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68904-5

No. 68904-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TOD SHARON,

Appellant,

v.

JILL SHARON,

Respondent.

BRIEF OF RESPONDENT

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A. INTRODUCTION

In his frivolous appeal, Jill Sharon's ex-husband Tod¹ claims that there was not sufficient evidence to warrant the order of protection the superior court issued to protect Ms. Sharon and their son, Alec. Mr. Sharon's argument is based on a misrepresentation of case law and a truncated recitation of the record.

Not only is there sufficient evidence in the record to justify the protection order, it is not even a close question. Ms. Sharon and Alec were harassed, stalked, and intimidated by Mr. Sharon in such a manner that police warned them to leave their home and go into hiding for their own safety. When he attempted to take Alec from school on an unauthorized day, he pushed a staff member who challenged him and then took Alec right out of his classroom. Alec's school had to adopt emergency plans and extra safety measures specifically to protect Alec from unauthorized removal by Mr. Sharon, including asking police to patrol the school on the lookout for Mr. Sharon. Alec's school had standing instructions for staff to call 9-1-1 if Mr. Sharon appeared on a day he was not permitted. Mr. Sharon threatened to "bash [Ms. Sharon's] head in," and verbally abused her while Alec was present. These are only

¹ In this brief, Jill Sharon is referred to as "Ms. Sharon" and Tod Sharon is referred to as Mr. Sharon. Their son is referred to as "Alec."

some of the instances in a continuing pattern of escalating behavior that support the order.

The Legislature authorized orders of protection to *prevent* domestic violence, not simply to remedy it after the fact. Preventing such violence from occurring or continuing is in the public interest, not just the interest of the individuals involved. *Id.* Arguing that a protection order was not warranted on these facts is tantamount to arguing that domestic violence victims should not seek orders of protection until after they have been injured or killed.

Mr. Sharon's claim that the record here is insufficient is unsustainable. This appeal is frivolous, and this Court should affirm.

B. RESTATEMENT OF ISSUES PRESENTED

1. On appeal from an order of protection issued in favor of both a mother and her child, is this Court restricted to examining only direct evidence of the father's behavior toward the child because the mother's original petition named only the child and not herself?

2. Do repeated and escalating incidences of stalking and threatening behavior against a mother and child, including repeated acts of taking the child from school improperly and contrary to a parenting plan, combined with incidences of assault against police officers and elementary

school staff, constitute sufficient evidence to support an order of protection?

C. STATEMENT OF THE CASE

Mr. and Ms. Sharon were married for four years until October 2003, six months after the birth of their son, Alec. CP 193. Ms. Sharon filed for legal separation, and a parenting plan was instituted. *Id.* There were a number of disagreements about the parenting plan as Alec grew. *Id.*

On Halloween 2010,² Mr. Sharon appeared unexpectedly in Ms. Sharon's neighborhood in a mask. CP 25. It was not his residential day. When he located Ms. Sharon, he stood on the sidewalk but did not say anything to her. *Id.* When Alec arrived, he took off the mask and spoke to Alec. Ms. Sharon said "he had no reason to be there and we were all afraid." *Id.*

In October 2011, Mr. Sharon's girlfriend and co-worker, Laura Barger, filed for an order of protection from Mr. Sharon on grounds that he was stalking her. CP 46. In one September incident witnessed by neighbors, he appeared at her home and repeatedly rang the doorbell and knocked. CP 47. Barger was home, but did not let him in. He left,

² Mr. Sharon suggests that this event is too remote and should not be considered. Br. of Appellant at __. Had he reviewed *Spence*, 103 Wn. App. at 334, he would have discovered that recency is totally irrelevant under the statute.

returned with his car, and parked in her driveway. *Id.* After trying to enter again by rattling the door handle, he shone his headlights into the window. He then drove back and forth past the house slowly, “like a shark swimming back and forth.” *Id.* He only left when the police arrived. Barger’s neighbor, who witnesses these events, said, “When I learned that Laura had been in her house through this whole experience, I was horrified for her. ...She must have been absolutely terrified.” *Id.*

Mr. Sharon admitted that he took Alec along with him on at least one of his attempts to contact Ms. Barger, and that the situation became “highly conflicted.” CP 227-28. On one occasion, he made Alec late for school while he was confronting Barger. CP 198, 203.

