



**TABLE OF CONTENTS**

TABLE OF CONTENTS.....i  
TABLE OF AUTHORITIES.....ii  
INTRODUCTION.....1  
REPLY TO RESPONDENT’S STATEMENT OF FACTS.....2  
ARGUMENT IN REPLY.....3  
STANDARD OF REVIEW FOR PROTECTION ORDER.....5  
LEGAL AUTHORITIES AND ARGUMENT.....6  
CONCLUSION.....22

## TABLE OF AUTHORITIES

CASES	PAGE
<i>Barber v. Barber</i> , 136 Wn. App. 512, 150 P.3d 124 (2007).....	6
<i>Colford v. Kiso</i> , 51 Wn.2d 640, 320 P.2d 1077 (1958).....	9
<i>Crawford v. Washington</i> , 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).....	4
<i>Freeman v. Freeman</i> , 169 Wn.2d 664, 239 P.3d 557 (2010).....	6, 7
<i>Griffiths v. Big Bear Stores</i> , 55 Wn.2d 243, 347 P.2d 532 (1959).....	9
<i>Hecker v. Cortinas</i> , 110 Wn. App. 865, 43 P.3d 50 (2002).....	5
<i>In re Estate of Jones</i> , 152 Wn.2d 1, 93 P.3d 147 (2004).....	14
<i>Lewis v. Mercer Island</i> , 63 Wn. App. 29, 817 P.2d 408, <i>review denied</i> , 117 Wn.2d 1024, 820 P.2d 510 (1991).....	5
<i>Northlake Marine Works, Inc. v. City of Seattle</i> , 70 Wn. App. 491, 857 P.2d 283 (1993).....	4, 5
<i>Pilcher v. Dep't of Revenue</i> , 112 Wn. App. 428, 49 P.3d 947 (2002), <i>review denied</i> , 149 Wn.2d 1004 (2003).....	5
<i>Puget Sound Plywood, Inc. v. Mester</i> , 86 Wn.2d 135, 542 P.2d 756 (1975).....	4
<i>Re v. Tenney</i> , 56 Wn. App. 394, 783 P.2d 632 (1989).....	5
<i>Scott v. Trans-Sys, Inc.</i> , 148 Wn.2d 701, 64 P.3d 1 (2003).....	5

<i>State v. Bilal</i> , 77 Wn. App. 720, 893 P.2d 674 (1995).....	18, 21
<i>State v. Ladenburg</i> , 67 Wn. App. 749, 840 P.2d 228 (1992).....	18, 21
<i>State v. Post</i> , 118 Wn.2d 596, 826 P.2d 172, 837 P.2d 599 (1992).....	18, 20, 22, 23
<i>State v. Stenson</i> , 132 Wn.2d 668, 940 P.2d 1239 (1997), <i>cert. denied</i> , 523 U.S. 1008 (1998).....	5
<i>State v. Thomas</i> , 150 Wn.2d 821, 83 P.3d 970 (2004).....	4
<i>Washburn v. Beatt Equip. Co.</i> , 120 Wn.2d 246, 840 P.2d 860 (1992).....	4
<i>Wiard v. Market Operating Corporation</i> , 178 Wash. 265, 34 P.2d (1934).....	9
<i>Willener v. Sweeting</i> , 107 Wn.2d 388, 730 P.2d 45 (1986).....	5

<b>STATE STATUTES</b>	<b>PAGE</b>
RCW 26.50.060.....	6
RCW 26.50.060(1)(e).....	13
RCW 26.50.060(3).....	6, 12
RCW 26.50.150.....	2, 13, 14, 16, 19, 25
RCW 26.50.150(1).....	13, 14, 15, 16, 17
RCW 26.50.150(2)(a).....	13
RCW 26.50.150(4).....	13, 14
RCW 26.50.150(5).....	14, 15

RCW 26.50.150(7).....	14, 15
RCW 26.50.150(9).....	19
<b>WASHINGTON ADMINISTRATIVE CODE</b>	<b>PAGE</b>
WAC 388-60.....	1, 2, 3, 12, 17, 18, 19, 25
WAC 388-60-0015.....	16
WAC 388-60-0115.....	15
WAC 388-60-0165.....	17
WAC 388-60-195(2).....	15, 16
WAC 388-60-195(3).....	15, 16
WAC 388-60-0255(2).....	16
<b>RULES OF APPELLATE PROCEDURE</b>	<b>PAGE</b>
RAP 10.3(a)(6).....	4
<b>COURT RULES</b>	<b>PAGE</b>
CR 59.....	22
CR 59(b).....	22
<b>LOCAL COURT RULES</b>	<b>PAGE</b>
LCR 59.....	22
LCR 59(b)(1).....	4
LSPR 94.03B(b)(2).....	4

## I. INTRODUCTION

Respondent Allyah Ayesh (Ayesh) mischaracterizes Appellant Jonathan Bullis' (Bullis) assignment of error he raises on review. Bullis does not allege that in renewing an order of protection against him, the trial court did not have authority to order his participation in a domestic violence perpetrator treatment program. Br. of Respondent at 1 ¶1. Bullis clearly stated that the trial court abused its discretion and it denied him the right to a fair hearing when it refused to reconsider that it was inappropriate and prejudicial for the trial court to substitute its opinion with respect to domestic violence perpetrator treatment for that of a state-certified domestic violence perpetrator treatment provider. Br. of Appellant at 1 ¶3.

