

No. 42617-0-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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WILLIAM M. PRICE, III and  
SUSAN G. PRICE

Respondents

v.

VERONICA G. PRICE,

Appellant

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***CORRECTED* BRIEF OF APPELLANT**

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Veronica G. Price  
*Pro se*

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STATE OF WASHINGTON  
BY *VG*  
FILED

**ORIGINAL**

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## I. INTRODUCTION

Respondents, William Montelius Price, III and Susan Price, sought and were granted an anti-harassment order which removed their sixty-two year old aunt, Veronica G. Price, from her home. The parties are tenants in common to a beachfront property in Long Beach, Washington. Appellant, Veronica Price, owns five-sixths of the property, Respondents one-thirtieth. Veronica Price and her late husband Frederick M. Price have been almost solely financially responsible for this property for years. After the death of her husband on December 30, 2010, Veronica Price visited the property and discovered a boarded up home with leaking water and sewage pipes which had saturated the lower level of the home. The extensive damage was caused by the neglect of William Price and members of his family.

Veronica Price then moved into the home in order to oversee thousands of dollars worth of extensive repairs to the home. William and Susan Price were unhappy to find that their aunt Veronica Price was living at the property. In order to remove her from the property during their vacation, they alleged that she had unlawfully harassed them. The unlawful harassment they alleged was Veronica Price's expressions of displeasure regarding the damages they had caused to the home, and her attempts to protect the home.

Appellant, Veronica G. Price, appeals the Pacific County Superior Court's Temporary Protection Order of August 17, 2011, and Antiharassment Order of August 19, 2011, as well as the Court's Order of September 16, 2011, denying her Motion for Reconsideration. The Court's antiharassment orders violated her due process right, and her right of freedom of expression as guaranteed by the First Amendment to the United States Constitution and the Washington Constitution, Art. I § 5. Further, as applied to the facts of this case, RCW 10.14 *et seq.* is unconstitutionally overbroad. A Registered Nurse by profession, Veronica Price should not be burdened with an antiharassment order on her record. Accordingly, Veronica Price requests that the order be vacated.

## **II. ASSIGNMENT OF ERROR**

### **A. Assignments of Error**

1. The court erred in finding that sufficient grounds existed for granting an *ex parte* temporary restraining order.
2. The court erred in finding that the Respondent had committed unlawful harassment.
3. The court erred in denying Respondent's motion for reconsideration.

**B. Issues Pertaining to Assignments of Error**

1. Did the Petitioners make a sufficient showing that they would suffer irreparable harm if the Court did not grant the ex-parte temporary restraining order?

2. Where the allegations of unlawful harassment were based on speech alone, did Petitioners make a preliminary showing sufficient to allow the Court to conclude that a breach of the peace had occurred?

3. Where the allegations of unlawful harassment were based on speech alone, did Petitioners present sufficient evidence at the antiharassment hearing to allow the Court to conclude that the Respondent had committed unlawful harassment?

4. Did the Superior Court deprive Respondent of her due process rights by entering a temporary restraining order that effectively evicted her from her own home without notice and an opportunity to be heard?

**III. STATEMENT OF THE CASE**

**A. Facts**

Petitioners William Price and Susan Price and Respondent Veronica G. Price own interests in a property located at: 1901 Boulevard North, Long Beach, Washington. Veronica G. Price owns a five-sixth interest in this property and William M. Price own a one-thirtieth interest

in this property. See Motion for Reconsideration, CP 11; Memorandum Opposing Protection Order and in Support of Requiring Bond, CP 7; VRP at 7. When William and Susan sought a Petition for an Order for Protection, this home was Veronica's primary residence.<sup>1</sup> VPR 6-11.