The Barger incidents and her petition for a protective order brought Mr. Sharon to the attention of Miguel Villahermosa, Director of Security for Tacoma Public Schools where Mr. Sharon and Barger worked, and where Alec attended elementary school. CP 40. On October 12, 2011, shortly after Villahermosa learned of Barger’s petition, he was contacted by staff at Alec’s school. CP 41. Staff reported that he had been forced to call 9-1-1 when Mr. Sharon had taken Alec from school on a day when Ms. Sharon was scheduled to have Alec. CP 41, 115. Mr. Sharon physically pushed a staff member, and when he was told that he could not take Alec, he said “Just try and stop me.” CP 52, 115. When the school

day ended, Mr. Sharon appeared at Alec's classroom and took him away, despite the teacher's protestations and in violation of procedure and the parenting plan. CP 53. Mr. Sharon was issued a warning letter by the principal for his violation. CP 41.

On Thanksgiving 2011, Ms. Sharon was on her way to retrieve Alec from Mr. Sharon's house at the appointed time. Minutes before her arrival, Mr. Sharon called her to tell her Alec was sick and she could not take him. CP 194. Because she was almost there, she went to Mr. Sharon's house. They argued, and Mr. Sharon picked up a large tray from his yard³ and threatened to "bash her head in." *Id.* He also pushed her, and called her a "bitch" and a "cunt." CP 103, 122.

During November and December 2011, Mr. Sharon was the subject of ongoing investigations related to his conduct as an employee. CP 41. He stopped reporting to work in November. *Id.* He began coming to Ms. Sharon's home unannounced and uninvited, walking her property line and taking pictures over her fence. CP 217-18. He would also "bang on the door." *Id.*

On December 1, 2011, Mr. Sharon filed for a protection order in Pierce County, but failed to serve Ms. Sharon. CP 194. He also failed to appear, but Ms. Sharon did. At that hearing the superior court realigned

³ Multiple witnesses stated that Mr. Sharon had a hoarding problem. CP 107, 200, 202.

the parties and issued an order of protection for Ms. Sharon against Mr. Sharon. *Id.*

On December 19, 2011, Mr. Sharon again took Alec from school when it was not his residential time, and again staff called 9-1-1. CP 41. Ms. Sharon tried to find Alec and contacted the police. CP 106. Alec did not go to school the next day. *Id.* Neither Ms. Sharon nor the officers found Alec or Mr. Sharon for the next two days. CP 107. Ms. Sharon said, "Alec and Tod were never found that night. I don't even know if they had fled the state. I had no idea of their location or when I would be getting Alec back." *Id.*

On January 5, 2012, Ms. Sharon contacted Alec's principal expressing concern that Mr. Sharon would try to take Alec from school the following day, his birthday, even though he was scheduled to be with his mother. *Id.* The next day, Alec did not show up at school, Mr. Sharon stated that Alec was sick. CP 42, 128-29. Due to Mr. Sharon's history, Villahermosa contacted the Tacoma Police, who conducted a child welfare check. CP 128-30. When the officer arrived, he noted stacks of "garbage or thrift store items" on the lawn. When he knocked on the door, Mr. Sharon opened it saying, "What the fuck do you want." CP 129. The officer told him he was there to conduct a welfare check on Alec. Sharon said Alec was fine and was sick. When the officer would not leave, Mr.

Sharon began shaking and yelling profanities. *Id.* He yelled “Alec call 911 this pig is trespassing in my house.” *Id.*⁴ Mr. Sharon accused the officer of having an affair with Ms. Sharon. *Id.* He became “increasingly violent” and the officer called for backup. A scuffle with the officer ensued, and Mr. Sharon assaulted the officer and broke the door hinges trying to slam it on his foot. *Id.*, CP 132.

