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NOV 04 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

No. 325415

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

SIERRA BEATSON, Petitioner

and

KELLY BEATSON, Appellant

APPEAL FROM THE SUPERIOR COURT

OF STEVENS COUNTY

HONORABLE ALLEN NIELSON

BRIEF OF APPELLANT

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REFERENCE FOR REPORTS OF PROCEEDINGS

<u>Title</u>	<u>Cite Used in Brief</u>
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Verbatim Report of Proceedings (05/13/14).....	RP2

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I.

ASSIGNMENTS OF ERROR

1. The trial court erred by refusing to ensure that Mr. Beatson received the statutory five days notice of hearing under RCW 26.50.050.
2. The trial court erred by determining that Mr. Beatson had waived his right to timely notice.
3. The trial court erred by failing to adequately determine whether Mr. Beatson intentionally and adequately waived his right to timely notice.
4. The trial court erred by not providing Mr. Beatson with due process and a hearing which took place at a meaningful time and in a meaningful manner.
5. The trial court erred by not overturning the Order for Protection on Revision and instead affirming the Order for Protection on the basis that Mr. Beatson had waived his right to timely notice.
6. Specific and general assignment of error is made to all portions of the Order for Protection filed on April 17, 2014 and to all Findings of Fact and Conclusions of Law made in the Order to Affirm Commissioner's Order for Protection filed May 23, 2014.

ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether Mr. Beatson's right to due process was waived by the trial court's failure to provide him with the statutory five days notice under RCW 26.50.050?
2. Whether the trial court can actually accept a "waiver" of timely notice in hearings under the Domestic Violence Protection Act since it has been held to be a special proceeding with already reduced due process protections?
3. Whether CR 12(h) is superseded as inconsistent with the provisions of the Domestic Violence Protection Act as allowed under CR 81 for special proceedings?
4. Whether, even if a respondent may waive the right to timely notice under RCW 26.50.050, the court failed to engage in a sufficient determination that Mr. Beatson intentionally and adequately waived his right to timely notice?
5. Whether the trial court should have allowed Mr. Beatson to waive his right to timely notice when it became evident he was under a misconception as to which hearing was taking place?

6. Whether the trial court erred by failing to overturn the Order for Protection on revision and finding that Mr. Beatson waived his right to timely notice?

II
STATEMENT OF THE CASE

A Petition for Protection was filed on April 10, 2014 by the Petitioner, Sierra Beatson, along with several supporting declarations. (CP 1-16). Judge Monasmith signed a Temporary Order for Protection and Notice of Hearing on April 10, 2014 and scheduled a hearing for April 17, 2014 at 1:00 p.m. (CP 17-20). Mr. Beatson was not served with the Temporary Order for Protection and Notice of Hearing until immediately preceding the hearing on April 17, 2014. (CP 21-22; RP1 3).

Upon commencement of the hearing on April 17, 2014, Commissioner Taylor questioned Mr. Beatson about his readiness to proceed despite the untimely service. (RP1 3). Although Mr. Beatson initially stated he was ready to proceed, it later became apparent that he believed an At-Risk-Youth petition scheduled for hearing the same date and time was actually the matter being addressed. (RP1 4-7). Commissioner Taylor proceeded with the hearing even after it was apparent that Mr. Beatson had been confused about which hearing he was being asked to proceed with. (RP1 4-7). No attempt was made by Commissioner Taylor to re-address the issue of Mr. Beatson's readiness for the hearing on the Petition for Order of Protection and his untimely

service. (RP1 3-19). Mr. Beatson reiterated that he was not ready for the hearing on the Order for Protection before Commissioner Taylor made her ruling. (RP1 14). Commissioner Taylor proceeded to grant the Order for Protection requested by the petitioner. (CP 23-27).

On April 28, 2014 Mr. Beatson filed a Motion to Revise Commissioner's Ruling which was set for hearing on May 13, 2014. (CP 28-29). The matter was argued before Judge Nielson on May 13, 2014 and Mr. Beatson raised the issue of the lack of five days statutory notice for the hearing on the Order for Protection. (RP2 8). After hearing, Judge Neilson issued his Order to Affirm Commissioner's Order for Protection which was filed on May 23, 2014. (CP 54-58). In the Order, Judge Nielson made the Conclusion of Law that Mr. Beatson had waived his right to timely notice. (CP 56). Mr. Beatson then filed his Notice of Appeal to commence this action. (CP 59-68).

III ARGUMENT

When an action turns on the correct interpretation of a statute, “the standard of review is de novo.” Johnson v. Kittitas County, 103 Wn.App. 212, 216, 11 P.3d 862 (2000). This is because the “purpose of statutory interpretation is to effectuate the legislature’s intent.” Scheib v. Crosby, 160 Wn.App. 345, 350, 249 P.3d 184 (2011).

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. State v. Karas, 108 Wn.App. 692, 699, 32 P.3d 1016 (2001) citing Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). However, because due process is a flexible concept, “the particular situation determines its exact contours.” Id. at 699.