The issue before this Court is not *whether* the trial court has the authority to order Bullis to participate in a domestic violence perpetrator treatment program, but *whether* the trial court may substitute its opinion with respect to domestic violence perpetrator treatment for that of a state-certified domestic treatment provider and order Bullis to participate in a domestic violence perpetrator treatment program when a state-certified domestic violence treatment provider determined under Washington Administrative Code (WAC) 388-60 clinical guidelines that Bullis would not benefit from treatment because he manifests none of the issues germane to the etiology of domestic violence. Br. of Appellant at 1, 6-8.

Ayesh misrepresents to the Court that Bullis failed to participate in any treatment or counseling that complied with WAC 388-60. Br. of

Respondent at 1 ¶1. Ayesh is well aware that on March 20, 2014, Bullis submitted to a domestic violence evaluation under WAC 388-60 by a state-certified provider at Social Treatment Opportunity Programs (STOP), a domestic violence treatment program certified by the Department of Social and Health Services (DSHS) under RCW 26.50.150. Br. of Respondent at 3 ¶2; CP 47, CP 59.

## **II. REPLY TO RESPONDENT'S STATEMENT OF FACTS**

Ayesh acknowledges that on March 20, 2014, Bullis submitted to a state-certified domestic violence perpetrator treatment program at STOP, yet on the other hand, she insists that he did not submit to an evaluation at any other treatment program or participate in any domestic violence perpetrator program or counseling compliant with WAC 388-60. Br. of Respondent at 3 ¶2. STOP is a domestic violence perpetrator treatment program compliant with WAC 388-60 (CP 47, CP 59), so Ayesh's argument that STOP is not WAC compliant is misplaced, particularly in light of the fact that she acknowledges in the same paragraph that it is a "State certified domestic violence perpetrator treatment program." Br. of Respondent at 3 ¶2.

Ayesh states that in denying Bullis' motion for revision of the commissioner's order granting the renewal for the order of protection, "Judge Schaller found no clear error of law." Br. of Respondent at 4. Judge Schaller clearly found errors of law:

During oral argument on Bullis' motion for revision, Bullis' counsel argued that the order stated that he was to submit to an

evaluation within 30 days, for which he timely complied. RP 5-6. In response, Judge Schaller replied: “Perhaps it’s unfortunate the way this order was drafted, but it ordered him to do the treatment. And then it said, for the evaluation process, he needs to – and it shouldn’t say evaluation, because they don’t do evaluations. They do screenings. So “evaluation” is not even the correct word. The WAC refers to a screening.” RP 6-7. Opening Br. of Appellant at 8.

### III. ARGUMENT IN REPLY

In her response brief, Ayesh argues for the first time on review that:

1. The trial court had the authority to grant the renewal of the protection order when Ayesh’s petition for renewal alleged past acts of domestic violence and present fear;
2. The trial court did not err as a matter of law by denying the motion for revision when: The renewal of the protection order was required; Ordering participation in treatment is authorized and there was substantial evidence that Bullis failed to comply with the order;
3. The trial judge’s statements were not evidence of actual or apparent bias when he<sup>1</sup> properly determined that STOP’s evaluation did not comply with WAC 388-60 and Bullis did not meet his burden:
  - a. Bullis fails to identify the basic components of due process and therefore the issue should not be addressed by this Court;
  - b. Bullis’ appearance of fairness claim does not contain evidence of actual or potential bias;
4. The trial court did not deny procedural or substantive due process when Bullis failed to obtain a transcript of the hearing for the motion for revision;
  - a. Bullis fails to identify the basic components of due process and therefore the issue should not be addressed by this Court;

---

<sup>1</sup> “She.” Judge Christine Schaller.



- b. Bullis fails to argue how [the] declaration of Sharon McMackin would change the trial court's determination; and
- c. Any error by the trial court for failing to timely provide the transcript was harmless error.

Br. of Respondent at 6-19.

Ayesh did not make any of the foregoing arguments in a responsive pleading under LSPR 94.03B(b)(2) in opposition to Bullis' motion for revision; under LCR 59(b)(1) in opposition to his motion for reconsideration; nor did her counsel make any of the foregoing oral arguments before the trial court during the hearing on Bullis' motion for revision. As a result, Ayesh cannot reference any part of the record below where she made a single argument in opposition to Bullis' motion for revision or in opposition to his motion for reconsideration. therefore, this Court should not consider any of Ayesh's arguments under RAP 10.3(a)(6).