On August 17, 2011, William and Susan petitioned the court for an anti-harassment order for protection against Veronica. In their petition they alleged:

We, the Price family, headed by Petitioner William M. Price III were accosted and verbally attacked by Veronica Price (married in-aunt) on Aug. 6, Aug. 16 & Aug. 17, 2011. We each hold shares of beach property, and Veronica Price verbally agreed that we, the Price family (kids, grandkids, friends) were able to occupy the house from Aug. 5 - Aug. 22, without her present. She agreed to this in April, 2011. During her irrational, emotionally charged outbursts, she entered the property and began screaming at the top of her lungs at all family members (Monty Price and wife Susan their adult children Monty Price IV & wife Alaya Price, Stasia Shafer and Megan D\_\_\_, daughters) and listed grandchildren. She told us we were liars, pigs, and that we had caused multiple property damages. She used extensive obscenities, making all children scared enough to run, hide, and cry. The youngest even left the premises and was hiding outside. She was physically too close to the family, shaking fist and fingers, and continuing an enraged rant that made no clear sense. Everybody is constantly on edge because she is volatile and unstable. She has alternately spent hours in her car outside the house at night watching us. It's not a normal or

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<sup>1</sup> Hereinafter, the petitioners William M. Price, III and Susan Price are referred to as "William and Susan" and respondent Veronica Price is referred to as "Veronica."

appropriate way to spend a vacation, especially in a family home.<sup>2</sup>

CP 1. Based on these allegations the Pacific County Superior Court entered a Temporary Restraining Order and Notice of Hearing on August 17, 2011. CP 2.

This Order was served by the Long Beach Police Department on August 17, 2011 at 10:18 p.m. Based upon these allegations, the Court entered an order which resulted in Veronica being forcibly removed from her home without any prior notice or opportunity to be heard. See, Correction to CR Rule 59 Motion for Reconsideration, CP 15. Veronica, a woman in her sixties, was forcibly removed from her home by police on August 17, 2011. CP 12; 28:27-28.

On August 19, 2011, Veronica filed a Memorandum Opposing Protection Order and in Support of Requiring a Bond. CP 7. In this Memorandum, Veronica explained that she owns a five-sixth interest in the property located at 1901 Boulevard North, Long Beach, Washington. The remaining one-sixth share is owned by five families, among them the Petitioners, William and Susan, who own a one-thirtieth interest. CP 9:18-20. Veronica states that William and Susan should have initiated a

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<sup>2</sup> Veronica continues to dispute all the allegations that William and Susan made their petition and at the hearing for protection order. Indeed, the declarations of Michael Binion and Sharon Gove both directly controvert many of their allegations. CP 16-17; 25-27. Further, Veronica's Correction to CR Rule 59 Motion for Reconsideration sets forth other errors in the record. See CP 28-32.

proceeding to obtain declaratory relief rather than using the anti-harassment statutes to exclude Veronica from the use and enjoyment of her real property. CP 11:5-23. Veronica further alleged that none of the incidents alleged by Petitioners rose to the level of imminent harm. *Id.* Finally, Veronica alleged that it would be an infringement of her constitutional rights for the Court to enjoin speech. CP 12:3-5.

At the August 19, 2012 hearing on the William and Susan's Petition for Order of Protection was held on August 19, 2011. CP 8. At this hearing, Veronica asserted that William and Susan were improperly using the anti-harassment statute to prevent her from enjoying her interest in her real property. VRP 6-7. Further, Veronica argued that constitutionally protected speech cannot be the basis for an anti-harassment order. VRP 7-8. She pointed out that nothing contained in William and Susan's allegations support a conclusion that they were in any imminent danger from a sixty-two year old woman. VRP 8.

At this hearing none of the witnesses were placed under oath prior to testifying. VRP 1. William addressed the Court first and essentially reiterated the claims made in the petition. VPR 14-16. He described Veronica as waiting outside her house, in her car, and then coming inside to rant and rave. VRP 14. He described Veronica as going into her bedroom, shutting her door, and staying in her room all night. *Id.*

The Court inquired of William exactly what he meant by “ranting and raving.” VRP 15. William described Veronica’s allegations accusing William and Susan of “multiple sins upon the house, allowing the bathroom to go to pot.” VRP 15. William stated that Veronica had told them that they had no right to be there because she owns it, even though it’s a divided interest. VRP at 16. Susan also addressed the court and stated that Veronica’s tirade, obscenities and profanities were “a little disconcerting because we had the grandkids there.” VRP at 17. She also described the reactions of the grandchildren upon hearing Veronica’s outburst. VRP 17-18.