General considerations required when determining what process is due in a certain situation include “(1) the private interest involved, (2) the risk that the current procedures will erroneously deprive a party of that interest, and (3) the governmental interest involved.” State v. Karas, 108 Wn.App. 692, 699, 32 P.3d 1016 (2001) citing Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). There is no question that protection orders implicate several private interests,

including “the interest in one’s children.” Id. at 699. The Domestic Violence Protection Act (DVPA) under RCW 26.50 has been found to satisfy the “two fundamental requirements of due process – notice and a meaningful opportunity to be heard by a neutral decisionmaker.” Id. at 699. This satisfaction of due process requirements is because the Act has certain specific procedural safeguards. Id. at 700. These procedural safeguards specifically include the requirement that, “personal service shall be made upon the respondent not less than five court days prior to the hearing.” RCW 26.50.050.

Even given the inherent flexibility of due process, in this particular situation Mr. Beatson was clearly not given the opportunity to be heard at a meaningful time and in a meaningful manner. There are a number of facts in the record which firmly support this conclusion. To begin, Mr. Beatson was only served with the Petition for Order of Protection the morning of the court hearing in the corridor. (RP1 3). Commissioner Taylor began with the following colloquy with Mr. Beatson:

THE COURT: You were served it looks like today?

MR. BEATSON: Yes ma’am, in the corridor over there.

THE COURT: Okay. Alright, so you’ve been ordered to appear and show cause why the court should not grant a protection order against you, but you have not had timely service, so...

MR. BEATSON: No ma'am and may I apologize, I came 3200 miles and got in at 2:00 am, and I'm a little tired [sic].

THE COURT: Okay, are you prepared to go today, or would you like a continuance?

MR. BEATSON: Ma'am I've done this before with my oldest daughter, I'm comfortable.

THE COURT: And you've, you've read the allegations?

MR. BEATSON: Yes ma'am.

THE COURT: And you're prepared to answer those today?

MR. BEATSON: Yes ma'am.

(RP1 3-4).

After this initial colloquy and the commencement of the hearing, it becomes apparent from the record that Mr. Beatson was not prepared to proceed with the Petition for Order of Protection at all. Instead, he believed that he was answering an At Risk Youth Petition which had also been set for that same hearing date and time. (RP1 4-5). The following discussion ensued:

THE COURT: Okay. So Mr. Beatson you've been ordered to appear and show cause why this court should not enter a protection order against you, this is your opportunity. You may proceed.

MR. BEATSON: Ma'am I'm a little confused there was a priori case first? Am I – am I getting something backwards?

THE COURT: We have two files involving Ms. Beatson, one is an At-Risk-Youth petition, I haven't called that case yet, this is the protection order.

MR. BEATSON: Oh I see, this is the second one, okay.

THE COURT: This is the protection order matter.

MR. BEATSON: I was kind of prepared for the first one, can you just give me a moment?

THE COURT: Hmm Hmmm.

MR. BEATSON: it's the At-Risk-Youth, I'm sorry ma'am.

THE COURT: That's alright, you haven't had any time to prepare for this, so.

MR. BEATSON: No ma'am and I have ---

THE COURT: But it takes a minute.

MR. BEATSON: --- three younger kids at home, that have to be back by sundown, their mom and their dad. I lost my train of thought, I was ready for the other one, ma'am I'm sorry, hold on, I'm ready. Ma'am this is for you, may I hand it to you?

...

THE COURT: You just need to answer the allegations in the petition.

MR. BEATSON: Oh, the allegations are false ma'am.

THE COURT: Well you, okay, you can kind of walk me through it. Okay, it's alleged in early January 2012, that's where it starts.

MR. BEATSON: Let me, I have the other petition. If you'll just give me just another moment so I can reread it. I was served and I put it -- the At-Risk-Youth, ma'am did I accidentally hand it to you with the -- petition for the -- this is my third petition, so I'm getting a little confused.

THE COURT: I don't -- I don't know there's a -- what's in here?

MR. BEATSON: Does anybody just have a copy real quick I can just simply borrow? I had it right here. I don't know if I left at the library, I was served in court, I do remember the allegations.

THE COURT: I can hand this back to you, you can see.

MR. BEATSON: Thank you, ma'am.

THE COURT: I can read them to you. Does anybody have a copy, no?

MR. BEATSON: I just had it. I (inaudible) library. I'm sorry ma'am, I've had two eye surgeries as well, it's a little, things can jump around. But I do have it, if you can just bear with me.

THE COURT: Okay, would you mind if he took a look at that, okay. So just work from that.

MR. BEATSON: Okay, yeah it's, I was served this.

THE COURT: Okay.

MR. BEATSON: And what would the court like to hear from me?

THE COURT: Okay, she's made allegations ---

MR. BEATSON: Yes ma'am.

THE COURT: --- starting on page four, so you are here to answer those allegations.
(RP1 4-7).

At no time after learning of Mr. Beatson's confusion about what Petition he was addressing, his obvious lack of readiness to address the Petition for Order of Protection, and even his lack of a copy of the Petition for Order of Protection did the Commissioner readdress the issue of whether Mr. Beatson should be given additional time. It is clear from the record that when Commissioner Taylor first engaged in a colloquy with Mr. Beatson about his readiness for hearing that he was under the presumption that the hearing was about the At-Risk-Youth petition, not the Petition for Order of Protection. His statements of readiness for hearing referred to the At-Risk-Youth petition. Similarly, any inherent waiver of his right to five days notice under RCW 26.50.050 for the Petition for Order of Protection is suspect and cannot be said to have been made intentionally.