On appeal, courts do not address arguments unsupported by citations to the record. RAP 10.3(a)(6); *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970, *abrogated in part on other grounds*, *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); *Puget Sound Plywood, Inc. v. Mester*, 86 Wn.2d 135, 142, 542 P.2d 756 (1975). Arguments not presented to the trial court will generally not be considered on appeal. *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 290, 840 P.2d 860 (1992). Allegations of fact without support in the record will not be considered by an appellate court. *Northlake Marine Works, Inc. v. City of*

*Seattle*, 70 Wn. App. 491, 513, 857 P.2d 283 (1993); *see also Lewis v. Mercer Island*, 63 Wn. App. 29, 31-32, 817 P.2d 408, *review denied*, 117 Wn.2d 1024, 820 P.2d 510 (1991)(matters not urged at the trial level may not be urged on appeal). Argument not raised before the trial court will not be considered on appeal. *Re v. Tenney*, 56 Wn. App. 394, 399-400. 783 P.2d 632 (1989).

Alternatively, if the Court is inclined to address the merits of Ayesh's arguments, Bullis replies as follows:

**A. STANDARD OF REVIEW FOR PROTECTION ORDER**

An appellate court reviews the superior court's decision to grant or deny a protection order for abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002). A superior court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998). The appellate court determines whether substantial evidence in the record supports the superior court's findings, and, if so, whether those findings support the conclusions of law. *Scott v. Trans-Sys. Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003) (*citing Willener v. Sweeting*, 107 Wn.2d 388, 393, 730 P.2d 45 (1986)).

Substantial evidence is that sufficient to persuade a fair-minded person for the truth of the asserted premise. *Pilcher v. Dep't of Revenue*, 112 Wn. App. 428, 435, 49 P.3d 947 (2002), *review denied*, 149 Wn.2d 1004 (2003).

## B. LEGAL AUTHORITIES AND ARGUMENT

1. The trial court had the authority to grant the renewal of the protection order when Ayesh's petition for renewal alleged past acts of domestic violence and present fear;

Ayesh misstates the standards for renewal of an order of protection, which is not past acts of domestic violence and present fear. Under RCW 26.50.060, the "petition for renewal shall state the reasons why the petitioner seeks to renew the protection order." RCW 26.50.060(3). "The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires." RCW 26.50.060(3).

Likewise, Ayesh's reliance on *Barber v. Barber*<sup>2</sup> is misplaced. *Barber* stands for the proposition that to renew or to make permanent a protection order, the victim does not need to prove a new act of domestic violence if the present likelihood of a recurrence is reasonable. See *Barber*, 136 Wn. App. 512 at 516. This case is distinguishable from *Barber* in that Ayesh does not have an ongoing relationship with Bullis, such as that found in *Barber* where the couple interacted after their divorce. 136 Wash.App. 512 at 513. *Freeman v. Freeman*, 169 Wn.2d 664, 674-75, 239 P.3d 557 (2010). This case is more on point with *Freeman* where Bullis is similarly aligned with the respondent in *Freeman*. CP 41 at 3 ¶¶5, 7. In *Freeman*, the Washington Supreme Court

---

<sup>2</sup> 136 Wn. App. 512, 150 P.3d 124 (2007)

held that where the parties had no recent contact; the respondent had not violated the protection order; had no known problems with alcohol or drugs; and had no criminal record; the petitioner's fear of the respondent "based on a threat of imminent harm" was unreasonable. Based on the foregoing, the commissioner abused her discretion in denying the respondent's motion to modify or terminate the order of protection (emphasis added). *Freeman*, 169 Wn.2d 664 at 675-76.

a.       AYESH'S REASONS FOR SEEKING TO RENEW PROTECTION ORDER:

In her petition for renewal of order of protection, Ayesh did not allege that there had been any violation whatsoever of the initial order for protection. CP 40, CP 41, CP 47. Ayesh's counsel stated on the petition that Ayesh wanted to renew the order for protection because: "I hereby adopt all the statements made in my original Petition for a Protection Order (see attached petition). I am still in fear of the Respondent due to his violent actions against me in this matter. I continue to live in fear for my safety." CP 40 ¶2. Ayesh did not submit a declaration describing Bullis' alleged violent actions against her in this matter or why she continues to live in fear for her safety when there has been no contact whatsoever from Bullis since 2013. CP 40, CP 41.

Bullis timely filed and served a response brief wherein he presented evidence from Ayesh, produced to him by and through her attorney, showing that Ayesh had been continually monitoring Bullis' online activities until he deactivated all his online social media accounts

*after* Ayesh represented to the trial court that she was in fear of Bullis and she had already been issued an ex-parte temporary order of protection.

CP 41, CP 47, CP 59.

