

original

NO. 37335-1-II

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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GAIL NICOLS,

Respondent,

v.

TREEVA COHEE,

Appellant.

FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY DEPUTY

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ON APPEAL FROM THE  
SUPERIOR COURT OF GRAYS HARBOR COUNTY

Before the Honorable Gordon Godfrey, Judge

OPENING BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. The trial court erred in granting a two year protection order under RCW 26.50 upon the basis of written statements and an allegation of “stalking” that raised disputed issues of fact.

2. The trial court erred in finding that the respondent presented a credible threat to the physical safety of the petitioner.

3. The trial court erred in granting a two year protection order under RCW 26.50.

**B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. Can a trial court decide the merits of a petition for protection order under RCW 26.50 on a written affidavit and a statement alleging stalking behavior by the respondent, without a meaningful evidentiary hearing, where the affidavit and in-court statement raised disputed issues of fact that depend on witness credibility? Assignments of Error No. 1 and 3.

2. Was sufficient evidence presented to support a finding that the respondent presented a credible threat to the petitioner’s safety? Assignment of Error No. 2.

**C. STATEMENT OF THE CASE**

**1. Procedural history:**

On November 16, 2007, Gail Nicols filed a petition for a protective order against Treeva Cohee, in which she accused her of spitting in her

face and hitting her in the eye and lip on November 12, and accused her of repeatedly leaving threatening messages on her phone on November 15. Clerk's Papers [CP] at 1-8.

The "petition" appears to be a mixture of two forms; the first page is a Temporary Order for Protection, and the final four pages are a Petition for Order of Protection. CP at 1-8.

A temporary protection order was entered November 16 and the case was set for hearing on November 26. CP at 9-11. Following a short hearing before Grays Harbor County Superior Court Judge Gordon Godfrey on November 26, the court entered a temporary order. Report of Proceedings [RP] (11.26.07) at 2-12. Treeva Cohee, Gail Nicols, Shawne Rountree were present at the hearing. The court took no testimony other than to determine if the parties were roommates and whether there were pending criminal charges as a result of the alleged acts of domestic violence. RP (11.26.07) at 7-8. The judge asked Ms. Cohee to describe the alleged incidents of November 12. RP (11.26.07) at 7-9. Judge Godfrey stated that he was "looking for the Reader's Digest version as opposed to the entire version" of the allegations and reissued the temporary orders entered November 16. RP (11.26.07) at 10, 12. Another hearing was set for February 4, 2008. CP at 12-15. RP (11.26.07) at 11, 12.

The matter was heard by Judge Godfrey on February 4, 2008. Again, Treeva Cohee, Gail Nicols, and Shawne Rountree were present in court.<sup>1</sup> Judge Godfrey swore the parties in, and then asked if they believed that they continued to need orders of protection, “[a]nd if so, why?” RP at 3. Ms. Cohee told the court that Ms. Rountree had threatened her with a pistol. RP at 3. She said that Ms. Nicols (also known as Gail Ryan) had choked her and that she hit Ms. Nicols in self defense. RP at 4. Ms. Cohee also stated: “I would like to argue against Ms. Ryan’s as sole purpose for her protection order was to get me out of the place, have me removed that way.” RP at 5. The court did not let her speak further. RP at 5.

Ms. Nicols then stated that she wanted the order of protection continued and alleged that Ms. Cohee was following another person after the temporary order was enacted, that she went to her house, and that she had seen Ms. Cohee’s car at a restaurant in Grays Harbor County called The Rusty Tractor. RP at 6. The other person, who is not identified, evidently lives in the house with Ms. Nicols.<sup>2</sup> RP at 6. Ms. Nicols stated that “I just feel like she’s a danger because she’s been stalking her, and she—she’s not supposed to be around her. She lives with me. So, this

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<sup>1</sup>*Treeva Cohee v. Shawne Rountree*, Grays Harbor County Cause No. 07-2-01407-8, another case involving a protection order, was evidently heard at the same time as the present case.

<sup>2</sup> This third person may be Shawne Rountree, but it is not clear in the record.

lady has been stalking us, you know.” RP at 6.

