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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 1040814

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

No. 59474-9-II

FRANCESCA PAOLA CORNELIO CUEVAS, Respondent,

v.

MUSAH KORAM ALI, Appellant

ANSWER TO PETITION FOR REVIEW

FRANCESCA P. CORNELIO CUEVAS
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I. INTRODUCTION

Appellant Musah Ali urges reversal of the trial court's granting of a domestic violence protection order against him on several grounds.

First, Mr. Ali does not assign error to the trial court's findings of fact. As such, the factual findings of the trial court are verities on appeal. Mr. Ali cannot argue that the trial court committed any error in its factual findings.

Second, Mr. Ali argues that an alleged racist statement contained within a police report that he submitted into evidence is error. However, the trial court made a specific finding that it did not consider or rely upon that or any other statement that may be construed as racist.

The trial court found that Respondent Franchesca Cornelio-Cuevas established by a preponderance of the evidence that Mr. Ali committed acts of domestic violence as defined by RCW 7.105.010 and entered a protection order. In doing so the court appropriately exercised its discretion and its findings are supported by substantial evidence.

This court should affirm the trial court's decision and the Court of Appeals' unpublished opinion to protect Ms. Cornelio-Cuevas and her daughter.

II. RESTATEMENT OF ISSUES

- a. Whether the trial court correctly applied the provisions of RCW 7.105 to the evidence in the record to issue a protection order to protect Ms. Cornelio-Cuevas and her daughter from Mr. Ali's acts of domestic violence.
- b. Whether the trial court validly exercised its discretion in finding that Mr. Ali had engaged in acts of domestic violence against Ms. Cornelio-Cuevas.
- c. Whether substantial evidence supported the trial court's findings that Mr. Ali engaged in acts of domestic violence against Ms. Cornelio-Cuevas.

III. RESTATEMENT OF THE CASE

On January 8, 2024, Ms. Cornelio-Cuevas filed a Petition for Protection Order. (CP 67). The court denied entry of a temporary order for protection and set a hearing for January 22, 2024. (CP 81). Ms. Cornelio-Cuevas filed two supplemental declarations. (CP 93, 99). She also filed declarations from third parties. (CP 102, 106).

On January 22, 2024, Mr. Ali requested a continuance. (CP 110-11). He had not filed a response at that time. Ms. Cornelio-Cuevas requested that, since a temporary order was not in place, the court should enter one as a condition of granting a continuance. (CP 457-58). The court granted a temporary order for protection and set the next hearing for February 6, 2024. (CP 112).

Per Ms. Cornelio-Cuevas's petition, Mr. Ali did not allow her to leave their home with their daughter. (CP 73). Mr. Ali tried to remove Ms. Cornelio-Cuevas from the deeds to real

property owned by the parties. (CP 73). Mr. Ali removed Ms. Cornelio-Cuevas from joint bank accounts. (CP 73). Mr. Ali interfered with Ms. Cornelio-Cuevas taking their daughter to a doctor's appointment. (CP 73). Ms. Cornelio-Cuevas also alleged that on past occasions, Mr. Ali hit her, broke her phone, and hit doors and walls in their home in the presence of their daughter. (CP 73).

In supplemental declarations, Ms. Cornelio-Cuevas described further verbal and physical abuse, for example, Ms. Cornelio-Cuevas detailed having to go to the police station with Mr. Ali's mother in the vehicle because she was not allowed to leave the house alone. (CP 97).

Ms. Cornelio-Cuevas also alleged Mr. Ali maxed out her credit cards and forced her to cosign on his student loan for \$250,000.00. (CP 95). Mr. Ali took her work computer and personal computer. (CP 97). Mr. Ali removed her access to Ring cameras on the family home and removed her from group chats with friends and family. (CP 97).

Ms. Cornelio-Cuevas alleged that Mr. Ali had moved his mother into the home in December 2023, and instructed Ms. Cornelio-Cuevas that she could not leave the home without his mother present. (CP 95). In fact, Ms. Cornelio-Cuevas was able to leave the home if she left their daughter with Mr. Ali's mother. (CP 95-96). Mr. Ali locked Ms. Cornelio-Cuevas out of the house on Christmas Eve. (CP 95-96).