During the February 27, 2015, hearing on Ayesh's renewal for order of protection, the following question and answer took place during direct examination between Ayesh's counsel and Ayesh:

Ms. Redford-Hall: Are you still in fear of Mr. Bullis' acts of violence against you?

Ayesh: Yes, I am.

RP 5 (February 27, 2015).

Based on the foregoing answer from Ayesh, Commissioner Lack found that Ayesh was still in fear of Bullis' acts of violence because she testified to that effect without specifying in either her petition for renewal or during her testimony before the commissioner what acts of violence she feared from Bullis, particularly since there has been no contact from him since 2013. CP 41, CP 47, RP 5 (February 27, 2015).

Ayesh's fear of Bullis is unreasonable, particularly in light of the fact that it is she who is monitoring Bullis' online social activities and printing out those activities as "evidence" and producing them to Bullis through her own attorney. CP 41, CP 47, CP 59. As Bullis argued to the trial court, he brought the issue of Ayesh cyberstalking him to the attention of the commissioner and to the trial court, both of which never addressed his concerns and Ayesh had four opportunities in which to deny

Bullis' allegation of cyberstalking, but she failed to do so. CP 59.<sup>3</sup> The foregoing facts, from a reasonable person standard, do not manifest fear of Bullis on the part of Ayesh. CP 59 at 14. If someone is fearful of a person to the extent that he or she requires a protective order, then that person would not be concerned in the least with the social media interactions of the person they claim to fear. CP 59 at 14.

"Where evidence has been introduced affording legitimate inferences going to establish the ultimate fact that the evidence is designed to prove, and the party to be affected by the proof, with an opportunity to do so, fails to deny or explain such facts, they may well be taken as admitted with all the effect afforded by the inferences." *Wiard v. Market Operating Corporation*, 178 Wash. 265, 271, 34 P.2d (1934). Failure to deny an admission, after opportunity to do so, is convincing proof of the fact admitted. *Colford v. Kiso*, 51 Wn.2d 640, 320 P.2d 1077 (1958); *Griffiths v. Big Bear Stores*, 55 Wn.2d 243, 347 P.2d 532 (1959). Thus, Ayesh had ample opportunity to deny Bullis' allegation that she cyberstalks him and she failed to deny that she engages in such behavior. CP 59.

Ayesh's claims of fear of *imminent harm* from Bullis are unreasonable in light of the fact that she continually cyberstalks him even after she obtained an order of protection against him. CP 41, CP 47, CP 59. From the foregoing facts, the commissioner abused his discretion

---

<sup>3</sup> Declaration of Allyah Ayesh in Support of Petition for Renewal of Protective Order; testimony before Commissioner Lack, Response or Declaration in Opposition to Motion for Revision; and Response or Declaration in Opposition to Motion for Reconsideration.

when he found substantial evidence that Ayesh's fear of Bullis was reasonable. CP 47. Similarly, the trial court abused its discretion when it affirmed the commissioner's renewal of the order of protection when it implicitly held that there was substantial evidence that Ayesh's fear of Bullis was reasonable.

In reply to Bullis' declaration in opposition to Ayesh's petition to renew the order of protection wherein Ayesh waived her first opportunity to deny Bullis' allegation that she cyberstalks him, Ayesh instead attempted to dispute Bullis' claim that there had been no contact whatsoever between the parties. CP 42, CP 59. In her declaration, Ayesh claims, on the one hand, that Bullis attempted to have contact with her while she was on a bus and he was in his car, and that she "strongly believe[s] that because of the protection order granted to me, this has prevented Jonathan Michael Bullis from having any contact with me." CP 42 at 2. On the other hand, in the very same declaration, Ayesh declares that, "Jonathan Michael Bullis has not made contact with me." CP 42 at 1.

Notably, despite all the transit locations between Ayesh's residence in Lacey/Olympia and her place of employment in Seattle, Ayesh uses the transit facility in DuPont, the small city where Bullis resided,<sup>4</sup> notwithstanding the fact that she "continue[s] to live in fear for my safety." CP 42 at 1; CP 40 ¶2; CP 59 at 13.

---

<sup>4</sup> Bullis moved to Michigan in November 2015, immediately after graduation from Embry-Riddle Aeronautical University.

In her declaration, Ayesh claims that on July 18, 2014, she was on a bus and Bullis was in his vehicle at a stop sign. CP 42 at 1, CP 59. Although her bus had the right of way, *she did not see which way he turned*, and if not for the protection order in place, he would have made contact with her (emphasis added). CP 42 at 1-2. CP 59 at 14. Even her own statement contradicts her allegations of fear because if Bullis is in his vehicle and turning away from her bus, he had no intent whatsoever to make contact with her. CP 59 at 14.