Furthermore, despite the obvious problems with the court's determination that Mr. Beatson was prepared for hearing despite having been served that morning, it should also be noted that Mr. Beatson referred to his tiredness (RP1 3), his concern for being home by sundown (RP1 5), his lack of a copy of the Petition for Order of Protection due to its

being left in the library (RP1 6), and his eye surgeries which apparently affected his ability to read (RP1 6). Although Mr. Beatson made it clear he was ready to proceed with the At-Risk-Youth petition, the record indisputably shows that he was not prepared to proceed with the Petition for Order of Protection.

Immediately before the ruling by the court, Mr. Beatson again stated, "... I'm sorry, I wasn't ready for this." (CP 39). After Commissioner Taylor signed the Order for Protection, Mr. Beatson retained counsel to file a Motion for Revision. In his Order to Affirm Commissioner's Order for Protection, Judge Nielson made the finding that, "Mr. Beatson, at the beginning of the hearing, was asked by Commissioner Taylor, 'Are you prepared to answer the allegations today?' He answered, 'Yes'." (CP 56). Based on this, Judge Nielson made the conclusion of law that although Mr. Beatson was not timely served, "he waived any objection based on timely notice and proceeded with the hearing." (CP 56). No discussion of Mr. Beatson's obvious confusion about the hearing and lack of readiness was addressed by Judge Nielson on revision.

On its face, there is no dispute that Mr. Beatson did not receive timely notice of the hearing. The initial question is whether the right to

timely notice can be waived at all in a special proceeding without violating due process. The requirement for five days notice on the respondent is especially important in proceedings under the Domestic Violence Prevention Act because the Act constitutes a “special proceeding”. The DVPA “replaces the common law injunction to the extent that domestic violence protection becomes an adjunct of the common law injunction with the statutory remedy of a domestic violence protection order.” Scheib v. Crosby, 160 Wn.App. 345, 354, 249 P.3d 184 (2011). As such, the Court held that, “DVPA protection orders are special proceedings.” Id. at 354. CR 81 specifically states, “Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings.” CR 81(a). See also State v. Karas, 108 Wn.App. 692, 699, 32 P.3d 1016 (2001). The holding that DVPA protection orders are special proceedings is significant in part because special proceedings supersede the Civil Rules.

In general civil proceedings which provide more expansive notice requirements as well as other provisions such as the right to discovery and cross-examination, the due process requirements are sufficiently protected such that the Civil Rules allow for the waiver of certain defenses by inaction of a party. For example, “a defense of ...

insufficiency of process, or insufficiency of service of process is waived ... (B) if it is neither made by motion under this rule nor included in a responsive pleading ..." CR 12(h)(1). Under the DVPA, however, the Civil Rules are superseded due to the emergency nature of the proceedings which allows the due process requirements of sufficiency of process and service of process to be shortened substantially. See Gourley v. Gourley, 158 Wn.2d 460, 468-469, 145 P.3d 1185 (2006). Since the DVPA only requires notice on the respondent of five days this becomes crucial to a discussion of whether due process is met when the five days notice are not provided.

Although the requirements of due process are flexible based upon specific circumstances, that inherent flexibility has already been strained to the limit in special proceedings such as the DVPA that act to reduce and otherwise lessen a respondent's procedural rights. Furthermore, since the Civil Rules are superseded by the DVPA to the extent they are inconsistent it cannot be assumed that failure to make a motion to address the issue of insufficiency of process or service of process should result in automatic waiver of that defense as CR 12(h)(1) allows in standard civil proceedings. This is particularly true when RCW 26.50.050 inarguably states that, "personal service shall be made upon the

respondent not less than five court days prior to the hearing.” (Emphasis added).

If due process was not violated presumptively by the failure to provide five days notice as required under the statute, the second question is whether due process was violated by the court’s acceptance of a “waiver” of timely notice by Mr. Beatson. When dealing with waiver it must be remembered that certain elements must be met. Waiver is “the intentional abandonment or relinquishment of a known right. It must be shown by unequivocal acts or conduct showing an intent to waive, and the conduct must also be inconsistent with any intention other than to waive.” Clark v. Falling, 92 Wn.App. 805, 812-813, 965 P.2d 644 (1998). A review of the record shows unquestionably that Mr. Beatson believed he was waiving a right to notice concerning the At-Risk-Youth petition, not the Petition for Order of Protection. His later comments regarding his confusion about what proceeding was occurring make it evident that he could not have had an intent to waive timely notice concerning the Petition for Order of Protection because he did not even initially understand that this was the matter being addressed by the court. Furthermore, Commissioner Taylor never explained to Mr. Beatson that he had a right to five days notice. The lack of clear

communication by Commissioner Taylor in addressing Mr. Beatson's decision to proceed with the hearing on Petition for Order of Protection without five days notice should render his "waiver" invalid.