The court also let Ms. Rountree address the court. RP at 7. Ms.

Rountree stated:

Well Treeva, she put the order out on me but yet she’s been calling me since December 23<sup>rd</sup>, all the way up to February 2<sup>nd</sup>. She’s been calling my family. She called my father’s home, my sisters. She called my nephew, even my son, and my brother, asking them to tell me to—begging me to call and talk to her. We went on vacation in December, Christmas vacation. She even came knocking on my home door there.

RP at 7.

Judge Godfrey did not permit either party to speak further and did not allow cross examination or allow the parties to call witnesses. The judge ruled that it will make “all these orders effective for two years against these two ladies, and for two years against this lady.” RP at 8. Judge Godfrey entered his decision without receiving testimony other than each of the initial statements he allowed them to make, trial exhibits, or permitting argument regarding the weight of the evidence.

The court entered an order of protection against Ms. Cohee, effective until February 4, 2010. CP at 16-19. Appendix A.

Timely notice of appeal of the protection order was filed on February 7, 2008. CP at 20-24. This appeal follows.

D. ARGUMENT

1. THE TRIAL COURT PROVIDED ONLY A RUDIMENTARY HEARING, INSTEAD CONDUCTING A HAPHAZARD PROCEDURE WHERE MS. COHEE, MS. NICOLS, AND MS. ROUNTREE EACH MADE A STATEMENT, AFTER WHICH THE COURT GRANTED A TWO YEAR PROTECTION ORDER AGAINST MS. COHEE.

RCW 26.50.060 authorizes the trial court, after notice and a hearing, to issue a protection order. *City of Seattle v. Edwards*, 87 Wn. App. 305, 310, 941 P.2d 697 (1997). Appendix B. Among other forms of relief, the court may restrain the respondent from committing domestic violence, from entering the residence or workplace of the petitioner, and from making contact with the petitioner. RCW 26.50.060(1). *Spence v. Kaminski*, 103 Wn. App. 325, 331, 12 P.3d 1030 (2000). RCW 26.50.060 states in relevant part:

- (1) Upon notice and after hearing, the court may provide relief as follows:
  - (a) Restrain the respondent from committing acts of domestic violence;
  - (b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;
  - (c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
  - (d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

....

(f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

....

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household.

A restraining order issued under RCW 26.50.060 is labeled an "order of protection." RCW 26.50.025(1).

If the court finds that the respondent "is likely to resume acts of domestic violence against the petitioner ... when the order expires," the court has discretion to enter a permanent order of protection. RCW 26.50.060(2). The statute does not require any particular wording in the order. *Edwards*, 87 Wn. App. at 310. *Kaminski*, 103 Wn. App. at 331.

RCW 26.50.010(a) defines domestic violence to include: "Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members." Appendix C.

RCW 26.50.010(2) defines "family or household members" as "spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past . . . ."

Ms. Cohee was entitled to a meaningful hearing on the merits of Ms. Nichol's allegations that she hit her, spit on her, and left threatening messages. The trial court denied Ms. Cohee a meaningful hearing when it ruled without offering Ms. Cohee an opportunity to question Ms. Nicols, introduce evidence or give testimony, instead reaching its decision to impose a two year protection order after hearing only cursory allegations from Ms. Nicols and Ms. Rountree. Moreover, the court heard an allegation by Ms. Nicols that Ms. Cohee was stalking a third party who was not a party to the petition filed by Ms. Nicols. In so doing, it deprived Ms. Cohee of the right to a hearing that the Domestic Violence Protection Act requires, and the meaningful opportunity to be heard.

In *Gourley v. Gourley*, 158 Wn.2d 460, 145 P.3d 1185 (2005), the Washington Supreme Court found that the due process procedures outlined in Chapter 26.50 RCW provide the following procedural protections:

(1) a petition to the court, accompanied by an affidavit setting forth facts under oath; (2) notice to the respondent within five days of the hearing; (3) a hearing before a judicial officer where the petitioner and respondent may testify; (4) a written order; (5) the opportunity to move for revision in superior court; (6) the opportunity to appeal; and (7) a one-year limitation on the protection order if it restrains the respondent from contacting minor children.