Veronica then addressed the Court and described some of the ongoing property disputes that she had been experiencing with William Price and Susan Price. VRP 22-25. These disputes involved the failure of William (a/k/a “Monty”) to properly winterize the home, resulting in sewage coming in through the ceilings and resultant damages costing her thousands of dollars to repair. *Id.* She described broken promises, such as the co-owners promise to replace windows, which they reneged on. VPR at 23.

Veronica also stated that for the last ten years she has been financially responsible for maintaining a house that she has not been able to enjoy during the warm months. *Id.* In addition, Veronica advised the

Court that she and her late husband invested at least \$150,000.00 in the home, and were the only owner to maintain liability insurance. VRP 25:11-12; 26:13-14. She also described disagreements with the William and Susan concerning whether she would be at the home during the time when they were planning to be there. *Id* at 24-25. She also described how William and Susan had large gatherings, lit fires and fireworks in close proximity to the house, failed to maintain the property resulting in burst sewage and water pipes. VRP 22-25

After Veronica addressed the Court, Susan spoke again and acknowledged that there was a little bit of truth to what Veronica had said. VRP 27-28. She admitted that she and her husband had more than twelve people over at the house on this most recent visit. *Id.* at 27-28.

After hearing from the parties, the Court ordered that Veronica be excluded from the house until noon on August 21, 2011 at 1:00 p.m. VRP at 29. The Court stated that there was enough “verbal harassment” to warrant this order. *Id.* The Court added that, in reaching its decision, it was swayed by the effect of the verbal outbursts on the children. VPR at 30. The Court did not make any specific findings of fact with regard to what acts of Veronica constituted “unlawful harassment.” *Id.* The Court simply entered an order that concluded that “...the Respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting

pursuant to any statutory authority.” See Order for Protection, entered August 19, 2011. CP 9-10.

#### IV. ARGUMENT

##### **A. The Only Conduct Of Veronica Described In William And Susan Petition For Antiharassment Order Is Protected Speech Activity.**

In the ex-parte petition for protection order William and Susan alleged that Veronica screamed at them in a house that she had a legal right to occupy, told them that they were liars, pigs, and had caused property damage; used extensive obscenities; and had frightened the children who were present. See Petition for an Order for Protection. CP 1-3. William and Susan also allege that Veronica had gotten “too close” to family members and that she had shaken her fist and her fingers at them. *Id.* They also allege that she spent hours sitting in her car, outside a house she owned five-sixths of, and watching them. *Id.*

RCW 10.14.020 excludes from the definition of harassment conduct which serves no legitimate or lawful purpose. While “screaming” may be disturbing to listeners, there is nothing inherent about it that constitutes harassment, especially when done in connection with the defense of a property right. The context of this speech was an argument over the manner in which William and Susan were treating the property and the damages to the property they inflicted, but Veronica was paying to

repair. Under these circumstances, it cannot be said that Veronica's speech was devoid of any legitimate or lawful purpose.

William and Susan did not sufficiently describe any words that would allow the Court to conclude that Veronica used fighting words. Furthermore, they did not describe behavior that was sufficiently threatening to constitute unlawful harassment.

Vague allegations of standing "too close" to family members are insufficient to permit a court to conclude that there was any risk of assault posed by Veronica's behavior. The Court would at the very least have needed more specific testimony as to how close Veronica was standing to whom, and exactly what was she doing, and how was she doing it. Furthermore, all of the circumstances, taken together, fail to support a conclusion that there was ever a breach of the peace.

The relevant circumstances include the fact that Veronica resided at the residence where the incidents took place; that there were only three incidents mentioned; that there were some twelve family members (invitees of William and Susan Price) on one side of the dispute while there was but one person (Veronica Price, a sixty-two year old woman) on the other side of the dispute; that the William is related to Veronica through marriage and has known her for many years. There was no mention whatsoever that Veronica had ever threatened anyone, or offered

to use force against anyone present, and absolutely no history of prior assault. A mutual regarding severe damage and neglect to the home in which Veronica owns a majority interest and has made recent large monetary investments cannot be considered unlawful harassment. The conduct described does not constitute “unlawful harassment.”

