Wn.App. 641, 657, 196 P.3d 753 (2008). Nothing ordered by Judge Price forestalls Ms. Coyle from future access to the courts, it simply requires that a judicial officer review any future motions before they can be filed to prevent future abuses of the judicial process. (CP 100; RP 77-78).

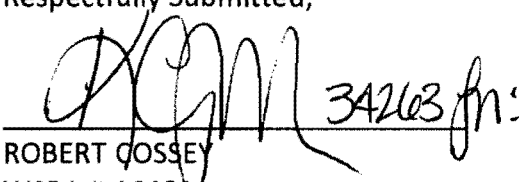
III
REQUEST FOR ATTORNEY'S FEES

Mr. Goins requests attorney fees be awarded to him pursuant to RAP 18.9(a) which permits the court to impose sanctions for a frivolous appeal. "An appeal is frivolous if it raises no debatable issues on which reasonable minds might differ and it is so totally devoid of merit that no reasonable possibility of reversal exists." Hernandez v. Stender, 182 Wn.App. 52, 61, 321 P.3d 1230 (2014). Ms. Coyle's appeal in this matter is without merit and falls under the definition of a frivolous appeal. It is requested that she be required to pay Mr. Goins' attorney fees on appeal.

IV
CONCLUSION

It is respectfully requested that this court deny Appellant's assignments of error on appeal and affirm the ruling of Judge Price.

Respectfully Submitted,



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