Ms. Cornelio-Cuevas also alleged that Mr. Ali had mentioned taking their daughter to Ghana, and alleged that Mr. Ali used their daughter to control her. (CP 98).

Ms. Cornelio-Cuevas also filed sworn declarations from two witnesses who did not specifically witness Mr. Ali commit acts of domestic violence but testified as to their observation of Ms. Cornelio-Cuevas's fearful demeanor. (CP 102, CP 106). One witness recounted Ms. Cornelio-Cuevas's fear that Mr. Ali would take their daughter to Africa and it would be impossible to get her back. (CP 107).

Ms. Cornelio-Cuevas also testified in open court at the hearing on February 6, 2024. She affirmed everything she filed in her petition and attached paperwork. (CP 261). She testified that she was scared for herself and for her daughter, that she did not want to be part of the list of women being murdered by ex-partners, and that she needed to be safe to take care of her daughter. (CP 269-70).

Mr. Ali submitted a response that was approximately 71 pages in length and included as Exhibit 10 a series of text messages. (CP 188-94). This included a conversation on January 5, 2024, where Ms. Cornelio-Cuevas begged Mr. Ali and reminded him of their daughter's appointment at 1:00 p.m. (CP 193). Mr. Ali also included a report from the Black Diamond police department which contained a statement from a police dispatcher of African descent, regarding the actions of African men. (CP 148-49).

On February 6, 2024, the court granted an order for protection. (CP 221-30). The commissioner made specific and

detailed findings that Petitioner (Ms. Cornelio-Cuevas) was most credible, and specific and detailed findings with respect to coercive control, physical harm, and blocking Ms. Cornelio-Cuevas's ability to call 911. (CP 224). The court entered a variety of relief including a judgment against Mr. Ali for Ms. Cornelio-Cuevas's attorney's fees. (CP 307)

Mr. Ali moved for revision, alleging among other things that the court failed to address racism and prejudicial statements in the proceeding. (CP 242). In response, the trial court read all of the filings associated with the case. (RP 3). The trial court carefully combed through the transcript of the hearing before the commissioner. (RP 6). The trial court denied Mr. Ali's motion for revision, adopting the commissioner's findings as its own. (CP 479-80). The trial court specifically stated that it did not consider the statement of the Black Diamond police dispatcher, that it had "absolute zero credibility with this court." (RP 6). The trial court determined the record did not reflect that the commissioner had relied on the dispatcher's statement.

(RP 6).

Mr. Ali moved for reconsideration. (CP 315). He filed over 150 additional pages of materials. (CP 4-66, 320-476). The court considered all of Mr. Ali's additional materials, and each of the grounds for reconsideration under CR 59(a). (CP 479- 80). The court denied reconsideration without oral argument. (CP 479-80). Mr. Ali appeals. (CP 481-83).

IV. ARGUMENT

a) Standard of Review

The trial court's decision to grant a domestic violence protection order is reviewed for abuse of discretion. *Maldonado v. Maldonado*, 197 Wn. App. 779, 789, 391 P.3d 546 (2017). An abuse of discretion is found when a trial judge's decision is exercised on untenable grounds or for untenable reasons, or if its decision was reached by applying the wrong legal standard. *Id.*

Challenges to a trial court's factual findings are reviewed for substantial evidence. *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011). Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Id.* Unchallenged findings of fact were verities on appeal. *State Farm Fire & Cas. Co. v. Justus*, 199 Wn. App. 435, 448, 398 P.3d 1258 (2017). Mr. Ali did not challenge any of the court's findings of fact.

The court should view the evidence and reasonable inferences in the light most favorable to the party who prevailed below, here, Ms. Cornelio-Cuevas. *Garza v. Perry*, 25 Wn. App. 2d 433, 453, 523 P.3d 822 (2023). This court should defer to the trial court's determinations regarding “the persuasiveness of the evidence, witness credibility, and conflicting testimony.” *In re the Matter of the Vulnerable Adult Pet. For Knight*, 178 Wn. App. 929, 937, 317 P.3d 1068 (2014).