During this incident one of the officers heard Alec crying, but could not see him past the “stacks of things” in the house. CP 202. The officer asked Alec if he was okay and to come and talk to him, and Alec replied “I don’t know what to do.” The officer again asked Alec to come out and Mr. Sharon said “no you stay back there.” *Id.* Eventually, Mr. Sharon’s mother arrived and brought Alec to the door. Before he spoke Alec turned to Mr. Sharon and asked “what should I say?” CP 129, 133.

On January 23, 2012, the District informed Mr. Sharon that he was barred from District property except when he was picking up Alec from school in accordance with his residential schedule. CP 42. A restriction letter was sent to Mr. Sharon two days later confirming this. *Id.*

On January 27, 2012, Mr. Sharon drove to Northeast Tacoma and parked immediately behind the School Patrol Officer and tried to engage with him “in a way that would lead to a conflict.” CP 42. On

⁴ The officer never entered the house, but remained on the front porch. CP 129.

Villahermosa's instructions, the officer continued observing Mr. Sharon. After Alec got in Mr. Sharon's car, the officer saw a process server hand Mr. Sharon documents, and observed a "loud verbal exchange" with that person in front of Alec. CP 43.

On January 30, 2012, Mr. Sharon kept Alec home from school again, and when Ms. Sharon went to pick Alec up, he was not there. CP 109. Mr. Sharon did not return with Alec until later that evening, when Ms. Sharon learned Mr. Sharon had taken Alec to Bellingham and stayed the night, in violation of Mr. Sharon's release papers relating to his arrest for officer assault. *Id.*

On February 13, 2012, Mr. Sharon's mother came to the school and brought Alec. CP 43. They met with a staff member. *Id.* Alec told the staff member "he was afraid to go to school because he thought something bad was going to happen and if it did he was afraid he would not see his father on Valentine's Day." CP 29, 43. Alec was not scheduled to be with his father on Valentine's Day. *Id.* Mr. Sharon's mother claimed that Alec's anxiety was caused by the actions of the police, not by Mr. Sharon. CP 29. The staff member related Alec's distress to Villahermosa, who contacted the Tacoma Police and advised Ms. Sharon that Alec should not attend school on February 14. CP 43. Officers were assigned to Alec's school to patrol the next day. CP 141.

The staff were advised that if Mr. Sharon showed up to take Alec on a day not specified in the parenting plan, “they are to go into a full lockdown and dial 911.” *Id.*

On February 14, 2012, Mr. Sharon’s mother came to the school to take Alec. CP 44. She was informed that Alec was not in school and that it was not Mr. Sharon’s residential day. Ms. Sharon feared that Mr. Sharon and his mother were attempting to take Alec and flee. CP 38.

The officer who conducted the welfare check filed a supplemental police report. CP 135. He stated that Mr. Sharon’s behavior was becoming “increasingly erratic.” He had been arrested for assaulting a police officer who was writing him a parking ticket for parking in a handicapped space. *Id.*, CP 198. The officer noted that Mr. Sharon’s water and power would soon be turned off, and that the combined circumstances of his loss of employment, custody battle, receipt of the order of protection regarding Ms. Sharon, “combined with a growing hoarding disorder and escalating violent behavior *causes me great concern as to the safety of Alec.* ...It is my opinion that it is not safe for Alec Sharon to stay with his father Tod Sharon, until Tod Sharon can get the help he needs.” *Id.* (emphasis added).

On February 15, 2012, Ms. Sharon filed for an order of protection for Alec in King County Superior Court. CP 18. She petitioned on behalf

of Alec only, because she already had the existing order of protection for herself from Pierce County. CP 18, 101.