If Ayesh is truly in fear of imminent physical harm from Bullis, as she claims, she would not choose to use the transit facility located in the small city where he resided from all other transit facilities located between her residence and her place of employment. CP 59 at 14. A reasonable person who legitimately fears someone would not file with the trial court a contradictory declaration signed under the penalty of perjury that alleges Bullis, in violation of a protective order and subject to criminal prosecution, attempted to make contact with her<sup>5</sup> while she was on a bus and he was in his car as both vehicles are at a stop sign, but that *she did not see which way he turned*, and had it not been for the protective order granted to her, Bullis would have made contact with her even though his vehicle *turned away from the direction of her bus*. CP 42 at 1-2; CP 59 at 13-14.

From the foregoing facts, the commissioner abused his discretion when he found substantial evidence that Ayesh's fear of Bullis was

---

<sup>5</sup> Ayesh.



reasonable. CP 47. Similarly, the trial court abused its discretion when it affirmed the commissioner's renewal of the order of protection when it implicitly held that there was substantial evidence that Ayesh's fear of Bullis was reasonable.

b. WHETHER BULLIS IS LIKELY TO RESUME ACTS OF VIOLENCE:

As Bullis argued to the commissioner and to the trial court, the standard on renewal for a protective order is whether he is likely to resume acts of violence and harassment if the order expires in a year. RCW 26.50.060(3). CP 47, CP 59. There has been absolutely no personal contact between Bullis and Ayesh since 2013, and Bullis has clearly and unequivocally declared that he never wants to see or be near Ayesh at any point of time in the future. CP 41, CP 47, CP 59.

Since there has been no contact whatsoever between the parties since 2013, Bullis proved by a preponderance of the evidence that he will not resume acts of violence and harassment if the order expires and it was an abuse of discretion for the trial court to deny Bullis' motion for revision of the commissioner's order granting the renewal of the order of protection.

2. The trial court did not err as a matter of law by denying the motion for revision when: The renewal of the protection order was required; Ordering participation in treatment is authorized and there was substantial evidence that Bullis failed to comply with the order;

Ayesh argues that the trial court had authority to order treatment or counseling in compliance with WAC 388-60 and properly found that

Bullis failed to comply. Br. of Respondent at 8. Bullis does not dispute that the trial court has authority under RCW 26.50.060(1)(c) to order him to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150, which provides in relevant part:

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the department of social and health services and meet minimum standards for domestic violence treatment purposes. The department of social and health services shall adopt rules for standards of approval of domestic violence perpetrator programs.

RCW 26.50.150;

(1) All treatment must be based upon a full, complete clinical intake including but not limited to: Current and past violence history; a lethality risk assessment; history of treatment from past domestic violence perpetrator treatment programs; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

RCW 26.50.150(1);

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign the following releases:

(a) A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates.

RCW 26.50.150(2)(a) (emphasis added);

(4) The treatment must focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior. The treatment must be based on nonvictim-blaming strategies and philosophies and shall include education about the individual, family, and cultural dynamics of domestic violence. If the perpetrator or the victim has a minor

child, treatment must specifically include education regarding the effects of domestic violence on children, such as the emotional impacts of domestic violence on children and the long-term consequences that exposure to incidents of domestic violence may have on children.

RCW 26.50.150(4) (emphasis added);

(5) Satisfactory completion of treatment must be contingent upon the perpetrator meeting specific criteria, defined by rule by the secretary of the department, and not just upon the end of a certain period of time or a certain number of sessions.

RCW 26.50.150(5) (emphasis added); and,

(7) All evaluation and treatment services must be provided by, or under the supervision of, qualified personnel.

RCW 26.50.150(7).

Under the plain language of RCW 26.50.150, it is the domestic violence treatment program, certified by the Department of Social and Health Services that develops the “treatment plan that adequately and appropriately addresses the treatment need of the individual” based upon a full and complete clinical intake. RCW 26.50.150(1). Where a statute is unambiguous, the court assumes the legislature means what it says and will not engage in statutory construction past the plain meaning of the words. *In re Estate of Jones*, 152 Wn.2d 1, 11, 93 P.3d 147 (2004).

RCW 26.50.150 clearly confers authority on the state-certified domestic violence treatment program to determine the treatment plan for the individual after the individual has submitted to state-mandated clinical protocols. RCW 26.50.150(1). The statute does not confer the authority on trial courts to determine the treatment plan, or the length of treatment, for

individuals they order to participate in a domestic violence perpetrator treatment program because the trial courts do not administer a full and complete clinical intake under RCW 26.50.150(1) and, most likely, because trial court commissioners and judges do not have extensive education in the social, psychological, and behavioral sciences, therefore they are not qualified to analyze the results of the clinical intake and to develop an adequate and appropriate *individualized* treatment program for the perpetrator based upon the clinical intake, as required by RCW 26.50.150(1), RCW 26.50.150(5), RCW 26.50.150(7); WAC 388-60-195(2) (treatment plan based on clinical intake assessment); and WAC 388-60-0195(3) (treatment plan must adequately and appropriately address needs of individual participant).