In addition, "notice must permit adequate preparation for the hearing." In re the Welfare of H.S., 94 Wn.App. 511, 525, 973 P.2d 474 (1999). The Petitioner did not comply with adequate notice for the hearing and the court knew this. (CP 56). As the hearing progressed, not only was it evident that Mr. Beatson was initially confused about what proceeding was being heard, but he also was denied the ability to present evidence. He attempted to present information in the nature of a call log which was summarily dismissed by Commissioner Taylor. (RP1 5-6). He voiced the fact that he was unprepared with copies for the petitioner and the court when he responded to Commissioner Taylor's question about copies with, "No ma'am, I got in way too late." (RP1 5). Rather than even determining what type of evidence Mr. Beatson was attempting to present, she simply stated, "you just need to answer the allegations in the petition." (RP1 6). He later again tried to present documents to the court but was not allowed to present them. (RP1 9). Even so, it is clear from the record that any documents Mr. Beatson had with him were prepared for the At-Risk-Youth petition, not the Petition for Order of

Protection. Since Mr. Beatson only arrived that morning at court and was subsequently served with the Petition for Order of Protection he could not have prepared any documents related to the new proceeding. (RP1 3).

The case law is clear that the fundamental right of due process requires not just the opportunity to be heard but the right to be heard at a meaningful time and in a meaningful manner. State v. Karas, 108 Wn.App. 692, 699, 32 P.3d 1016 (2001) citing Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Although the due process requirements may be flexed somewhat to address different situations, they cannot be flexed to the point that the constitutional right is eliminated or foreshortened so much that it loses the element of meaningfulness. The due process rights in DVPA special proceedings are already reduced due to their emergency nature. Further shortening these fundamental rights does away with any concept of a meaningful time and a meaningful manner in which to be heard. RCW 26.50.050 orders that a respondent shall be give five days notice. This is an ultimatum not a suggestion. This strict unyielding language is required because the respondent's due process rights are already flexed and

affected. They cannot be further altered without violating the fundamental rights of due process.

A respondent in a DVPA special proceeding should not be allowed to waive the right to five days notice because to do so gives up any sense of being heard at a meaningful time and in a meaningful manner. CR 12(h) is a rule that should be superseded by the nature of the special proceedings as it is inherently inconsistent with the restricted due process rights of the DVPA. Even if it is not superseded, the court should be required to engage in a more stringent and meaningful colloquy with a respondent about the meaning of waiver of the right to notice than in proceedings that are not considered special proceedings. The court in this case took no notice whatsoever of the fundamental due process rights of Mr. Beatson. Even when it was evident that Mr. Beatson was not prepared, did not understand what hearing to which he was being called to respond, and could not have intentionally abandoned his rights when he didn't realize what matter was being addressed, the court still did not stop and engage in further colloquy with Mr. Beatson to ensure his intention and knowledge to actually waive his due process rights.

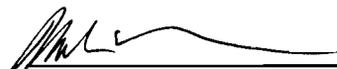
IV
ATTORNEY FEES ON APPEAL

Attorney fees are requested by Mr. Beatson on appeal pursuant to the statutory authority of RCW 26.50.060(1)(g). If attorney fees are allowable at trial, “the prevailing party may recover fees on appeal.” Scheib v. Crosby, 160 Wn.App. 345, 353, 249 P.3d 184 (2011). See also RAP 18.1. Should Mr. Beatson prevail on appeal, attorney fees are requested pursuant to the mentioned legal authority.

V
CONCLUSION

It is hereby respectfully requested that this court vacate the Order to Affirm Commissioner’s Order for Protection filed on May 23, 2014 and the Order of Protection filed on April 17, 2014 for the errors addressed in this appeal.

Respectfully Submitted,



MARK HODGSON, WSBA #34176
Attorney for Appellant

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**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

In re the Matter of:

SIERRA BEATSON,

Petitioner,

Vs.

KELLY BEATSON,

Respondent/Appellant,

**STEVENS COUNTY CAUSE NO.
14-2-00163-9**

**COURT OF APPEALS NO.
325415-III**

COPY

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter was heard before the Honorable Jessica L. Taylor, Superior Court Commissioner, County of Stevens on April 17, 2014.

SUSAN L. ROBSON, TRANSCRIBER
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APPEARANCES:

For the Petitioner: MS. SIERRA BEATSON
Pro Se

For the Respondent: MR. KELLY BEATSON
Pro Se

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1 THE COURT: ---is Beatson, cause number 14-2-163-9.

2 (1:28:12 to 1:28:20 UNRELATED MATTER)

3 THE COURT: We are here because Ms. Beatson has filed a
4 petition for an order for protection. The court granted an
5 ex parte restraining order, or protection order, and Mr.
6 Beatson, you are Mr. Beatson?

7 MR. BEATSON: Yes ma'am.

8 THE COURT: You were served it looks like today?

9 MR. BEATSON: Yes ma'am, in the corridor over there.

10 THE COURT: Okay. Alright, so you've been ordered to
11 appear and show cause why the court should not grant a
12 protection order against you, but you have not had timely
13 service, so---

14 MR. BEATSON: No ma'am and may I apologize, I came 3200
15 miles and got in at 2:00 AM, and I'm a little tired.

16 THE COURT: Okay, are you prepared to go today, or
17 would you like a continuance?

18 MR. BEATSON: Ma'am I've done this before with my
19 oldest daughter, I'm comfortable.

20 THE COURT: And you've, you've read the allegations?

21 MR. BEATSON: Yes ma'am.

22 THE COURT: And you're prepared to answer those today?

23 MR. BEATSON: Yes ma'am.

24 THE COURT: Okay. Alright, so what I am going to do is
25 I am going to ask the parties to please stand, and raise

1 your right hand I am going to put you under oath. Do you
2 solemnly swear or affirm under the penalty of perjury that
3 the testimony you are about to give this court will be the
4 truth, and nothing but the truth, so help you?