- b) The trial court correctly granted Ms. Cornelio-Cuevas's requests for a protection order.
- i) The trial court correctly applied the provisions of RCW 7.105 to Ms. Cornelio-Cuevas's requests based on the evidence in the record.

The trial court shall issue a protection order based upon a finding that the petitioner has proven by a preponderance of the evidence that the petitioner has been subjected to domestic violence by the Respondent. *See* RCW 7.105.225(1)(a). Domestic violence is defined as physical harm to one intimate partner by another intimate partner. *See* RCW 7.105.010(9)(a). Domestic violence is defined as coercive control of one intimate partner by another intimate partner. *Id.* There is no evidence to suggest that Mr. Ali and Ms. Cornelio-Cuevas were not married or otherwise intimate partners.

The trial court received evidence from both parties and their witnesses, and considered testimony and argument offered at the hearing to determine whether domestic violence occurred. The trial court discussed the evidence and made specific

findings, after which it concluded that Ms. Cornelio-Cuevas had proven that Mr. Ali subjected her to domestic violence. The trial court then correctly applied the law to the facts, which mandated the issuance of the protection order.

ii) The trial court made the findings required by RCW 7.105

The trial court, in adopting the commissioner's findings, found that Ms. Cornelio-Cuevas had met her burden of establishing that Mr. Ali had engaged in domestic violence by a preponderance of the evidence. The findings are extensive and detailed. (RP 312-314, RP 221-230). The trial court found that Mr. Ali committed acts of domestic violence as defined by RCW 7.105.010(4)(a)(i)(A) specifically damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value, finding that Mr. Ali tried to take Ms. Cornelio-Cuevas off of deeds to community real property, maxed out credit cards to take cash

advances. (RP 224). He blocked Ms. Cornelio-Cuevas from taking their daughter to the doctor's appointment. (RP 224). The trial court found that Mr. Ali changed home locks, codes, so that Ms. Cornelio-Cuevas could not access them. (RP 224). The trial court also found that Mr. Ali hit Ms. Cornelio-Cuevas multiple times in the face with an open hand, interfered with her attempts to call 911, and took her phone and broke it. (RP 224). Mr. Ali has not assigned error to any of these factual findings by the trial court.

iii) Substantial evidence supported the trial court's findings.

RCW 7.105.200(5) states that “[h]earings may be conducted upon the information provided in the sworn petition, live testimony of the parties should they choose to testify, and any additional sworn declarations.” A petitioner under RCW 7.105 is not required to provide any further corroboration than his or her own statement.

Ms. Cornelio-Cuevas submitted sworn testimony by way of her original Petition (starting at CP 67), three additional declarations from Ms. Cornelio-Cuevas (starting at CP 93, CP 99, and CP 204), and three declarations from third parties (starting at CP 102, CP 106, and CP 199).

The trial court found that Ms. Cornelio-Cuevas was the most credible of the parties. (RP 224). The petition itself is testimony and is evidence. Ms. Cornelio-Cuevas submitted declarations from herself and other witnesses to establish sufficient evidence to persuade the trial court that Mr. Ali committed acts of domestic violence. She also testified during the hearing. As counsel noted in the argument to the trial court, the preponderance of evidence standard is low, 50.1 percent. (RP 14). Otherwise, domestic violence between parties in the confines of their own home could never be proven unless corroborated.

But here, there is corroboration. Perhaps the best corroborative evidence of Ms. Cornelio-Cuevas's allegations

are the text messages attached to Mr. Ali's response. (CP 188-194). These text messages between Mr. Ali and Ms. Cornelio-Cuevas corroborate the existence of disputes between the parties as Ms. Cornelio-Cuevas suggested, involving his mother's overbearing presence in their home (CP 193-94), her claim that she begged for Mr. Ali to allow her to take their daughter to the doctor's appointment (CP 193), that she was begging Mr. Ali for peace for her and their daughter. (CP 194). Mr. Ali accuses Ms. Cornelio-Cuevas of being "incapable of supporting [daughter]'s daycare as with everything for even a month" and "As with everything you have 200% complete dependence on me." (CP 191). This corroborates her allegations that Mr. Ali took actions to make her financially dependent upon him, which is coercive control under RCW 7.105.101(4)(a)(ii). Ms. Cornelio-Cuevas's witnesses did not observe the acts of domestic violence, but observed her demeanor and corroborated her fear of Mr. Ali.

