

70827-9

70827-9

NO. 70827-9-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

THOMAS BRET HAGGERTY

APPELLANT

v.

SAIYIN PHASAVATH

RESPONDENT

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STATE OF WASHINGTON
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BRIEF OF RESPONDENT

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I. INTRODUCTION

There has been ongoing litigation between the parties involving claims of domestic violence for over eleven years. Mr. Haggerty (hereafter referred to as the Father) litigated the parties' post-dissolution matters up to the Montana Supreme Court, and upon the parties' relocation to Washington State, this is the fourth appeal.¹ Their superior court case pleadings number almost 600, primarily in King County, but recently in Snohomish County as well.

The Father has a long history of deception, domestic violence, failure to comply with court orders, engaging in improper litigation tactics, manipulating the parties' children, making false reports to the courts, to CPS, and to law enforcement. This appeal arises out of the Father's use of forum shopping to the Snohomish County Superior Court, which was unaware of the Father's prior misdeeds, in an attempt to use a Domestic Violence Protection Order (DVPO) to improperly modify the parties' parenting plan. He has again dragged Ms. Phasavath (hereafter referred to

¹ Haggerty I. *In re Marriage of Haggerty*, 2005 MT 80N, 110 P.3d 1057 (2005)
Haggerty II. *In re Marriage of Phasavath*, noted at 132 Wn. App. 1033, 2006 WL 1005003, *review denied*, 159 Wn.2d 1005, 153 P.3d 195 (2007)
Haggerty III. *In re Marriage of Phasavath*, noted at 144 Wn. App. 1024, 2008 WL 1934844
Haggerty IV. *In re Marriage of Phasavath*, noted at 151 Wn. App. 1029, 2009 WL 2230724, *review denied*, 168 Wn.2d 101, 227 P.3d 295 (2010)

as the Mother) to the appellate court, and has employed his classic tactic of “throwing the kitchen sink” at the Mother, including allegations of domestic violence dating back to 2011 that were determined at the time to be unfounded. The Father’s continued attempts to interfere with the Mother’s parenting, along with his ongoing conduct of triangulating the children has been incredibly emotionally damaging to the Mother and children. Based on these considerations, the Mother respectfully requests that this court uphold the decision of the Snohomish County Superior Court dismissing the Father’s DVPO petition with prejudice, and award the Mother attorney’s fees based on 26.09.140, due to the Father’s intransigence, and because the Father’s appeal is frivolous.

**II. ISSUES PERTIANING TO THE FATHER’S
ASSIGNMENTS OF ERROR**

- (1) Did the Court Commissioner properly dismiss the Father’s petition for a domestic violence protection order with prejudice on July 24, 2013, when the allegations of past violence contained in the petition were previously determined to be unfounded and the Father failed to present credible evidence of present fear? Answer: YES

- (2) Under RCW 2.24.050, was the Court permitted to impose conditions on the parties in the order denying the Father’s motion to shorten time on August 7, 2013, pending the hearing on revision? Answer: YES

- (3) Has the Father failed to present evidence of actual or potential bias on the part of the Court regarding its decision to disallow oral argument at the hearing on revision on August 21, 2013? Answer: YES

III. STATEMENT OF THE CASE

The Father filed his 97-page petition for a DVPO on July 10, 2013, and obtained a temporary order without notice to the Mother via ex parte action, removing the children from her primary care. CP 430-527, 426-429. The Father alleged that the petition was being filed based on an incident that had occurred in June between the Mother and Sam, the parties' 14-year-old. CP 434-36. The Father's allegations were subsequently refuted in the Mother's Declaration filed July 17, 2013. CP 195-97. The Father attached police reports and statements containing allegations of domestic violence on the part of the Mother dating back to 2011, along with several reports from 2012. CP 438-91, 503-27. Many of the facts presented in the Father's opening brief are completely unsupported by the record, and the clerk's papers cited by the Father fail to contain the information he has alleged; however, these 2011 and 2012 allegations form the basis from which the Father has crafted the Introduction to his brief. As provided in the numerous exhibits to the Mother's July 17, 2013 Declaration, these documents filed along with the

Father's petition fail to provide the appropriate context within which this action was founded. CP 193-421.