*Gourley*, 158 Wn.2d at 468-69.

The *Gourley* Court found that no section of Chapter 26.50 RCW explicitly sets forth the form the hearing must take or defines what is meant by "full hearing," and that "nothing in the statutory scheme explicitly requires a trial judge to allow the respondent in a domestic violence protection order proceeding to cross-examine a minor who has accused him of sexual abuse." *Gourley*, 158 Wn.2d at 469-70. The Court found in *Gourley* that the commissioner did not abuse his discretion when he determined that cross-examination was unnecessary. *Id.* at 470. The Court also found that the commissioner "had ample evidence with which to make his determination, including Mr. Gourley's admission that he rubbed aloe vera on N.'s naked body[.]" and that "the need to cross-examine N. was obviated because Mr. Gourley himself confirmed N.'s declaration," and therefore his due process rights were not violated. *Id.* The *Gourley* Court specifically held that "[w]hile the facts of this case did not require testimony or cross-examination, live testimony and cross-examination might be appropriate in other cases." *Id.*

Unlike *Gourley*, who unsuccessfully argued that he was entitled to a "full hearing," Ms. Cohee submits that she was given a hearing only in the most abbreviated, truncated sense of the term.

The Domestic Violence Prevention Act requires a hearing on the merits of a petition for a protection order. The hearing is described as

such in the Act and in the case law. RCW 26.50.020(5), 26.50.070; *Spence v. Kaminski*, 103 Wn. App. 325, 334, 12 P.3d 1030 (2000). A hearing includes the right to confront adverse witnesses, the right to present evidence and oral argument, and the right to representation by counsel. *Flory v. Dep't of Motor Vehicles*, 84 Wn.2d 568, 527 P.2d 1318 (1974).

Here, the court had only the affidavit by Ms. Nicols contained in her petition and the statement of Ms. Nicols on February 4 that Ms. Cohee was stalking a third party, went to her house, and Ms. Cohee's statement that she hit Ms. Nicols but that she was acting in self defense. RP at 4. The *Gourley* court found that the Court Commissioner had "ample evidence" to make his determination and therefore did not err when he determined cross examination was not necessary. *Gourley*, 158 Wn.2d at 470. The present case, however, constitutes a situation where a paucity of evidence requires the necessity of presenting testimony and cross examining witnesses. Here, Judge Godfrey, after swearing the parties in, firmly controlled the hearing by merely inviting each party to say why an order of protection could be extended. The judge did not give Ms. Cohee, who appeared without counsel, the opportunity to refute the allegations contained in the petition. She attempted to argue that Ms. Nicols' reason for seeking a protection order was to "get me out of the place, have me

removed that way.” RP at 5. Judge Godfrey did not allow further argument regarding Ms. Cohee’s contention, stating, “[o]ne at a time here” and then invited Ms. Nicols to speak. RP at 5.

The result was that virtually no testimony was presented, leaving the Judge to consider only Ms. Nichol’s affidavit. Trial by affidavit is not a full hearing, as Washington courts have made clear on numerous occasions. See, for example, *Estate of Stockman*, 59 Wn. App. 711, 713, 800 P.2d 1141 (1990) (appellant requested “full hearing with live testimony” in lieu of “trial by affidavit”); *State v. Howe*, 44 Wn. App. 559, 564, 723 P.2d 452 (1986) (trial court held “hearing,” but not “full evidentiary hearing with oral testimony and cross examination”); *Little v. Rhay*, 8 Wn. App. 725, 509 P.2d 92 (1973) (trial court erred by placing sole emphasis on affidavit in lieu of “full and fair evidentiary hearing”). The hearings of November 26, 2007, and February 4, 2008, at which the trial court issued the two year protection order, were not meaningful hearings; the court did not provide Ms. Cohee with the opportunity to confront Ms. Nichol’s allegations, let alone present her evidence and argue its significance.

A court may abuse its discretion by failing to hold an evidentiary hearing when affidavits present an issue of fact whose resolution requires a determination of witness credibility. *Woodruff v. Spence*, 76 Wn. App.