Furthermore, under WAC 388-60-0115, the domestic violence treatment program has the authority to accept or to reject any referral for its program. WAC 388-60-0115 provides:

- (1) A treatment program has the authority to accept or reject any referral for its program.
- (2) The program must base acceptance and rejection of a client on written criteria the program has developed to screen potential participants.
- (3) A treatment program may impose any conditions on participants that the program deems appropriate for the success of treatment.

Based upon Bullis' clinical intake and interview during his evaluation, he was rejected from the domestic violence treatment program because he manifests none of the issues germane to the etiology of

domestic violence. CP 59. Ex. B at 3. This means that he was rejected from the treatment program due to his inability to benefit from the program because he possesses none of the issues that cause domestic violence. CP 59. Under RCW 26.50.150(1), the treatment plan that adequately and appropriately addresses the individualized treatment need of Bullis based upon his full and complete clinical intake is no treatment whatsoever. *See also* WAC 388-60-195(2) and WAC 388-60-195(3).

Ayesh argues that under WAC 388-60-0255(2), the domestic violence perpetrator treatment “program ‘must’ require a court-ordered client to attend treatment and satisfy all program requirements for a minimum of 12 months.” Br. of Respondent at 10. Ayesh is misguided in her argument. WAC 388-60-0255(2) applies to program participants: that is, “the client enrolled in the domestic violence perpetrator treatment program.” WAC 388-60-0015. Bullis was rejected from the domestic violence treatment program, and therefore not enrolled as a program participant, because he possesses none of the issues that cause domestic violence based upon his full and complete clinical intake. CP 59.

The order of protection required Bullis to submit to a domestic violence treatment and counseling program evaluation within 30 days and to include releases of information to permit the provider to contact Ayesh (emphasis added). CP 47 at Ex. A; CP 59 at Ex. A. The order also required Bullis to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling by a “State certified

provider that provides current WAC compliant treatment (emphasis added).” CP 47 at Ex. A; CP 59 at Ex. A.

Bullis fully complied with the order of protection by timely submitting on March 20, 2014, to a domestic violence evaluation at STOP. STOP is a state-licensed and a state-certified domestic violence perpetrator treatment facility that is compliant with WAC 388-60. CP 47 at Ex. B; CP 59 at Ex. E.

Bullis provided the commissioner and the trial court with the written evaluation prepared by Domestic Violence Counselor/Supervisor Sharon McMackin, M.A. verifying that Bullis timely submitted to a domestic violence evaluation within 30 days from the date of the initial order; at a state-certified provider that provides WAC compliant treatment under WAC 388-60; that Bullis was assessed under state-mandated clinical examinations/inventories;<sup>6</sup> and that Bullis signed the requisite release to permit the provider to contact Ayesha. CP 47, CP 59, RP 6. Based upon Bullis’ clinical intake and interview, he was rejected from the domestic violence treatment program because he manifests none of the issues germane to the etiology of domestic violence. CP 47. CP 59, RP 6.

It was an abuse of discretion for the trial court to deny Bullis’ motion for revision of the commissioner’s order granting the renewal of the order of protection because there was substantial evidence that Bullis fully complied with the order of protection by timely submitting to a domestic violence perpetrator treatment program evaluation at a WAC

---

<sup>6</sup> As required by RCW 26.50.150(1) and WAC 388-60-0165.

compliant domestic violence treatment facility and by submitting to all of the program's domestic violence protocols.

3. The trial judge's statements were not evidence of actual or apparent bias when he<sup>7</sup> properly determined that STOP's evaluation did not comply with WAC 388-60 and Bullis did not meet his burden;
  - a. Bullis fails to identify the basic components of due process and therefore the issue should not be addressed by this Court;
  - b. Bullis' appearance of fairness claim does not contain evidence of actual or potential bias;

There is no requirement for this issue that Bullis identify the basic components of due process, which Ayesh fails to identify in her brief. Br. of Respondent at 12.

Appellate courts generally review claims of judicial bias under the appearance of fairness doctrine, which states that "a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing." *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995) (quoting *State v. Ladenburg*, 67 Wn. App. 749, 754-55, 840 P.2d 228 (1992)). However, the party who argues that a judge has a bias must support the claim with evidence; a claim unsupported by such evidence is without merit. *State v. Post*, 118 Wn.2d 596, 619, 826 P.2d 172, 837 P.2d 599 (1992). Thus, before the courts will apply the appearance of fairness doctrine, a party must show such evidence of a judge's actual or potential bias. *State v. Post*, 118 Wn.2d 596 at 619.

---

<sup>7</sup> "She." Judge Christine Schaller.

As argued above, STOP is certified as a domestic violence perpetrator treatment program with DSHS and it is compliant with WAC 388-60. CP 59. STOP must undergo the rigors of standards and monitoring imposed by DSHS to maintain its state certification. RCW 26.50.150; RCW 26.50.150(9); CP 59. It is for DSHS to determine whether STOP fails to comply with WAC 388-60 and not the trial court or Ayesh's counsel. RCW 26.50.150.