5 MR. BEATSON: Yes ma'am.

6 MS. BEATSON: Yes.

7 THE COURT: Alright, thank you please be seated.

8 Ms. Beatson I have read your petition. Is there
9 anything you would like to add or change?

10 MR. BEATSON: (Inaudible).

11 THE COURT: Okay, I have -- can we slide that
12 microphone over in front of her a little bit better. Okay,
13 would you answer that again?

14 MS. BEATSON: Yes ma'am.

15 THE COURT: Okay, so did you want to change or add
16 anything?

17 MS. BEATSON: No ma'am.

18 THE COURT: Okay. So Mr. Beatson you've been ordered
19 to appear and show cause why this court should not enter a
20 protection order against you, this is your opportunity. You
21 may proceed.

22 MR. BEATSON: Ma'am I'm a little confused there was a
23 prior case first? Am I -- am I getting something backwards?

24 THE COURT: We have two files involving Ms. Beatson,
25 one is an At-Risk-Youth petition, I haven't called that case

1 yet, this is the protection order.

2 MR. BEATSON: Oh I see, this is the second one, okay.

3 THE COURT: This is the protection order matter.

4 MR. BEATSON: I was kind of prepared for the first one,
5 can you just give me a moment?

6 THE COURT: Hmm hmmm.

7 MR. BEATSON: It's the At-Risk-Youth, I'm sorry ma'am.

8 THE COURT: That's alright, you haven't had any time to
9 prepare for this, so.

10 MR. BEATSON: No ma'am, and I have---

11 THE COURT: But it takes a minute.

12 MR. BEATSON: ---three younger kids at home, that I
13 have to be back by sundown, their mom and their dad. I lost
14 my train of thought, I was ready for the other one, ma'am
15 I'm sorry, hold on, I'm ready. Ma'am this is for you, may I
16 hand it to you?

17 THE COURT: Well have you made copies for Ms. Beatson?

18 MR. BEATSON: No ma'am. I got in way too late.

19 THE COURT: Okay, so what -- what's contained in here,
20 what are you asking me to look at?

21 MR. BEATSON: It's information that as we go along I
22 have mine, maybe we can work together. I am going to go to
23 timeline in the back and you should have a tab, and it's a
24 call log of when these things started, and I'll have to
25 trust your judgment of how far back I should go.

1 THE COURT: You just need to answer the allegations in
2 the petition.

3 MR. BEATSON: Oh, the allegations are false ma'am.

4 THE COURT: Well you, okay, you can kind of walk me
5 through it. Okay, it's alleged in early January 2012,
6 that's where it starts.

7 MR. BEATSON: Let me, I have the other petition. If
8 you'll just give me just another moment so I can reread it.
9 I was served and I put it -- the At-Risk-Youth, ma'am did I
10 accidentally hand it to you with the -- the petition for the
11 -- this is my third petition, so I'm getting a little
12 confused.

13 THE COURT: I don't -- I don't know there's a -- what's
14 in here?

15 MR. BEATSON: Does anybody just have a copy real quick
16 I can just simply borrow? I had it right here. I don't
17 know if I left at the library, I was served in court, I do
18 remember the allegations.

19 THE COURT: I can hand this back to you, you can see.

20 MR. BEATSON: Thank you, ma'am.

21 THE COURT: I can read them to you. Does anybody have
22 a copy, no?

23 MR. BEATSON: I just had it. I (inaudible) library.
24 I'm sorry ma'am, I've had two eye surgeries as well, it's a
25 little, things can jump around. But I do have it, if you

1 can just bear with me.

2 THE COURT: Okay, would you mind if he took a look at
3 that, okay. So just work from that.

4 MR. BEATSON: Okay, yeah it's, I was served this.

5 THE COURT: Okay.

6 MR. BEATSON: And what would the court like to hear
7 from me?

8 THE COURT: Okay, she's made allegations---

9 MR. BEATSON: Yes ma'am.

10 THE COURT: ---starting on page four, so you are here
11 to answer to those allegations.

12 MR. BEATSON: Just a moment please, two of six, three
13 of six, four of six. In January 2012 in our home in
14 Colville I was coming home and walked in the door and was
15 upset, or went to set my jacket in my room, my father had
16 told me to shut the door all the way, but I didn't. My
17 father was furious, came in threw me on the bed, and told me
18 he was going to, I'll refrain from that phrase, he then
19 returned to his room. I went to the living room to sit on
20 the couch with my sister, two brothers, William and Joey,
21 and Kimberly Adams' children, I sat down crying. Still when
22 my father came out my father screamed, I will refrain, he
23 then threw me on the ground pinned my arms down with his
24 legs, then put one hand around my neck, he drew the other
25 back as if he were going to punch me. He screamed at me for