Instituting this action in Snohomish County, the Father failed to disclose that there was a King County family law case with over 493 pleadings filed since 2004. CP 193, 205-25. In doing so, the Father sought to avoid the court becoming aware of the voluminous recorded instances of the Father's misconduct and intransigence in connection with his parenting and in legal proceedings. CP 202. The Mother's Declaration of July 17, 2013 provides a detailed history of the Father's conduct in association with the present action, as well as supplemental background materials presented through 24 exhibits. CP 193-421. Rather than unnecessarily duplicating the information contained within the Declaration and its exhibits, the Mother would like to note the following important background information for the court: First, the parties' agreed final parenting plan of July, 2006 limits the Father's visitation and contact with the children based on mandatory RCW 26.09.191 restrictions, and remains in full force and effect today. CP 12, 193, 228.

Second, King County Family Court Services issued a report in 2006, documenting the Father's numerous false reports to CPS between the years of 2000 and 2005, which resulted in a specific restraint in the

parties' parenting plan restricting the Father from making CPS referrals without engaging in protective measures. CP 194, 231. Third, the court has granted orders for protection against the Father in multiple years since 2005. CP 197, 205-25. In September, 2011, a temporary DVPO was issued against the Father after he made DV allegations against the Mother and removed the children from the Mother without her consent. CP 194, 253-56.

Fourth, following the Father's 2011 allegations against the Mother, a Guardian ad Litem (GAL) was appointed address the Father's allegations. CP 194. The GAL issued a report stating that despite the children's preference to live with the Father, he could not, "in good conscience, recommend that the children should live with their Father." CP 194, 282.

Fifth, CPS Investigations in both 2011 and 2012 following the Father's allegations of domestic violence against the Mother were dismissed, determining that the majority of the allegations were unfounded. CP 194, 289-97, 318-20. The only recommendations resulting from any founded allegations contained in these reports were that the parties adhere to the parenting plan and other court orders, that the Mother and children attend counseling, and that the parties follow the

recommendations of the GAL and any counselors. CP 194, 290.

Finally, all experts and courts involved in this action have continuously acknowledged the Father's pattern of manipulating and causing emotional damage to the children. CP 198-201. For example, an order entered on May 21, 2008, finding the Father in contempt states, "The court finds that there is some evidence that the Father is undermining and triangulating the children..." CP 199, 375. Findings of Fact and Conclusions of Law regarding an order of protection dated October 13, 2008 contained the following findings, "The Father's acts of triangulation continue..." CP 200. Even this very court has acknowledged this pattern of behavior on the part of the Father in previous appeals, stating, "Haggerty incited the boys to violate the parenting plan...Haggerty's additional contact with the children had harmful effects...[T.J.] was internalizing so much pressure from Haggerty that it manifested as physical abuse." CP 388, *Phasavath*, 151 Wn. App. 1029, 2009 WL 2230724, at *5.

All of this information was before the trial court when it dismissed the Father's petition on July 24, 2013, determining that the Father failed to provide sufficient evidence of domestic violence. CP 10. The Father filed a motion for revision on August 2, 2013, CP 77-93, and filed a

motion/declaration to shorten time on August 6, 2013. CP 32-42, 43-76. The Father's motion to shorten time was heard before Judge Anita Farris on August 7, 2013. CP 96-97. Judge Farris denied the Father's motion to shorten time but granted him temporary relief, and imposed several conditions on the Mother pending his revision hearing set for August 21, 2013. CP 94-97. The Father's Motion for Revision was denied on August 21, 2013 by Judge George Bowden, and the order denying revision clarified that the parties' "King County Parenting Plan dated July 28, 2006 remains in full force and effect as is the Snohomish County order of July 24, 2013." CP 12.

IV. ARGUMENT

The Court of Appeals reviews a trial court's decision to grant or deny a protection order for an abuse of discretion. *In re Marriage of Stewart*, 133 Wn. App. 545, 550, 137 P.3d 25 (2006). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). The Court of Appeals determines whether the trial court's findings are supported by substantial evidence in the record, and if so, whether those findings support the conclusions of law. *Scott v. Trans-System, 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 evidence that is sufficient to persuade a fair-minded person of 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, 67 P.3d 1096 (2003). Substantial evidence may support a finding of fact even if the reviewing court could interpret the evidence differently. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). The Court of Appeals defers to the trial court's determinations on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *State v. Ainslie*, 103 Wn. App 1, 6, 11 P.3d 318 (2000).