Tacoma police advised Ms. Sharon to take Alec and leave their home for their own protection. CP 38, 155. The City Domestic Violence Advocate was assigned to formulate a safety plan. CP 155. A safety plan was also implemented at Alec's school. *Id.* The police arranged to install a VARDA⁵ panic alarm at Ms. Sharon and Alec's home. *Id.* The alarm is triggered by pressing a button on a "monitoring necklace," which police issued to Ms. Sharon stating that "agencies don't just do that unless we are legitimately concerned." CP 203.

All of these events took a significant toll on Alec. During the Thanksgiving confrontation, Mr. Sharon was yelling at Ms. Sharon that she was a "cunt" and a "bitch" in front of Alec. CP 103. Alec was yelling through the door, which he could not open. *Id.* Alec expressed concern "that on a daily basis his dad will show up and take him from school." CP 113. He was afraid to go to school. CP 39. He also had trouble sleeping. *Id.* Alec said that he was "scared at his dad's" when the power was turned off and he had to walk around the house through piles of junk with a lantern. CP 102.

⁵ A voice-activated radio-dispatched alarm, or VARDA-alarm, is a type of burglar alarm that when activated, broadcasts the type and location of alarm over the local police radio frequency using a pre-recorded audio message.

On February 29, 2012, at the initial hearing on Ms. Sharon's petition for an order of protection, Commissioner Bonnie Canada-Thurston heard the evidence and issued a temporary order of protection. CP 194. The court also ordered a domestic violence assessment. *Id.* That report was completed on May 8, 2012.

In the domestic violence assessment report, the investigator outlined the history of Mr. Sharon's behavior as told by a number of witnesses, including police officers. CP 193-204. Numerous witnesses expressed safety concerns relating to Mr. Sharon in that report. *Id.* The Investigator noted that the case was not typical, but expressed concern that Mr. Sharon's mental health was deteriorating. CP 203. The investigator noted "significant concerns" by Tacoma police that Mr. Sharon showed "willingness to include Alec in some very high conflict and traumatic events for a nine year old child." CP 204. The investigator stated that Mr. Sharon "did exhibit stalking behaviors toward the mother and maternal family members on a number of occasions and that, in conjunction with his continual violations of the parenting plan, would create a reasonable fear in the mother that would support a full order of protection." *Id.* The investigator recommended issuance of a full order of protection and a psychiatric evaluation of Mr. Sharon. *Id.*

Commissioner Canada-Thurston reviewed the investigator's report and took testimony from Mr. Sharon and Ms. Sharon. CP 207-38.⁶ The Commissioner issued a full order of protection for both Ms. Sharon and Alec. CP 187.

D. SUMMARY OF ARGUMENT

A court has broad powers to fashion an order of protection, and may protect the petitioner's family members under that order even if those family members are not specifically named in the original petition. The superior court here entered an order protecting both Ms. Sharon and Alec. All evidence of threatening, intimidating, stalking, and harassing behavior is relevant.

The evidence to support the order of protection here is not only substantial, it is overwhelming. Numerous witnesses, including police officers, school staff, security professionals, the domestic violence investigator, and even mere bystanders, stated concern and alarm that Mr. Sharon was in a downward spiral of violence and aggression. On more than one occasion, Mr. Sharon intimidated and threatened people, including police officers and Ms. Sharon herself, in Alec's presence. Ms. Sharon was afraid of Mr. Sharon. Alec was afraid that of Mr. Sharon

⁶ The record here is somewhat muddled. Commissioner Canada-Thurston filed the order for protection on May 9, 2012. CP 191. However, the hearing transcript indicates a date of June 4, 2012. CP 207.

might take him away. Mr. Sharon repeatedly stalked both Ms. Sharon and Alec, including numerous successful attempts to take Alec from school without authority, causing school staff to summon the police. He assaulted a police officer in Alec's presence. He threatened Ms. Sharon in Alec's presence. The police were so concerned for their safety they advised Ms. Sharon to take Alec from their home and hide, and install a panic alarm.