1 a while then got up, drug me by hands out of the house,
2 threw me off the porch, and told me to leave. I started to
3 walk, it was cold, dark and I had no shoes or jacket, and no
4 idea where I was going to. He then sent my brother Joey out
5 to come and get me. I came inside even though I was scared
6 to. My father then told me to call CPS or 911, but I
7 refused because I didn't know what would happen to us kids.
8 I didn't want us to have to move away and, ah okay, and I
9 didn't want us -- I didn't want all of us to lose our
10 college benefits. You won't lose those hon, late
11 (inaudible)---

12 THE COURT: Okay, Mr. Beatson, I have read the
13 petition, you told me you read the petition.

14 MR. BEATSON: Yeah.

15 THE COURT: So it's a starting point, you see how the
16 allegations flow, there are specific allegations---

17 MR. BEATSON: Yeah.

18 THE COURT: ---about your conduct, things you did,
19 things you said.

20 MR. BEATSON: They're not true, Your Honor.

21 THE COURT: And so I need to hear your side of.

22 MR. BEATSON: Ma'am, Sierra simply just doesn't want to
23 move, I don't fault her for that. She's now, in my opinion,
24 decided that she will follow her oldest sister and seven
25 years of allegations through the Idaho courts, and hence

1 decided that this was the way to go, when I've encouraged
2 her to always stand up and tell the truth first.

3 She's upset with me because I moved her last July. I
4 allowed her to finish the school year in Kettle Falls. And
5 the time period she's talking about, I was hospitalized with
6 a rupture, and prior to that pneumonia. I had to get people
7 to help me. You'll see in your documents, the support
8 system that I have here---

9 THE COURT: I don't have your documents, and---

10 MR. BEATSON: Oh, bailiff---

11 THE COURT: ---actually no. Okay, I can't look at
12 things you haven't provided for her to see.

13 MR. BEATSON: Okay, sounds good.

14 THE COURT: So you can tell me.

15 MR. BEATSON: Sure.

16 THE COURT: I mean hearsay is permissible. The rules
17 of evidence don't really apply in these matters, but---

18 MR. BEATSON: The bottom line, Your Honor, I guess to
19 get to the point is, she wants to stay in Kettle Falls. I -
20 - I can't fault her for that. This is not the way to do it,
21 as me and Ms. Evans have discussed, and me and Mr. Flugel at
22 the school have discussed. She notes that I don't allow
23 abuse of the court system anymore. If you're going to come
24 into court and put something on a document against me I will
25 show up, and I came 3200 miles to do that, and left her

1 three younger siblings at home.

2 These are false, because the first things Sierra needs
3 to remember, our renter in our studio next door was CPS,
4 Jeff Studaben, (phonetic) great guy, our neighbor was Becky
5 Berry (phonetic) CPS, great woman, good friend. If Sierra
6 had a problem she could have simply walked over there, and
7 said help me. Yes I did tell her when she is angry with me
8 and I won't -- my daughters get angry with me because I'm
9 all about college, finishing school, not drinking, not
10 staying out late. Second one, 15 years old, 16 years old,
11 they start to think well dad rules are a little tough, next
12 thing I know I'm in court. That's about where we're at.

13 THE COURT: Have you ever had a domestic violence
14 protection order---

15 MR. BEATSON: Yes.

16 THE COURT: ---entered against you?

17 MR. BEATSON: Yes ma'am.

18 THE COURT: And who were---

19 MR. BEATSON: I was charged.

20 THE COURT: ---the petitioners?

21 MR. BEATSON: Her mother.

22 THE COURT: Okay, and you keep referring to her older
23 sister, did she obtain a domestic violence protection order
24 against you as well?

25 MR. BEATSON: No ma'am. She tried and if you give me

1 time I will look through the book, oh I have it right here
2 actually, I got ready for that one. If Mr. Bailiff, if you
3 will show my dismissal of the abuse and neglect from the
4 State of Idaho, and the dismissal of the domestic violence
5 against her mother from the State of Oregon, to the Judge
6 please.

7 THE COURT: Okay, this was a deferred sentence on the
8 DV.

9 MR. BEATSON: Right.

10 THE COURT: Okay, so that's different from the court
11 dismissing it, okay.

12 MR. BEATSON: Okay, sure.

13 THE COURT: So don't present it in a way that it is not
14 factually accurate.

15 MR. BEATSON: Sorry, I don't know the rules.

16 THE COURT: Okay, that was deferred. The court found
17 that---

18 MR. BEATSON: Yes ma'am.

19 THE COURT: ---you committed DV, and you had---

20 MR. BEATSON: And dismissed it.

21 THE COURT: ---to do your treatment and then that was a
22 deferred.

23 MR. BEATSON: Yes ma'am.

24 THE COURT: So that's how that got dismissed.

25 MR. BEATSON: Yes ma'am.

1 THE COURT: Okay, this is an unsubstantiated report of
2 child abuse and neglect pertaining to all -- all of the
3 children.