A protection order is a civil remedy. *City of Tacoma v. State*, 117 Wn.2d 348, 351-52, 86 P.2d 7 (1991). Civil cases require proof of the statutory elements by a preponderance of the evidence. *Reese v. Stroh*, 128 Wn.2d 300, 312, 907 P.2d 282 (1995). As stated in the Father's brief, the Domestic Violence Protection Act sets forth the definition of domestic violence in RCW 26.50.010(1). A party seeking a protection order must allege the existence of domestic violence and declare the specific facts and circumstances from which relief is sought; thus, the burden is on the Father to meet the statutory requirements with specific facts and circumstances. *See* RCW 26.50.030(1).

A. The Court Did Not Abuse its Discretion in Dismissing the Father's Petition with Prejudice on July 24, 2013, because the Allegations of Past Violence in His Petition Were Previously Determined to Be Unfounded, and the Father Failed to Demonstrate a Present Fear.

The Father's first assignment of error is that the trial court erred in dismissing his DVPO petition on July 24, 2013. However, the trial court's decision was clearly not an abuse of discretion because the Father did not meet his initial burden to prove the existence of domestic violence under the definition set forth in RCW 26.50.010(1) by a preponderance of the evidence.

The Father first asserts in his brief that based on the *Muma* and *Spence* cases, a petitioner need not wait for further acts of violence in order to seek an order of protection, arguing that past incidents in this case containing allegations of domestic violence were sufficient to support the granting of his protection order. *See Muma v. Muma*, 115 Wn. App. 1, 6-7, 60 P.3d 592 (2003); *See also Spence v. Kaminski*, 103 Wn. App. 325, 332-34, 12 P.3d 1030 (2000).

Spence and *Muma* are not on point in this case because in both of those cases, the action was for renewal of an order of protection. The Petitioners had met their initial burden of establishing the existence of domestic violence. In this case, the Father has been deemed to be the

perpetrator of domestic violence in multiple orders, while the Mother and children were found to be victims of his abuse.

To the extent that *Muma* applies, it makes clear that in order to meet statutory requirements, the party seeking a protection order must demonstrate both past violence and a present fear. *See Muma*, 115 Wn. App. at 6-7. The *Freeman* case further clarifies that such fear must relate to a threat of imminent harm, injury or assault. *In re Marriage of Freeman*, 169 Wn.2d 664, 674, 239 P.3d 557 (2010). The *Freeman* court explained, “It is not enough that the facts may have justified the order in the past. Reasonable likelihood of imminent harm must be in the present.” *Id.* The court goes on to state that past abuse and present fear alone are insufficient to support the renewal of a protection order. *Id.* The victim does not need to prove a new act of domestic violence to have an expiring order renewed only if the present likelihood of a recurrence is reasonable. *Id.* (emphasis added). However, in this case, the Father was presenting an initial petition. He bore the burden of proof to provide facts to support the entry of an order for protection which sought to modify the parties’ plan.

The Father failed to demonstrate either past violence or a present fear based on the above standards. First, in the first two full paragraphs of his Introduction, the Father presents the facts that he states were before the

court on July 24, 2013. The Father fails to note that these facts of “past violence” are pulled from stale allegations contained in a Renton Police Department report of August, 2011, and March, 2012. Not only are several of the facts presented by the Father wholly unsupported by the record, but the Father conveniently leaves out the fact that subsequent to the allegations in August, 2011, a GAL was appointed to address the Father’s accusations. The GAL concluded that he could not “in good conscience recommend that the children should live with the father.” CP 194, 263-283. A CPS Investigation was also closed in October, 2011, finding two allegations unfounded, and for the one allegation that was determined to be founded, adherence to the parties’ parenting plan and other court orders, along with counseling for the Mother and children were the only recommendations. CP 194, 289-297. Another CPS investigation was closed in October, 2012, determining all of the Father’s allegations to be unfounded. CP 195, 318-320. Therefore, the facts presented by the Father failed to meet the preponderance of the evidence standard as required by statute and case law.

Over the past decade, the Father has demonstrated a pattern of triangulating the children, encouraging them to lie and creating false accusations in order to attempt to change custody. CP 195. This very court

recognized the Father's harmful conduct in Haggerty IV by stating, "Haggerty incited the boys to violate the parenting plan, including one for which he was held in contempt...Haggerty's additional contact with the children had harmful effects...[T.J.] was internalizing so much pressure from Haggerty that it manifested as self-inflicted physical abuse." CP 388, *Phasavath*, 151 Wn. App. 1029, 2009 WL 2230724, at *5. Other courts have also recognized the Father's pattern of false reporting to state officials. CP 201. Based on a report issued by King County Family Court Services detailing the Father's numerous false reports to CPS between 2000 and 2005, the parties' parenting plan contains a specific restraint prohibiting the Father from making CPS referrals without following measures implemented to protect the children. CP 194, 231.