The evidence here is ample, and Mr. Sharon's attempt to downplay, whitewash, and truncate the record is frivolous. The order should be affirmed, and this Court should award Ms. Sharon her reasonable attorney fees on appeal.

E. ARGUMENT

1. Standard of Review and Applicable Law

The decision to grant or deny a protection order is reviewed for an abuse of discretion. *In re Marriage of Stewart*, 133 Wn. App. 545, 550, 137 P.3d 25, 28 (2006), *review denied*, 160 Wn.2d 1011 (2007); *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002). Findings will be upheld on appeal if they are supported by substantial evidence in the record. *Id.*

The superior court has broad powers to fashion an order of protection is proper if there is substantial evidence of domestic violence.

RCW 26.50.060. “Domestic violence” includes: (a) 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. RCW 26.50.010(1). “Stalking” under subsection (c) is defined as “intentionally and repeatedly” harassing or following another person, and placing that person in reasonable fear under the circumstance that the stalker intends to injure the person, another person, or property of the person or of another person. RCW 9A.46.110(1). Also, the stalker must either intend to frighten, intimidate, or harass the person; or know or reasonably should know that the person would be afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person. *Id.*

2. The Argument that Only Evidence of Domestic Violence Against Alec Is Relevant Is Frivolous

The central gist of Mr. Sharon’s brief is that all of the evidence of domestic violence against Ms. Sharon should be disregarded by this Court. Br. of Appellant at 22-26, 31-32. He also claims that all of the evidence of threatening and frightening behavior he exhibited toward police officers, co-workers, and his girlfriend--even if that behavior took place in front of

Alec--should also be ignored. *Id.* He insists that because Ms. Sharon filed the original petition on behalf of Alec and not herself, the superior court abused its discretion in considering any evidence of domestic violence except that against Alec directly. *Id.* In support, he cites RCW 26.50.020(1) and *Neilson ex rel. Crump v. Blanchette*, 149 Wn. App. 111, 115, 201 P.3d 1089, 1091 (2009). *Id.*

Despite the fact that Ms. Sharon's petition was on behalf of Alec and not herself,⁷ the superior court ordered protection for both Ms. Sharon as petitioner and for Alec, as was its statutory prerogative. CP 187-88. In fact, the order identifies Ms. Sharon as "the petitioner." *Id.* In protection order proceedings – regardless of who the named petitioner is – the Court has authority to: "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....*" RCW 26.50.060(1)(h). Even assuming Alec is the "victim" named in the petition, Ms. Sharon as his mother was also entitled to be covered by the order of protection, which was granted. CP 187. Thus, the order on review here properly restrains Mr. Sharon with respect to mother *and* child, and this Court reviews the order for substantial evidence regarding domestic violence against both parties. Who the original named petitioner was is irrelevant.

⁷ Again, Ms. Sharon already had a protective order on her own behalf in Pierce County. CP 101.

Also, even assuming this Court would review only evidence of domestic violence against Alec, evidence of Mr. Sharon's behavior toward Ms. Sharon is still relevant to domestic violence against Alec. Creating fear in a child that one might assault others, including a child's mother, constitutes domestic violence against a child. *Stewart*, 133 Wn. App. at 551. A parent need not physically threaten his or her child directly in order to inflict fear of imminent physical harm. *Spence v. Kaminski*, 103 Wn. App. 325, 334, 12 P.3d 1030, 1035 (2000). Instead, a petition will be upheld if there is evidence the parent threatened or frightened others in front of the child. *Id.*

Crump, upon which Mr. Sharon relies, is easily distinguishable. In that case, a mother petitioned for a protection order on behalf of her 14-year-old child against that child's boyfriend. *Crump*, 149 Wn. App. at 114. Under the statute, protection orders may only be issued against "Family or household members," who are defined as "persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship." RCW 26.50.010(2). Because the alleged victim in *Crump* was only 14, the boyfriend did not meet the statutory definition of a "family or household member." Thus neither the girlfriend nor her mother qualified under the statute to receive an order of

protection against the boyfriend. *Crump*, 149 Wn. App. at 114. The issue in *Crump* was purely statutory, not evidential.