**B. Unless Speech Invades The Rights Of Others, Inflicts Injury, Or Creates A Breach Of The Peace It Protected By The First Amendment To The U.S. Constitution And The Washington Constitution, Article 1, § 5.**

The First Amendment, applicable to the States through the Fourteenth Amendment, provides that “Congress shall make no law ... abridging the freedom of speech.” *Virginia v. Black*, 538 U.S. 343, 358, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). While the scope of the First Amendment is broad, it does not extend to “unprotected speech.” *State v. Kilburn*, 151 Wn.2d 36, 42-43, 84 P.3d 1215 (2004). “True threats” occupy one category of unprotected speech. *Id.* at 43. A true threat is “a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted ... as a serious expression of intention to inflict bodily harm upon or to take the life of another person.” *Id.* (alteration in original) (internal quotation marks omitted) (quoting *State v. Williams*, 144 Wn.2d 197, 208-09, 26 P.3d 890 (2001)). Consistent with this requirement, Washington courts interpret statutes criminalizing threatening language as proscribing only

true threats, which are not protected by the First Amendment. *State v. Tellez*, 141 Wn.App. 479, 482, 170 P.3d 75 (2007).

Mere words, used as a tool of communication, are constitutionally protected. The protection fails only when 1) by the manner of their use, the words invade the right of others to pursue their lawful activities, or 2) by their very utterance, they inflict injury or tend to incite an immediate breach of the peace. *State v. Montgomery*, 31 Wn.App. 745, 760, 644, P.2d 747 (1982).

Here, there was absolutely no evidence that Veronica's alleged angry outbursts, on just three occasions, in any way prevented the other occupants of the household from pursuing their lawful activities. Very loud noise continuing over a prolonged period of time might very well hamper the William and Susan's ability to enjoy their vacations. However, no testimony of any kind was presented regarding the duration of the alleged screaming. Moving to the second prong, whether Veronica's words, by their very utterance, inflicted injury or tended to incite an immediate breach of the peace, again, there was no evidence presented that the words were the sort of utterances that inflicted injury on anyone, or that there was ever a breach of the peace.

With regards to "fighting words," there was no evidence presented that Veronica's had ever used "fighting words." In determining whether

fighting words were used, the Washington Supreme Court has held that an objective test must be applied to the words spoken. *City of Seattle v. Camby*, 104 Wn.2d. 49, 701 P.2d 499 (1985). However, to pass constitutional muster, the Court in applying the test must look at the words in the actual context or situation in which they were said. *Id.* This Court should find, as a matter of law, that insufficient evidence was presented that the words spoken by Veronica were “fighting words” and that, therefore, no substantial risk of assault was proven—indeed there was no evidence presented that there was any risk of assault.

“Fighting words” excluded from First Amendment protection, are defined as: “words ... which by their very utterance inflict injury or tend to incite an immediate breach of the peace,” (Footnote omitted) *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 572, 62 S.Ct. at 769 (1942). See also *Gooding v. Wilson*, 405 U.S. 518, 522, 92 S.Ct. 1103, 1106, 31 L.Ed.2d 408 (1972); *Pasco v. Dixon*, 81 Wash.2d 510, 520, 503 P.2d 76 (1972); *Kennewick v. Keller*, 11 Wn.App. 777, 785, 525 P.2d 267 (1974); *State v. Yoakum*, 30 Wn.App. 874, 876, 638 P.2d 1264 (1982); *State v. Montgomery*, 31 Wn.App. 745, 754, 644 P.2d 747 (1982); *Camby*, 38 Wn.App. at 465.

“Fighting words” have a direct tendency to cause acts of violence by the persons to whom, individually, the remark is addressed. Again,

since William and Susan never described with particularity which words were used, or how they had any tendency to cause acts of violence by the listeners, there was no evidence for the Court to even conclude that Veronica employed “fighting words.”