It was within the context of this knowledge, provided through the Mother's July 17, 2013 Declaration, that the trial court dismissed the Father's petition, finding that there was insufficient evidence of domestic violence. CP 10. Based on all of these considerations, it was not an abuse of discretion for the court to determine that the Father did not meet his burden, as he did not provide credible evidence that would support past violence, nor a present fear of imminent harm based on reasonable likelihood of recurrence. *See Freeman*, 169 Wn.2d at 674.

Second, the Father's brief launches into a completely irrelevant and lengthy discussion of adoptive admissions within the context of a criminal defendant. The Father attempts to analogize this criminal doctrine to the present civil case to insinuate that the Mother essentially admitted to past acts of domestic violence and that the Mother's attorney admitted to fraudulent reporting to the police and tampering with witnesses by failing to deny the allegations. Despite the fact that adoptive admissions have no relevance to the present civil case or case law, the record clearly shows that the Mother has vehemently denied the Father's accusations of domestic violence. CP 14-16, 195-97. Similarly, the record reveals that T.J. and the Father's accusations regarding the Mother's attorney are without merit. CP 462.

The Father concludes the first section of his argument with a discussion of dismissal with prejudice within the context of criminal procedure and criminal law, arguing that the commissioner's "*sua sponte*" dismissal with prejudice was evidence of actual or potential bias. However, dismissal with prejudice is different within the context of a civil case. Dismissal with prejudice is included on the standard form order of dismissal. *Black's Law Dictionary* (9th ed. 2009) defines dismissal with prejudice merely as "a judgment that dismisses the case due to the

plaintiff's contentions not being proved," whereas dismissal without prejudice allows the petitioner to bring the same cause of action again. Here, after considering all facts before it, the court determined that there was insufficient evidence of domestic violence and therefore the Father failed to meet his burden. The ruling was proper, and thus it was not an abuse of discretion to dismiss the Father's DVPO petition with prejudice.

B. Under RCW 2.24.050, the Court Was Free to Impose Conditions on the Parties Pending the Revision Hearing.

The Father's second assignment of error is that the court erred in imposing new conditions on an order that had been dismissed with prejudice. The first five paragraphs of the Father's second Argument section, beginning on page 21 of his brief, contain a severe misstatement of facts with absolutely no citation to the record in this case, and have no relevance to the Father's substantive arguments contained in this section of his brief. The Father then goes on to make completely irrelevant and conflicting arguments regarding the August 7, 2013 order. He first argues that the conditions contained in the order denying the Father's motion for shortened time constituted partial granting of his request for the protection order, which he now states the court had no jurisdiction to do because his petition was dismissed with prejudice. If the Father's argument is correct,

then it was bad faith for him to knowingly file and present a request for relief which he now states the court had no authority to grant.

However, RCW 2.24.050 states that acts and proceedings of court commissioners shall be subject to revision by the superior court and that the revision shall be based on the records of the case and the findings of fact and conclusions of law entered by the commissioner. On revision, the superior court has full jurisdiction over the case and its power of review is essentially unlimited. *In re Dependency of B.S.S.*, 56 Wn. App. 169, 171, 782 P.2d 1100 (1989). It may conduct whatever proceedings it deems necessary to resolve the matter. *Id.* The Father filed a motion for revision and a motion for an order to shorten time for an earlier hearing. The order denying the Father's motion to shorten time was a free-standing order. Based on the rules stated above, the court had jurisdiction to hear both motions and was free to impose conditions on the parties pending the hearing on revision.

The Court did not partially grant the father's protection order, nor did its August 7, 2013 order modify a previously dismissed order. Nowhere in the August 7, 2013 order does it state that the Father's protection order was granted in part. CP 94-95.

The Father also argues that failing to remove the children from the

home when granting a domestic violence protection order in part is error. No protection order was granted. Furthermore, the Father's intransigence in this matter goes so far to appeal the granting of relief that he requested from the trial court. Though the court denied the Father's motion to shorten time, it imposed conditions on a temporary, emergency basis at the Father's request to address the safety of the children. Once the court was able to review the context of the case in its entirety on revision, however, it became clear that the Father had continued his pattern of making baseless allegations and his motion for revision was denied.

Finally, despite the fact that the Father claims that the court had no jurisdiction to impose conditions on the parties, he contends that the court erred under RCW 26.50.100 in failing to forward a copy of an order for protection to law enforcement. As stated above, no protection order was granted. Therefore, the decisions made in connection with the August 7 order denying the Father's motion to shorten time were not an abuse of discretion.