Presumably, if STOP is in any way deficient or lacking in any aspect regarding its domestic violence treatment program, it will cease to be certified by the State. CP 59 at 10. If the trial court believes that STOP is lenient or deficient with respect to how it administers its domestic violence treatment program to perpetrators or to offenders, then that is an issue the trial court should address with STOP and with DSHS, however, the trial court made no such finding in the record below that STOP fails to comply with RCW 26.50.150; fails to comply with WAC 388-60; or is perhaps engaging in fraudulent conduct. CP 59 at 10. *See* RP (May 8, 2015). Furthermore, if the trial court prefers some domestic violence treatment programs over others, then the trial court is free to include such restrictions in its orders. CP 59. Bullis' order contained no such restriction. CP 59 at 10.

During Bullis' counsel's oral argument before the trial court on his motion for revision, the trial court stated that: "...and I recognize STOP might be different, *and perhaps that's why he went to STOP.*



because he thought he could get an assessment that didn't require treatment (emphasis added).” RP 8. Such a statement from the trial court is highly prejudicial in general and in specific, exceedingly offensive to Bullis. CP 59. Prior to this action against him, Bullis has never been a respondent or a defendant in any legal proceeding – not even a single traffic citation.<sup>8</sup> CP 59. Such a comment is extremely biased, prejudicial, and insulting – not only to Bullis, but to any other person who has, is, or will receive services from STOP because implicit in that judicial declaration from the bench is that people who use the services of STOP are “gaming” the system; that they seek treatment from this specific program because they know that STOP will not subject them to the burdens associated with treatment. CP 59.

To support a claim of judicial bias, Bullis need only present evidence of the trial court’s actual or potential bias. *State v. Post*, 118 Wn.2d 596 at 619. Bullis has presented evidence of the trial court’s actual or potential bias by its statement that Bullis sought treatment from STOP because “he thought he could get an assessment that didn't require treatment.” RP 8; CP 59.

Bullis submitted to a domestic violence perpetrator treatment evaluation at STOP, a WAC compliant domestic violence treatment program, to comply with the expressed terms of a court order and not to obtain an assessment that would not require treatment. CP 59 at 10. When a trial court questions Bullis’ motives and impugns his integrity based

---

<sup>8</sup> Nor any proceeding since this action.

upon which state-certified domestic violence treatment facility he used when he merely sought to comply with the expressed terms of an order, the trial court not only appears biased, *it is biased*. CP 59 at 10.

Based on the foregoing, a reasonably prudent and disinterested observer would conclude that Bullis did not obtain a fair, impartial, and neutral hearing before the trial court.

4. The trial court did not deny procedural or substantive due process when Bullis failed to obtain a transcript of the hearing for the motion for revision;
  - a. Bullis fails to identify the basic components of due process and therefore the issue should not be addressed by this Court;
  - b. Bullis fails to argue how [the] declaration of Sharon McMackin would change the trial court's determination; and
  - c. Any error by the trial court for failing to timely provide the transcript was harmless error.

There is no requirement for this issue that Bullis identify the basic components of due process, procedural and substantive, which Ayesh fails to identify in her brief. Br. of Respondent at 17-18.

Appellate courts generally review claims of judicial bias under the appearance of fairness doctrine, which states that “a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing.” *State v. Bilal*, 77 Wn. App. 720 at 722 (quoting *State v. Ladenburg*, 67 Wn. App. 749 at 754-55). However, the party who argues that a judge has a bias must support the claim with evidence; a claim unsupported by such

evidence is without merit. *State v. Post*, 118 Wn.2d 596 at 619. Thus, before the courts will apply the appearance of fairness doctrine, a party must show such evidence of a judge's actual or potential bias. *State v. Post*, 118 Wn.2d 596 at 619.

Ayesh argues that Bullis "had sufficient time to Amend his Motion before the trial court's order." Br. of Respondent at 18. The foregoing argument lacks knowledge of the basic rules of civil procedure. The trial court denied Bullis' motion for revision and entered the order on May 8, 2015. CP 55. Under CR 59 and LCR 59, Bullis had *no later than 10 days* after the entry of the order to file a motion for reconsideration (emphasis added). CR 59(b).