207, 210, 883 P.2d 936 (1994). The trial court clearly abused its discretion in this case by failing to hold a meaningful hearing where the affidavit presented issues of fact that could only be resolved by determining witness credibility.

2. **THE COURT'S FINDING THAT MS. COHEE REPRESENTS A CREDIBLE THREAT TO THE PHYSICAL SAFETY OF THE PETITIONER WERE NOT SUPPORTED BY THE EVIDENCE.**

Ordinarily, a trial court's findings of fact are entitled to deference on appeal, and will be upheld upon a showing that they were supported by substantial evidence. Substantial evidence is evidence of a character that would convince an unprejudiced thinking mind of the truth of the fact. *Hillhaven v. Sellen Constr.*, 133 Wn.2d 751, 766, 948 P.2d 796 (1997). The substantial evidence rule does not apply, however, when witnesses do not testify in the underlying proceeding and the trial court bases its finding on documentary evidence. *Davis v. Labor & Industry.*, 94 Wn.2d 119, 124, 615 P.2d 1279 (1980). Where a trial court has considered documents only in reaching its decision, the appellate court may review the case *de novo* because the court is in the same position as the trial court to review written submissions. *Marriage of Rideout*, 150 Wn.2d 337, 353, 77 P.3d 1174 (2003) (narrow exception recognized for determinations of adequate cause on petitions to modify parenting plans.)

There is no reason why the appellate court should defer to the trial court's findings in this case; the trial court did not take live testimony in the usual sense, but instead allowed each party to make a brief statement—essentially amounting to argument—to convince the Judge why the temporary order should be continued. RP at 3-6. The trial court's written findings were:

The Court finds based upon the court record:

....  
Respondent committed domestic violence as defined in RCW 26.50.010 and represents a credible threat to the physical safety of petitioner....

CP at 16-19.

The evidence did not support these findings, neither with respect to whether Ms. Cohee committed domestic violence, nor with respect to whether she represented a credible threat to the physical safety of the petitioner.

The evidence did not support the trial court's finding that the respondent "represents a credible threat to the physical safety of petitioner." Not to the substantial evidence standard. Not by *de novo* review. The petitioner did not claim that Ms. Cohee represented a threat to her physical safety. Instead, she requested that the temporary order be continued:

because she's been following us. She's—the Wednesday she was

pulling up—she was trying to get in touch with her. She's always with me. In order to get to her, she is following us. She come up to the house Wednesday. We was coming from the building, coming around the curve. She was backing out of the driveway. When she got close to her, she stopped and looked in the car. Saturday, it was a car at the park—it was at the Rusty Tractor. There was a car out there parked looked like her boyfriend's, and my car was parked in front. So, she parked two cars down from me, come in there to look for her. She came—she not supposed to be within 100 feet of me. She came in to look for her, and when I seen her, I said, Let me get my phone. So, when I got my phone, she rushed out of there, thinking I was going to call the police. And she just—I **just feel like she's a danger because she's been stalking her**, and she—she's not supposed to be around her. She lives with me. So, this lady has been stalking us, you know.

RP at 5-6. (Emphasis added).

Ms. Nicols does not claim that Ms. Cohee is a danger to *her*, but that she's a danger because she's "stalking" a third party. She then states that Ms. Cohee has been "stalking us," but does not allege that the stalking behavior constitutes a "danger" to Ms. Nicols. RP at 6.

In *Spence v. Kaminski*, *supra*, the Court of Appeals sustained a protection order that was challenged for insufficient findings upon the basis that the order's restrictions were not unreasonable "if based on a demonstrated need to protect [the petitioner] from domestic violence." *Kaminski*, 103 Wn. App. at 332. But in this case, there was no such demonstrated need. None of the concerns of Ms. Nicols or Ms. Rountree describe a credible threat to the physical safety of the petitioner. Simply put, there was not sufficient evidence to substantiate the court's finding of

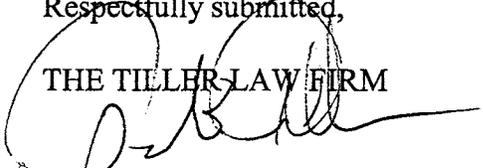
a “credible threat to the physical safety of [the] petitioner,” and the court never identified any.