C. The Father Failed to Provide Evidence of Actual or Potential Bias Required to Overcome the Presumption Under the Appearance of Fairness Doctrine.

The Father's third and final assignment of error is that the court erred in disallowing oral argument at the August 21, 2013 hearing on

revision. The Mother would first like to note that throughout the entirety of his brief, the Father consistently states, inaccurately, that he filed a motion for reconsideration of the July 24, 2013 order of dismissal. The Father filed a motion for revision. The Father's brief fails to identify any error on the part of the trial court under RCW 2.24.050 or SCLCR 7(b)(2)(D)(12) regarding court rules and standards on revision. The only error asserted by the Father in his final Argument section is that the trial court's decision to disallow the Father to present oral argument at the hearing was a violation of the Father's due process rights and the "appearance of fairness doctrine."

The Father first asserts that due process requires the absence of actual bias. The Father has presented absolutely no evidence of actual bias on the part of the court. He simply goes on to state that the court did not allow the Father to address the court for any purpose. The Father fails to provide any evidence to support this argument, but even if true, oral argument on motions is not a due process right. *Parker v. United Airlines, Inc.*, 32 Wn. App. 722, 728, 649 P.2d 181 (1982). Therefore, the Father has failed to demonstrate that his due process rights were violated.

Second, the Father asserts that in disallowing presentation of oral argument, the trial court judge violated the appearance of fairness

doctrine. The Father provides the “test” for whether the doctrine is violated through the *Bilal*² case, but fails to include the rule in its entirety. The Father’s brief excludes the sentence that appears in that case following the one he cited, which states, “Before we can find a violation of this doctrine, however, there must be some evidence of a judge’s actual or potential bias.” *Id.*

Prejudice is not presumed. *In re Marriage of Wallace*, 111 Wn. App. 697, 706, 45 P.3d 1131 (2002) (citing *State v. Dominguez*, 81 Wn. App. 325, 328-30, 914 P.2d 141 (1996)). Rather, the trial court is presumed to perform its functions regularly and properly without bias or prejudice. *Wolfkill Feed and Fertilizer Corp.*, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). After a claimant presents sufficient evidence of potential bias, a court will consider whether the appearance of fairness doctrine was violated. *Dominguez*, 81 Wn. App. at 328-29.

Instances of actual bias include such situations as where the adjudicator has a pecuniary interest in the outcome, where the judge has been the target of personal abuse or criticism from the party before him, or where the judge sits on the appeal from his own case. *State v. Chamberlin*, 161 Wn.2d 30, 38, 162 P.3d 389 (2007). As stated above, the Father has

² *State v. Bilal*, 77 Wn. App. 720, 722, 833 P.2d 674 (1995).

presented no evidence of actual bias on the part of the judge.

The Father has similarly failed to demonstrate any evidence of potential bias. The Father makes only bald assertions of bias based on the fact that the Father was not permitted to present oral argument, which is insufficient to overcome the presumption that judges perform their functions without bias or prejudice. *See Wolfkill*, 103 Wn. App. at 841. Even in cases where the parties are able to point to conduct that might seemingly indicate partiality, courts are hard pressed to find potential bias. For example, in the *Dominguez* case, the court determined that the fact that a judge had participated as a lawyer for or against a party in a previous, unrelated case, alone, was insufficient to show potential bias. *Dominguez*, 81 Wn. App. at 329. Furthermore, other cases reveal that actions on the part of the judge such as making comments that inform parties of the legal consequences of their position, or comments that underscore a judge's awareness and sympathy for a party's position in making a decision are insufficient to constitute evidence of potential bias. *See Wallace*, 111 Wn. App. at 706; *In re Dependency of O.J.*, 88 Wn. App. 690, 697-98, 947 P.2d 252 (1997). Therefore, the Father's simple, conclusive assertion that his inability to present oral argument constituted a violation of the appearance of fairness doctrine is insufficient to

overcome the presumption.

D. The Father Fails to Provide Any Evidence for his Assertion That the Court's Decision to Deny the Motion for Revision was Based on Grounds Unsupported By the Record.