On May 11, 2015, Bullis submitted to the trial court clerk a request for the transcript of the hearing on Bullis' motion for revision. Bullis' counsel advised the court clerk that he required the transcript to file a motion for reconsideration within 10 days. CP 59 at Ex. F. The trial court clerk responded that the transcript would be available that same week. CP 59 at Ex. G. On May 15, 2015, Bullis' counsel contacted the trial court clerk to see if the transcript was ready for pick up. CP 59 at Ex. H. The trial court clerk advised counsel that "I gave the ruling to the judge for review (which I'm required to do under our local court rules) and I haven't gotten it back yet. I am hoping for Monday.<sup>9</sup> I will stay on it and send it ASAP." CP 59 at Ex. I. As of Friday, March 15, 2015, the transcript of the subject hearing was prepared pursuant to Bullis' written request, yet it was

---

<sup>9</sup> May 18, 2015.

not released to him with sufficient time to review the transcript with his STOP provider and to obtain a declaration from Ms. McMackin that addressed all of the trial court's findings during the hearing on Bullis' motion for revision, CP 59 at 11. As the trial court clerk did not receive the transcript from the trial court in the time frame required by Bullis, he was unable to obtain a declaration from Ms. McMackin. CP 59 at 11.

Since he waited until the last minute possible for the transcript, Bullis filed a motion for reconsideration shortly before the clerk's office closed on May 18, 2015, and on the following day, he amended the motion for reconsideration to include the Declaration of Alana K. Bullis with exhibits attached thereto. CP 57, CP 59, CP 60. Bullis did not receive the transcript until May 22, 2015.

To support a claim of judicial bias, Bullis need only present evidence of the trial court's actual or potential bias. *State v. Post*, 118 Wn.2d 596 at 619. Bullis has presented evidence of the trial court's actual or potential bias in that the commissioner, the trial court, and Ayesh place great importance on the fact that STOP did not contact Ayesh regarding Bullis' treatment. RP 7 (February 27, 2015); RP 6; CP 42 at 2; Br. of Respondent at 14. Clearly, Ms. McMackin's declaration regarding why Ayesh was not contacted by STOP was relevant to these proceedings<sup>10</sup> and the trial court's inexplicable withholding of the completed transcript from Bullis prejudiced him from addressing all the errors and issues he intended

---

<sup>10</sup> Ms. McMackin subsequently provided a declaration with respect to this issue after she had an opportunity to review the transcript from the subject hearing, but since the declaration is not part of the record below, Bullis will not cite to it.

to raise in his motion for reconsideration and to preserve the record for review. CP 59 at 12.

Based on the foregoing, a reasonably prudent and disinterested observer would conclude that Bullis did not obtain a fair, impartial, and neutral hearing before the trial court.

Finally, Ayesh argues that “Bullis filed a Declaration from Sharon McMackin on March 8, 2016, in response to Ayesh’s Petition for renewal of the protection order.” Br. of Respondent at 19. The foregoing argument is clearly improper in that it references proceedings beyond the record and the Court should therefore strike it in its entirety. However, if the Court elects to consider Ayesh’s argument, Ayesh again misstates facts. The commissioner made no finding of fear, particularly since there has been no contact between the parties since December 9, 2013, and Bullis now resides in Michigan because, as he stated in his declaration in opposition to Ayesh’s 2016 petition for renewal of order of protection, of his fear that Ayesh will continue to put him in a position where she can claim that he is in violation of the order of protection.<sup>11</sup>

The commissioner, however, did find that Bullis was not in compliance with the domestic violence treatment under the order because it is Thurston County’s policy to order all domestic violence respondents

---

<sup>11</sup> Even with no contact since December 9, 2013, and Bullis’ relocation to Michigan, Ayesh asked for an order of protection until the year 2099, knowing full well that she is restricting Bullis from obtaining a career in his desired field by subjecting him to an order of protection.

to 52-weeks of treatment<sup>12</sup> and on that basis alone, the commissioner granted Ayesh's petition renewing the order of protection.

#### IV. CONCLUSION

For the foregoing reasons, this Court should find that the trial court abused its discretion and it denied Bullis a fair hearing on his motion for revision and on his motion for reconsideration and reverse the trial court with instructions to terminate the renewed order of protection entered against him on February 27, 2015.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of April, 2016.

ALANA BULLIS, PS

/s/ Alana K. Bullis

Alana K. Bullis, WSBA No. 30445  
Attorney for Appellant

ALANA BULLIS, PS  
1911 Nelson Street  
DuPont, WA 98327  
Telephone: (253) 905-4488  
Fax: (253) 912-4882

---

<sup>12</sup> Irrespective of the dictates of RCW 26.50 150 and 388-60 Bullis' order does not specify length of treatment.

FILED  
COURT OF APPEALS  
DIVISION II

CERTIFICATE OF SERVICE

I certify that on April 12, 2016, I caused a true and correct copy of this Reply Brief of Appellant to be served on the following by email only per agreement

2016 APR 15 AM 11:17  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

**Counsel for Respondent:**

**Kristin F. Kelly** (Kristin@demaarlaw.com)  
**Natalie de Maar** (nataliedemaar@hotmail.com)  
**Law Offices of Natalie de Maar**  
**9 Lake Bellevue Drive, Suite 103**  
**Bellevue, WA 98005**

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

/s/ Alana K. Bullis  
Alana K. Bullis