**E. CONCLUSION**

The Court of Appeals should reverse the ruling that was entered by Judge Godfrey, and remand the case to the trial court with instructions to vacate the two year protection order, and dismiss the proceeding in which it was issued.

DATED: April 28, 2008.

Respectfully submitted,

  
THE TILLER LAW FIRM

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PETER B. TILLER-WSBA 20835  
Of Attorneys for Treeva Cohee

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'08 FEB -4 P4 31

CHERYL BROWN  
COUNTY CLERK

Superior Court of Washington  
For Grays Harbor County

Order for Protection

No. 07-2-1421-3

Gail Nicks 2.9.58

Petitioner (First, Middle, Last Name) DOB

Treva Cohee 4-11-61

Respondent (First, Middle, Last Name) DOB

Court Address: 102 W Broadway Montesano, WA

Telephone Number: (360) 249-3842

(Clerk's Action Required) (ORPRT)

Names of Minors:  No Minors Involved

First	Middle	Last	Age

Respondent Identifiers

Sex	Race	Hair
F	Black	Black
Height	Weight	Eyes
5'3"	140	Black

Respondent's Distinguishing Features:

Caution: Access to weapons:  yes  no  unknown

The Court Finds Based Upon the Court Record:

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

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

Respondent's relationship to the petitioner is:

- spouse or former spouse
- current or former dating relationship
- in-law
- parent or child
- parent of a common child
- stepparent or stepchild
- blood relation other than parent or child
- current or former cohabitant as intimate partner
- current or former cohabitant as roommate

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

Court Order Summary:

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

The terms of this order shall be effective immediately and for one year from today's date,

unless stated otherwise here (date):

Feb 4, 2010

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It is Ordered:

<p><input checked="" type="checkbox"/> 1. Respondent is <b>Restrained</b> from causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking <input checked="" type="checkbox"/> petitioner <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p> <p>(If the respondent's relationship to the petitioner is that of spouse or former spouse, parent of a common child, or former or current cohabitant as intimate partner, then effective immediately, and continuing as long as this protection order is in effect, the respondent may not possess a firearm or ammunition. 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)</p>
<p><input checked="" type="checkbox"/> 2. Respondent is <b>Restrained</b> from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3<sup>rd</sup> party or contact by Respondent's lawyer(s) with <input checked="" type="checkbox"/> petitioner <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only.</p> <p>If both parties are in the same location, respondent shall leave.</p>
<p><input checked="" type="checkbox"/> 3. Respondent is <b>Excluded</b> from petitioner's <input checked="" type="checkbox"/> residence <input type="checkbox"/> workplace <input type="checkbox"/> school; <input type="checkbox"/> the day care or school of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p> <p><input type="checkbox"/> Other</p> <p><input type="checkbox"/> Petitioner's address is confidential. <input type="checkbox"/> Petitioner waives confidentiality of the address which is:</p>
<p><input checked="" type="checkbox"/> 4. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately <b>Vacate</b> the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.</p> <p><input type="checkbox"/> This address is confidential. <input type="checkbox"/> Petitioner waives confidentiality of this address which is:</p> <p style="text-align: center;"><i>53 Strawberry Hill Road, Elmo</i></p>
<p><input checked="" type="checkbox"/> 5. Respondent is <b>Prohibited</b> from knowingly coming within, or knowingly remaining within 100' (distance) of: petitioner's <input checked="" type="checkbox"/> residence <input type="checkbox"/> workplace</p> <p><input type="checkbox"/> school; <input type="checkbox"/> the day care or school of <input type="checkbox"/> the minors named in the table on page one</p> <p><input type="checkbox"/> these minors only:</p> <p><input type="checkbox"/> Other:</p>
<p><input type="checkbox"/> 6. Petitioner shall have possession of essential personal belongings, including the following:</p>
<p><input type="checkbox"/> 7. Petitioner is granted use of the following vehicle:</p> <p>Year, Make &amp; Model _____ License No. _____</p>
<p><input type="checkbox"/> 8. Other:</p>