Here, the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person that Mr. Ali committed acts of domestic violence.

iv) The trial court did not consider allegedly racist evidence submitted by Mr. Ali.

Mr. Ali filed with the trial court a police report with a statement in it that he claimed was racist. (CP 148-49). Mr. Ali did not move to strike or redact the offensive statement from the record below. Mr. Ali instead accused the trial court of failing to adequately address the racist materials and on appeal insinuated or accused racism by the Black Diamond police department, two judicial officers, opposing counsel, and witnesses in the case. However, the record is clear that the judicial officers, including and especially the trial court whose decision was affirmed on appeal, made careful note to disavow and not consider the allegedly racist statement.

In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making

decisions.” *Harris v. Rivera*, 454 U.S. 339, 346 (1981). Bench trials place unique demands on judges, requiring them to sit as both arbiters of law and as finders of fact. *State v. Read*, 147 Wn.2d 238, 245 53 P.3d 26 (2002). For example, judges in bench trials may be asked to exclude probative evidence on the grounds it is unfairly prejudicial. *Id.* No judge could rule on such a request without considering the challenged evidence. *Id.* And yet, in a bench trial, it is the consideration of such evidence by the judge that the objecting party seeks to prevent. *Id.* The same is true of all challenged evidence in a bench trial. *Id.*

Mr. Ali severely criticizes the trial court for failing to “eradicate racism and prejudice” when the trial court took pains to do exactly that. The trial court in this case should be commended for taking Mr. Ali’s accusation of racism seriously and “scouring the record” for evidence of racism playing a factor in the court’s decisions. (RP 16). She further made pains to assure the parties that the allegedly racist statement “has

absolute zero credibility with this Court”. (RP 6). Instead, Mr. Ali infers that the trial judge in this case was utterly unable to do the very thing the trial judge actually did, which is “to eradicate racism and prejudice.”

There is nothing in the record which suggests that the trial court considered the allegedly racist statement. In fact, the court went to pains not to consider it. Mr. Ali did not move to strike it from the record. The trial court did not err in this matter.

v) The Court of Appeals affirmed that provisions of RCW 7.105 were correctly applied by the Superior Court based on evidence in the record.

Division II in its unpublished opinion affirmed that the provisions of RCW 7.105 were correctly applied by the Superior Court based on the evidence on the record. Division II also addressed that “A court “shall issue” a DVPO “If it finds by a preponderance of evidence that “the petitioner has been subjected to domestic violence by the respondent.” RCW 7.105.225 (1)(a).

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Division II concluded that “there is no evidence in the

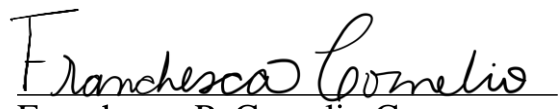
record that the superior court judge considered the racial generalization in the police dispatcher's statement. And with no challenge to the judge's findings, those findings constitute a preponderance of the evidence that Cornelio-Cuevas was the victim of domestic violence."

V. CONCLUSION

For the reasons set forth, Respondent Franchesca Paola Cornelio Cuevas respectfully requests that this court affirm the trial court's decision and the Court of Appeals' unpublished opinion. Also, Respondent Franchesca Paola Cornelio Cuevas respectfully request that Musah Koram Ali's Petition for Review be denied.

Certificate of Compliance: This document contains 2,769 words in 14-point Times New Roman font, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted on this May 24, 2025


Franchesca P. Cornelio Cuevas,
Respondent

FRANCESCA CORNELIO CUEVAS - FILING PRO SE

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