4 MR. BEATSON: And I have many more.

5 THE COURT: You have many more?

6 MR. BEATSON: Hmm hmmm.

7 THE COURT: Okay.

8 MR. BEATSON: Of charges.

9 THE COURT: Alright.

10 MR. BEATSON: When I -- when I try to collect child
11 support I end up in court, and I'm currently trying to get
12 child support. And if you were to look at my timeline in
13 here and you would see that the reactions from Sierra and
14 the fight that she had with Ms. Evans, that brought me here
15 for some reason, is a counter move because she already has
16 permission to live here. I've already appointed Ms. Evans
17 her guardian. It was filed with Mr. Flugel at the school.
18 I have a durable power of attorney. I have Sierra's living
19 agreement, and she actually violated that living agreement
20 bringing in a Ms. Hancock in on the CHINS petition, that I
21 was served with a week ago. And that's another violation,
22 and that's why I am -- I'm -- I am at this point working
23 with Family Counseling in Pensacola, Florida and I've been
24 in there for three months for the three youngest and my
25 doctor and my attorney. We don't think my health can take

1 much more of me going to court every time I can't make a
2 daughter happy.

3 So what we've decided is, I am going, seven years
4 Easter Sunday, I've been a mom and a dad, I think my time
5 has come to an end. I don't know how to raise a girl when
6 she's 15, 16, because they change and I'm struggling with,
7 you know we had a deal, you promised me you would never
8 drink, you would go to college, you wouldn't be out in the
9 middle of the night. And Ms. Evans would be able to attest,
10 she's ran away twice, that's why I'm here, and she's stayed
11 out overnight with another violation against her living
12 agreement filed with the school that I have. And if she's
13 going to keep violating my living agreement, and if I'm
14 going to end up in court because I have my beliefs, my
15 daughter have to be home at 8, 9, 10:00. I apologize that
16 her mother's rules are different, however, through the State
17 of Idaho I have sole custody, and then I had sole custody
18 again when their mom took the oldest two from us, and I---

19 THE COURT: So Mr. Beatson I need you to get to the
20 point, okay. You've said you think your time as a parent
21 has come to an end, what does that mean for this court right
22 now?

23 MR. BEATSON: I have an option for Sierra, and me and
24 the mother hopefully are going to sign an agreement when I
25 get back. I want to reunite Sierra with her younger

1 siblings, and I've told her mother that I will take a
2 support role. I will give you money because I can't get
3 money. I've tried. I'm broke. I had to fly standby, bus,
4 everything here.

5 THE COURT: Okay.

6 MR. BEATSON: I want Sierra to reunite with her
7 siblings and live with her mother, and I want her mother to
8 finish the next seven years until William is 18. I've done
9 seven years, I'm pretty worn out.

10 THE COURT: Okay, so are you opposing the entry of an
11 order for protection, that's all I need to know.

12 MR. BEATSON: I'm opposing it ma'am. I'm sorry, I
13 wasn't ready for this.

14 THE COURT: Okay. Alright, and you're opposing it.
15 The burden here is on the petitioner, okay?

16 MR. BEATSON: Yes ma'am.

17 THE COURT: And the burden is by a preponderance of
18 evidence, so just more likely than not. I realize you are
19 ill-prepared, but you did choose to proceed today. You have
20 quite an extensive court history, quite a CPS history. This
21 demonstrates to the court that you have significant
22 interpersonal difficulties. Your relationships are
23 dysfunctional with your children, with your spouse, with
24 significant people in your life. So all of the information
25 that you brought to proffer a defense to show the court, and

1 you say well I have multiple CPS reports that have come back
2 unfounded.

3 MR. BEATSON: True.

4 THE COURT: My -- my older daughter went to court to
5 try to get protection form me and the court denied that,
6 which I didn't see any proof of that actually.

7 MR. BEATSON: I can get---

8 THE COURT: But, and the domestic violence against her
9 mother, that was dismissed. When in fact, no, that's a
10 deferred sentence. It was found that you are a domestic
11 violence perpetrator and you had to jump through certain
12 hoops and when you did that the court then dismissed it. So
13 I kind of fell off your record because everyone gets one
14 shot at a deferred.

15 MR. BEATSON: Sure.

16 THE COURT: Okay, so by preponderance of the evidence
17 this court finds that this child has met her burden, and the
18 court will grant an order for protection. This will be good
19 for one year. You just told this court your plans, although
20 there -- it's irrelevant to the issuance of a protection
21 order.

22 MR. BEATSON: Hmm hmmm.

23 THE COURT: You've told the court your plans, you
24 don't live with this child. You live in another state. You
25 don't plan to have this child live with you. You plan to

1 have this child live with her mother. And this child is
2 fearful of you based on your history, based on what she's
3 witnessed you do to her mother, to her siblings, and what
4 she's personally experienced from your behavior. So I am
5 granting the order, and it has no bearing on custody. So
6 whatever the other issues you're dealing with, this order is
7 completely separate from that.

8 MR. BEATSON: Alright, and I strongly disagree. I
9 raised the children---

10 THE COURT: I don't expect you to agree with me. I am
11 signing an order that I know you won't like, but I know you
12 will follow.