The “fighting words” analysis involves three steps. First, the words must be directed at a particular person or group of persons. *Cohen v. California*, 403 US. 15, 20, 91 S.Ct. 1780, 1785, 29 L.Ed.2d 284 (1971). Second, the words themselves must be “those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.” *Id.* at 20, 91 S.Ct. at 1785. This protects against supersensitive addressees. The addressee’s personal disagreement with or anger over words said to him does not, by itself, mean that the words can be punished as fighting words. Presuming the first two steps are present—which in this case they are not—then the third step would be to look at the words in the context or situation in which they were made. As stated by Justice Powell in *Lewis v. City of New Orleans*, “[W]ords may or may not be ‘fighting words,’ depending upon the circumstances of their utterance.” *Lewis v. City of New Orleans*, 415 U.S. 130, 135, 94 S.Ct. 970, 973 (1974).

**C. There Was No Evidence That Veronica's Words Invaded The Rights Of Others Or Caused A Breach Of The Peace.**

In an antiharassment proceeding, the petitioner bears the burden of proof. It should be noted that in this proceeding no *sworn testimony* was presented at the hearing. The only statements presented under penalty of perjury were those contained in the initial pleadings: *i.e.*, in the petition for a protection order. First, Veronica was never given any opportunity to cross-examine the William or Susan regarding their accusations. Further, taken alone, the allegations contained in the preliminary pleadings are insufficient to permit a rational trier of fact to conclude that the Veronica committed unlawful harassment. Accordingly, William and Susan failed to meet their burden of proof.

William and Susan alleged that Veronica had screamed and shouted obscenities at them, but nowhere did they ever specify the duration of these alleged episodes. Further, William and Susan never specify the "obscenities" involved, or give sufficient details with regard the context for this incident to allow the Court to make a proper determination of whether the Respondent's speech objectively constituted "fighting words" likely to cause a breach of the peace. Finally, nowhere in the pleadings, or in the *unsworn* statements made in Court, do William and Susan ever allege that Respondent had threatened harm of any kind to anyone present.

**D. As Applied To The Facts Of This Case, RCW 10.14 Is Unconstitutional.**

“Unlawful harassment” is defined by statute as a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. RCW 10.14.020. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child. *Id.* “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. *Id.* Constitutionally protected activity is not included within the meaning of “course of conduct.” *Id.*

In this case, the Court was apparently swayed by the effect of Veronica’s outbursts on the Price children, who cried and fled upon hearing them. VPR at 30. However, Veronica’s conduct, in attempting to protect her home from relatives who were damaging it, would not cause a reasonable parent to fear for the well-being of their child. Further, to the extent that the relevant statute empowered the Court to grant an injunction against Veronica Price based on the reactions of the Price children and the fears of their parents, RCW 10.14.020 is unconstitutional because it adopts

a subjective standard contrary to the objective standard of *Chaplinsky v. State of New Hampshire, supra*, and its progeny.

Using the trial court's reasoning, anytime adults argue and a child becomes upset, then one a party to the argument may be evicted from their property. Although the statute does include a saving clause indicating that constitutionally protected activity is not included within the meaning of "course of conduct," the other portions of the definition suggests that any willful course of conduct that alarms or annoys another could constitute harassment. The statute gives the Court practically no guidance as to what activity is covered and what activity is not covered. By providing that conduct, such as speech, must have some "legitimate or lawful purpose," the statute comes very close to placing the burden on the speaker, or in this case, the respondent in an antiharassment petition, to show that his or her words have a proper purpose. This has an obvious chilling effect on speech. Freedom of expression should never be contingent on the speaker having to show that her words have some legitimate or proper "purpose."

Although the statute may be constitutional in other contexts, it is clearly unconstitutional as applied to the facts of this case. Veronica had a legitimate purpose for her behavior, but the Court nonetheless concluded that she engaged in unlawful harassment based on her words alone.

When the Court found that there was sufficient “verbal harassment” to warrant a protection order, it employed a definition of “harassment” that was far too commonplace, too vague and overbroad, and not nearly grounded enough in the facts or the law, to pass constitutional muster.