9. Respondent shall participate in treatment and counseling as follows:  
 domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: \_\_\_\_\_  
 parenting classes at: \_\_\_\_\_  
 drug/alcohol treatment at: \_\_\_\_\_  
 other: \_\_\_\_\_

10. Petitioner is granted judgment against respondent for \$ \_\_\_\_\_ fees and costs.

11. Parties shall return to court on \_\_\_\_\_, at \_\_\_\_\_ m. for review.

~~Complete only if the protection ordered involves minors: This state  has exclusive continuing jurisdiction;  is the home state;  has temporary emergency jurisdiction;  that may become final jurisdiction under RCW 26.27.231(2);  other: \_\_\_\_\_~~

12. Petitioner is *Granted* the temporary care, custody, and control of  the minors named in the table above  these minors only:

13. Respondent is *Restrained* from interfering with petitioner's physical or legal custody of  the minors named in the table above  these minors only:

14. Respondent is *Restrained* from removing from the state  the minors named in the table above  these minors only:

15. The respondent will be allowed visitations as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

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

**Warnings to the Respondent:** A violation of provisions 1 through 5 of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject you to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C. §§ 2261, 2261A, or 2262.

A violation of provisions 1 through 5 of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if you have at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74 RCW.

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

**You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions.** You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application. Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

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

**Service**

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

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

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

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

Dated: July 20 at 3:30 a.m./p.m.

[Signature]  
 Judge/Commissioner

Presented by: \_\_\_\_\_ I acknowledge receipt of a copy of this Order:

\_\_\_\_\_  
 Petitioner Date Respondent Date

A Law Enforcement Information Sheet (LEIS) must be completed.

**B**

**RCW 26.50.060**

**Relief – Duration – Realignment of designation of parties – Award of costs, service fees, and attorneys' fees.**

(1) Upon notice and after hearing, the court may provide relief as follows:

- (a) Restrain the respondent from committing acts of domestic violence;
- (b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;
- (c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
- (d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;
- (e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;
- (f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;
- (g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees;
- (h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;
- (i) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;
- (j) Consider the provisions of RCW 9.41.800;
- (k) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and
- (l) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. 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. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in \*subsection (1)(f) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a

petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

[2000 c 119 § 15; 1999 c 147 § 2; 1996 c 248 § 13; 1995 c 246 § 7; 1994 sp.s. c 7 § 457. Prior: 1992 c 143 § 2; 1992 c 111 § 4; 1992 c 86 § 4; 1989 c 411 § 1; 1987 c 460 § 55; 1985 c 303 § 5; 1984 c 263 § 7.]

C

**RCW 26.50.010**  
**Definitions.**

As used in this chapter, the following terms shall have the meanings given them:

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

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

[1999 c 184 § 13; 1995 c 246 § 1. Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.]

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COURT OF APPEALS  
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IN THE COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION II

GAIL NICOLS,  
Respondent,

v.

TREEVA COHEE,  
Appellant.

COURT OF APPEALS NO.  
37335-1-II

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that the original and one copy of Opening Brief of Appellant were mailed by first class mail to the Court of Appeals, Division 2, and copies of were mailed to Treeva Cohee, Appellant, and Gail Nichols, Respondent, by first class mail, postage pre-paid on April 28, 2008, at the Centralia, Washington post office addressed as follows:

Ms. Gail Nicols  
53 Strawberry Hill Road  
Elma, WA 98541

Mr. David Ponzoha  
Clerk of the Court  
WA State Court of Appeals  
950 Broadway, Ste. 300  
Tacoma, WA 98402-4454

CERTIFICATE OF  
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DATED: April 28, 2008.

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P. B. Tiller', is written over the text 'THE TILLER LAW FIRM'. The signature is stylized and cursive.

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PETER B. TILLER – WSBA #20835  
Attorney for Appellant

CERTIFICATE OF  
MAILING

2

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