13 MR. BEATSON: No, I can accept your decision.

14 THE COURT: You will follow, right?

15 MR. BEATSON: Sure, of course.

16 THE COURT: Okay. And this child has a legal guardian
17 you say?

18 MR. BEATSON: I appointed Ms. Evans.

19 THE COURT: Okay, can I get her name.

20 MS. BEATSON: Her name is Kimberly Evans.

21 UNIDENTIFIED FEMALE VOICE: Your Honor?

22 THE COURT: Yes?

23 UNIDENTIFIED FEMALE VOICE: As a friend of the court,
24 and having to talked to Ms. Evans earlier today in the other
25 matter, I don't believe her testimony would be the same as

1 argument here today.

2 THE COURT: Would differ from what it was reported to
3 be?

4 UNIDENTIFIED FEMALE VOICE: Running away twice.

5 THE COURT: Sorry?

6 UNIDENTIFIED FEMALE VOICE: Running away.

7 THE COURT: Oh, okay. Well, we'll get to that in the
8 At-Risk-Youth.

9 UNIDENTIFIED MALE VOICE: (Inaudible).

10 MR. BEATSON: Yes, sir. You guys are serving me pretty
11 quick. Well I have your name on the CHINS dismissal and it
12 said (inaudible).

13 THE COURT: Okay, we're in open court.

14 MR. BEATSON: Oh, sorry ma'am.

15 THE COURT: Okay, Mr. Beatson this order does provide
16 that if both parties are in the same location the respondent
17 shall leave. They used to be worded so whoever appeared,
18 you know, arrived first, but law enforcement is no longer
19 required to try to make that determination. If you're both
20 at the same place you have to leave.

21 MR. BEATSON: Absolutely ma'am. I'll be on my way back
22 to Alabama shortly here.

23 THE COURT: Okay. So Mr. Beatson I need you to review
24 this order, and sign and date it for me please.

25 MR. BEATSON: Ma'am?

1 THE COURT: Yes sir?

2 MR. BEATSON: Section 18, respondent is restrained from
3 removing from the state the petitioner, minor. I believe
4 that's some sort conflict as I have a more current durable
5 power of attorney with a safe actions from the petition
6 that's coming for Sierra to go to Boise for her college, and
7 for her to be back involved with social services.

8 THE COURT: I don't -- you're not -- you are restrained
9 from having any contact whatsoever with this child. So that
10 is a restraint that prohibits you from removing her from the
11 State of Washington, which shouldn't be a problem if you
12 don't have contact with her at all. And should you need to
13 modify this, you can motion the court to modify it to
14 accommodate another court order elsewhere if you need to.

15 MR. BEATSON: Okay, understood.

16 THE COURT: Thank you. Okay, so this order will be in
17 effect until April 17, 2015. And this order grants
18 temporary custody to the child's legal guardian. She has to
19 have someone legally responsible to serve as a parent.

20 MR. BEATSON: Yes, Ms. Evans.

21 THE COURT: So Ms. Evans you are named as the child's
22 legal guardian and awarded temporary custody pursuant to the
23 protection order.

24 Okay, Mr. Beatson do you have any questions for the
25 court regarding the contents of this protection order? You

1 know what's required of you?

2 MR. BEATSON: I understand what's required, ma'am.

3 THE COURT: Alright.

4 MR. BEATSON: There's no problem there.

5 THE COURT: Okay. Alright, so I've signed that order,
6 and so that's it for the protection order.

7

8 (COURT HEARING CONCLUDES)

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1 STATE OF WASHINGTON)
2 COUNTY OF STEVENS)

CERTIFICATE

3
4 I, SUSAN L. ROBSON, a notary public in and for the
5 State of Washington, do hereby certify, under penalty of
6 perjury:

7 That the foregoing Verbatim Report of Proceedings was
8 taken on the date and place as shown on the Title Page
9 hereto;

10 That I am in no way related to or employed by any
11 counsel in this matter, nor do I have any interest in this
12 matter;

13 That the foregoing is a true and correct transcription,
14 to my best ability to hear the audio equipment transcribed
15 by me or under my direction.

16
17
18 WITNESS my hand and seal this 7th day of May, 2014.

19
20
21 _____
22 NOTARY PUBLIC in and for the
23 State of Washington, residing
24 at Clayton. My commission
25 expires: 09/09/2017

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2
3
4
5
6
7 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
8 IN AND FOR DIVISION III

9 SIERRA BEATSON,

Petitioner,

NO: 325415

10 and

AFFIDAVIT OF SERVICE BY MAIL

11 KELLY BEATSON,

Appellant/Respondent.

12
13 **I Declare:**

14 1. I am over the age of 18 years, and I am not a party to this action.

15 2. I served the following documents by mail:

16 Brief of Appellant

17
18 3. The date and place of service were by regular mail posted on the date listed below to
19 the following addresses:

20 Date:

11-4-14

21 Address:

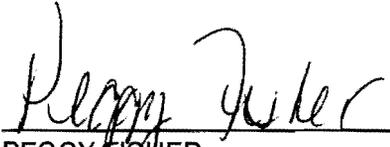
22 Kerry Summers
23 Northwest Justice Project
24 132 W. 1st Avenue
Colville, WA 99114

Kelly Beatson
21300 Cotton Creek Dr., Apt. E201
Gulf Shores, AL 36542

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

27 Date:

10/4/14

28
29 
30 PEGGY FISHER

31
32 AFFIDAVIT OF SERVICE BY MAIL

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