Crump does not say, as Mr. Sharon suggests, that evidence of domestic violence against a mother by a father is irrelevant as to whether a protection order should issue on behalf of a child. In this Court in *Crump* quite plainly distinguished that case from the circumstances here: “This is not a situation where [the mother], as a victim of domestic violence herself, petitioned for relief ‘on behalf of minor family or household members.’” *Crump*, 149 Wn. App. at 118 (citing RCW 26.50.020(1) and *Stewart*, 133 Wn. App. at 547–49). In such cases, as in this case, the “dating relationship” provision and the age restriction in the statute are irrelevant to the analysis. *Stewart*, 133 Wn. App. at 547-49.

There is absolutely no authority to support the notion that an order of protection issued in favor of a mother and child may only be reviewed for evidence of domestic violence against the child. Mr. Sharon’s argument that *only* evidence of domestic violence committed against his son should be considered, and that evidence of domestic violence against Ms. Sharon is irrelevant, is frivolous.

3. The Argument that There Is No Substantial Evidence to Support the Order Is Frivolous

Having established that this Court can and should consider all of the evidence submitted in support of the petition for the protection order, Mr. Sharon's only remaining argument is that there was not substantial evidence to support the order. Br. of Appellant at 25-32. Mr. Sharon admits that hearsay is admissible and that the rules of evidence are relaxed. *Id.* at 20. He raises no challenge to the admissibility of any evidence below. Thus, only the quantity of evidence is at issue.

The Legislature authorized orders of protection to *prevent* domestic violence, not simply to remedy it after the fact. *State v. Dejarlais*, 136 Wn.2d 939, 944, 969 P.2d 90, 92 (1998). Division III of this Court in *Spence* concluded that requiring victims to wait until their fears became realized would defeat the Legislature's purpose in creating orders of protection to prevent domestic violence. *Spence*, 103 Wn. App. at 335. In doing so, this Court observed, the Legislature evidenced a strong interest in allowing protection orders before actual physical violence occurs: "A requirement that the victim must wait until further threatened acts actually occur before seeking a protection order would undermine that intent." *Id.* at 335.

It is surprising that Mr. Sharon does not attempt to distinguish *Spence*, where Division III of this Court rejected arguments astonishingly similar to those he raises here. In that case the ex-wife presented evidence

that her ex-husband had stalked her, interfered with custody, and had frightened their daughter. *Spence*, 103 Wn. App. at 328. She did not allege that any physically violent acts took place. *Id.* She presented the court with numerous declarations from witnesses who stated that they had seen her husband threaten her or had observed her fear of him. *Id.*

Mr. Sharon recites some of the evidence the superior court considered, cherry-picking certain instances upon his faulty premise that only his behavior toward Alec is relevant. Even the acts he admits to committing, such as the repeated stalking, taking pictures over the fence, and banging on Ms. Sharon and Alec's door are sufficient to constitute domestic violence. RCW 26.50.010(1)(c). In his list of what he believes to qualify as stalking behavior, he omits his repeated attempts to take Alec from school when he was unauthorized to do so. Br. of Appellant at 29-30. Mr. Sharon argues that this evidence is not sufficient to persuade a reasonable person that Ms. Sharon and Alec were stalked. Br. of Appellant at 28-30. He lists a number of instances in the record, which themselves are sufficient to constitute stalking under the statute. *Id.* He also ignores the numerous instances related to picking up Alec from school when he was not scheduled to do so. *Id.* Mr. Sharon claims there is "no evidence whatsoever that Alec felt fear or intimidation by his father trying to pick him up on a scheduled residential day." *Id.* at 30. However,

there is evidence that Alec was afraid that if he went to school, his father would take him when he was *not* scheduled to do so. CP 39. Also, Mr. Sharon glosses over that several instances where Ms. Sharon testified that he would walk her property line, take pictures over the fence, and bang on the door. Br. of Appellant at 30. He does not deny it, he simply argues that he did not know and should not have known that such behavior would be frightening and intimidating. *Id.* He simply does not present an accurate picture of all the events.