Conflating his arguments regarding the appearance of fairness doctrine with the court's ultimate decision to deny the Father's motion for revision, the Father concludes the Argument section of his brief with several paragraphs of string cites regarding the abuse of discretion standard. The only other reference in the Father's brief as to how the court's decision to deny the Father's motion for revision was an abuse of discretion is the Father's one-sentence assertion in his conclusion that the motion was denied "on grounds unsupported by the record." The Father claims that the court denied the motion on the grounds that it was untimely, the file was too burdensome to read, and the motion should have been special set. The Father provides no evidence to support this assertion. The order of August 21, 2013 clearly states that the Father's motion for revision was denied and that the parties' King County Parenting Plan remained in full force and effect. CP 12. The minute entry for the hearing also states that the motion was denied. CP 13. A revision denial constitutes an adoption of the commissioner's decision and the court is not required to enter separate findings and conclusions. *In re Marriage of Williams*, 156

Wn. App. 22, 27-28, 232 P.3d 573 (2010). Because the Father fails to make any comprehensive or supported argument as to why the court's decision to deny the Father's motion for revision was an abuse of discretion, he has failed to demonstrate that the decision to deny his motion for revision was in error.

V. ATTORNEY'S FEES

Although the Father filed this appeal, he asserts that the Mother should be ordered to pay *his* expenses and fees under RCW 26.09.140 on the basis of need versus ability to pay. Again, he has presented no evidence as to the parties' relative need for assistance or ability to pay. As this is the sole basis under which he has sought attorney's fees, his request should be denied.

Furthermore, the Mother requests that her fees and costs on appeal be paid by the Father under RAP 18.1, RCW 26.09.140, and based on the Father's intransigence. A party's intransigence can substantiate an award of attorney fees, regardless of the factors enunciated in RCW 26.09.140; attorney fees based on intransigence are an equitable remedy. *In re Marriage of Mattson*, 95 Wn. App. 592, 604, 976 P.2d 157 (1999). In deciding whether to award fees, the trial court may consider the extent to which one party's intransigence caused the other party who is seeking an

award of fees to undertake additional legal services. *In re Marriage of Crosetto*, 82 Wn. App. 545, 563, 918 P.2d 954 (1996). The Father has engaged in conduct that resulted in a substantial and unnecessary increase in the cost and difficulty of the underlying matter by basing his petition and appeal on allegations that were determined to be unfounded and by continuing his pattern of deception and manipulation of the court and the parties' children. He has also continued his long-standing pattern of abusive litigation. The Court should find that intransigence has permeated the case and as a result, the Mother is not required to segregate attorney's fees. *See In re Marriage of Sievers*, 78 Wn. App. 287, 312, 897 P.2d 388 (1995).

Moreover, the Mother requests an award of attorney fees based on the Father's frivolous litigation under RCW 4.84.185. A prevailing litigant is entitled to an attorney fee award, where the losing litigant had no bona fide grievance, knew that he did not, but nevertheless proceeded with his action. *See Reid v. Dalton*, 124 Wn. App. 113, 123, 100 P.3d 349 (2004), *review denied*, 155 Wn.2d 1005, 120 P.3d 578 (2005). An award of attorney fees against a litigant for filing a frivolous lawsuit lies within the sound discretion of the court. *Eller v. East Sprague Motors & R.V.'s, Inc.*, 159 Wn. App. 180, 191, 244 P.3d 447 (2010). An action is frivolous if it

cannot be supported by any rational argument on the law or facts. *Id.* at 191-92. The arguments presented in the Father's appeal have no legal merit and are completely unsupported by the record. RCW 4.84.185 was enacted to discourage abuse of legal system by providing for award of expenses and legal fees to any party forced to defend itself against meritless claims asserted for harassment, delay, nuisance or spite. *Suarez v. Newquist*, 70 Wn. App. 827, 832-33, 855 P.2d 1200 (1993). The Mother is therefore entitled to attorney fees, as she was forced to defend against this frivolous action filed by the Father solely for purposes of spite and harassment.

VI. CONCLUSION

The Father has failed to establish that the orders of the Snohomish County Superior Court constituted an abuse of discretion. Therefore, the Mother respectfully requests that this Court deny the Father's requests for reversal, and uphold the decisions of the trial court, dismissing the Father's petition for a domestic violence protection order with prejudice.

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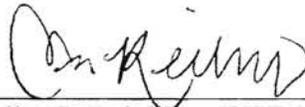
Respectfully submitted this 21st day of March, 2014.

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CERTIFICATE OF SERVICE

I certify that a copy of the Brief of the Respondent was mailed and emailed to Stephen Pidgeon, Attorney for Appellant, at his office located at 3002 Colby Avenue, Suite 306, Everett, WA 98201 on March 21, 2014.


KERRY BOWERS