**E. Veronica Was Removed From Her Home Without Notice And Opportunity To Be Heard Violating Her Right To Due Process.**

The State must provide “due process of law” whenever it deprives any person of “life, liberty, or property.” United States Constitution Amendment XIV, § 1; Wash. Const., Art. I, § 3. Veronica was not provided any opportunity for a hearing before being forcibly removed from her home on the basis of William and Susan’s vague accusations of harassment. Although an exception may be found in cases of imminent danger, injunctive relief is proper when the petitioner has made a sufficient showing that the acts complained of are causing actual and substantial injury. *Kucera v. State Dept. of Transpiration*, 140 Wn.2d 200, 995 P.2d 63 (2009).

Alternatively, a petitioner may show a well-grounded fear of immediate invasion of a legal or equitable right. *Osborn v. Grant County*, 78 Wn. App. 246, 896 P.2d 111 (1995). In fact RCW 10.14.080 authorizes the Court to issue a temporary restraining order *only* when the

petitioner shows reasonable proof of unlawful harassment by the Respondent, and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted. The facts alleged in William and Susan's petition fail to establish any imminent risk of harm. Indeed, the claim that a sixty-two year old woman posed any risk of great or irreparable harm is laughable. William and Susan improperly used RCW 10.14.020 to remove Veronica from her home. In doing so, Veronica was denied due process. The ex-parte temporary protection order should never have been granted.

**F. This Case Is Not Moot Because Effective Relief Can Be Provided By Vacating The Improper Antiharassment Order Thereby Removing The Associated Stigma.**

Even if this case would otherwise be moot, it is not moot if the court can provide effective relief by removing the order from Veronica's record. This principle is borne out in the similar case of *Hough v. Stockbridge*, 113 Wn.App. 532, 536, 54 P.3d 192 (2002) in which the Respondent in an anti-harassment petition appealed the lower court's order granting said petition. Veronica, a registered nurse by profession, should not have to be burdened with the stigma of having an antiharassment order on her record. See Motion for Reconsideration, CP 11.

**G. As the prevailing party, the Appellant should be awarded reasonable court costs on appeal.**

Pursuant to RAP 14.2, Veronica, as the substantially prevailing party, should be awarded reasonable costs.

## V. CONCLUSION

The Court erred in finding that sufficient grounds existed for granting an ex-parte temporary restraining order removing her from her lawful residence where she was quietly resting in a room; in finding that Veronica Price had committed unlawful harassment; and in denying her motion for reconsideration. The conduct described in William and Susan's petition for protection order amounts to speech activity, and as such, is protected by the First Amendment to the United States Constitution and by the Washington Constitution, Art. 1, § 5.

The Court's order and findings should be reversed, and the antiharassment order vacated.

Respectfully submitted this 30<sup>th</sup> day of April, 2012.

By:   
Veronica G. Price  
Appellant

COURT OF APPEALS  
DIVISION II  
12 APR 30 PM 4:25  
STATE OF WASHINGTON  
BY 3  
DEPUTY

**COURT OF APPEALS,  
DIVISION II  
OF THE STATE OF WASHINGTON**

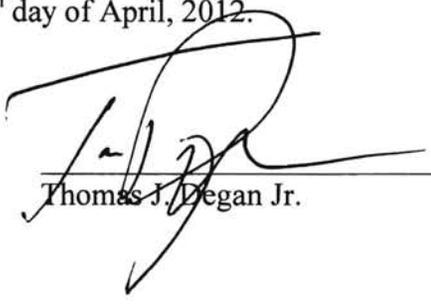
WILLIAM and SUSAN PRICE,            )  
  ) No. 42617-0-II  
      Respondents,                    )  
  )  
      vs.                                ) **CERTIFICATE OF SERVICE**  
  )  
VERONICA G. PRICE,                    )  
  )  
      Appellant.                        )  
\_\_\_\_\_  
  )

The undersigned declares under penalty of perjury, under the laws of the State of Washington that the following is true and correct:

That on April 30, 2012, I sent, via First Class Mail, postage prepaid, a true and correct copy of the Corrected Brief of Appellant to:

Bertha Baranko Fitzer  
Fitzer Law LLC  
950 Pacific Avenue, Suite 400  
Tacoma, WA 98402-4441

DATED at Seattle this 30<sup>th</sup> day of April, 2012.

  
\_\_\_\_\_  
Thomas J. Degan Jr.