Reviewing the full record, as described in the statement of the case, *supra*, there was ample evidence to support the order. Numerous witnesses, including police officers, school staff, security professionals, the domestic violence investigator, and even mere bystanders, stated concern and alarm that Mr. Sharon was in a downward spiral of stalking, violence, and aggression. On more than one occasion, Mr. Sharon intimidated and threatened people, including police officers and Ms. Sharon herself, in Alec's presence. CP 42, 103, 122, 227-28. Ms. Sharon was afraid of Mr. Sharon. CP 220. Alec was afraid that Mr. Sharon might take him away, and that something "bad" might happen at school. CP 29, 113. Mr. Sharon repeatedly stalked both Ms. Sharon and Alec, including repeated removal of Alec from school and/or keeping at Mr. Sharon's home without authority, forcing school staff and Ms. Sharon to summon

the police. CP 41, 42, 44, 109. He assaulted a police officer in Alec's presence, and tried to force Alec to participate in the confrontation by telling Alec to call 9-1-1 to report the "pig." CP 129. Alec was crying during this incident. CP 202. Mr. Sharon aggressively confronted Ms. Barger in Alec's presence. CP 227-28. He threatened and verbally abused Ms. Sharon in Alec's presence. CP 103, 122, 194. The police were so concerned for Ms. Sharon and Alec's safety, they advised Ms. Sharon to take her child and hide. CP 38, 155. They installed a voice activated alarm, an uncommon measure that police only employ when they "are legitimately concerned." CP 155, 203.

Although the ample evidence of stalking behavior alone is sufficient to support the order of protection, RCW 26.50.010(1)(c), there is also sufficient evidence of domestic violence in Mr. Sharon's infliction of fear of imminent harm. RCW 26.50.020(1)(a). This case is precisely in line with *Stewart*, where assaultive acts against a mother such as spitting on and berating her in front of the children, inflicted sufficient psychological damage on the children to support an order of protection:

There is no allegation that Wilson assaulted his children. But the children witnessed Wilson's assaults on Nichole, and were afraid for her. For example, R.S. attempted to call 911 during one assault, and when Wilson invaded Nichole's house "both children were terrified, begging [Wilson] to stop and just leave." In short, there was ample evidence that Wilson caused his children to fear he would assault

Nichole. Such fear is indeed psychological harm, as the trial court termed it. It is also domestic violence, and is a statutory basis for an order of protection.

Stewart, 133 Wn. App. at 551. Here, Alec witnessed a prolonged confrontation between Ms. Sharon and Mr. Sharon in which Mr. Sharon verbally abused her in the vilest language (“bitch” and “cunt”) and also physically threatened her. CP 103, 122, 194. Alec feared that his father would take him from school, and had trouble sleeping. CP 113. Mr. Sharon disappeared with Alec for two days when he was not scheduled to have Alec, keeping him out of all contact with Ms. Sharon. CP 107-09. He assaulted police officers and aggressively confronted his ex-girlfriend and a messenger in Alec’s presence. CP 43, 227-28. All of these behaviors constitute psychological domestic violence under *Stewart*.

The declarations, police reports, the investigator’s report, and in-court testimony from Ms. Sharon, suggests absolutely no abuse of discretion in issuing the order of protection. Any claim that the evidence here was insufficient is frivolous. The Commissioner’s decision to issue an order of protection should be affirmed.

4. Attorney Fees Are Not Available under RAP 14.2, Mr. Sharon’s Argument In This Regard Is Also Frivolous

Mr. Sharon argues that he should be awarded attorney fees on appeal under RAP 14.2. Br. of Appellant at 33. He cites no other authority and makes no argument. *Id.*

RAP 14.2 governs *costs* on appeal, not attorney fees. Requests for attorney fees on appeal must be made under RAP 18.1, and supported by argument. RAP 18.1; *Hudson v. Hapner*, 170 Wn.2d 22, 33, 239 P.3d 579, 584 (2010).

Our Supreme Court has admonished parties to offer substantive argument in support of their attorney fee requests, rather than making a “bald request.” *Id.*; *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710, 952 P.2d 590, 599 (1998).

Mr. Sharon’s claim for attorney fees is frivolous and should be denied.

5. Under RCW 26.50.060(g) and/or RAP 18.9, This Court Should Award Attorney Fees on Appeal to Ms. Sharon

Under RAP 18.1, this Court has authority to award attorney fees if “applicable law” grants the prevailing party such a right. RAP 18.1(a). Ms. Sharon requests an award of attorney fees on appeal on two alternate grounds: RCW 26.50.060(g) or RAP 18.9.

RCW 26.50.060(g) allows a court discretion to “require the respondent⁸ to pay the administrative court costs and service fees, ...including reasonable attorneys’ fees.” This discretion to award fees extends to the Court of Appeals should Ms. Sharon prevail. *Scheib v. Crosby*, 160 Wn. App. at 345, 353, 249 P.3d 184 (2011).

Ms. Sharon successfully sought and obtained an order of protection at her own expense. Mr. Sharon has caused her to incur significant additional expense by appealing from that order, and this Court should exercise its discretion and award her attorney fees on appeal.

In the alternative, this Court has discretion to award Ms. Sharon’s attorney fees under RAP 18.9. Pursuing a frivolous appeal justifies the imposition of terms and compensatory damages. *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 442–43, 730 P.2d 653 (1986). An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal. *Id.*

This appeal was from an order of protection for both mother and child, issued based on ample evidence of dangerous, threatening, stalking, and assaultive behavior by Mr. Sharon toward numerous individuals,

⁸ “Respondent” under the statute is a term of art, meaning the person against whom an order of protection is sought by the petition. This Court does not have authority under RCW 26.50.060(g) to award attorney fees on appeal to Mr. Sharon, as he was the “respondent” below. CP 187.

including Ms. Sharon and police. Mr. Sharon in his appeal argued that any evidence besides direct evidence of threats or assaultive behavior against Alec is irrelevant, based on *Crump*, a totally inapposite case. He lists numerous incidences of stalking, and then denies that there was any evidence of stalking. He argues that a mother and child who are told by police to flee their home and hide, and then install a panic alarm before returning, have not presented sufficient evidence that they have imminent fear of bodily harm.

An appeal based on a truncated view of the evidence and a misrepresentation of case law is frivolous. Ms. Sharon should be awarded reasonable attorney fees under RAP 18.9 for having to respond to this appeal.

F. CONCLUSION

This Court should be cautious about concluding that an appeal is frivolous. However, in this case, it is warranted. The escalating pattern of violent and aggressive behavior that so alarmed police, frightened Ms. Sharon and her son. It is substantial evidence of domestic violence under both RCW 26.50.010(a) and (c), and no case or statute suggests otherwise. This Court should affirm the order of protection and award Ms. Sharon attorney fees and costs on appeal.

DATED this 11th day of February, 2013.

Respectfully submitted,



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DECLARATION OF SERVICE

On this day said forth below, a true and accurate copy of the Brief of Respondent in Court of Appeals Cause No. 68904-5-I to the following parties:

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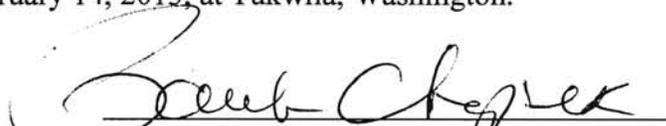
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: February 14, 2013, at Tukwila, Washington.


Paula Chapler, Legal Assistant
Talmadge/Fitzpatrick