No. 406962

WASHINGTON STATE COURT OF APPEALS

DIVISION III

TAYLOR RAE MCAVOY, Petitioner/Appellant

v.

ALEXANDER THOMAS SIEG, Respondent

PETITION FOR REVIEW

Taylor McAvoy, Petitioner/Appellant
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Petition for Review

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I**.** Introduction

RAP 13.3(a) states: A party may seek discretionary review by the Washington Supreme Court of a Court of Appeals' decision. I am seeking the Supreme Court of Washington's review of the Division III Appellate Court's decision in this case.

Statement of facts

This case began on May 3rd 2024 with a temporary protection order due to sexual assault (CP 31-41) from Thurston County Family and Juvenile Court by Commissioner Rebekah Zinn. On May 30th, 2024, this protection order was granted on preponderance of the evidence for one year (CP 90-100) in the same court. On August 29th, 2024 there was a hearing on the respondent's motion for revision, revision was granted by a visiting Judge from Lewis County, and a denial order entered. I appealed this decision (see appellant's brief). The Court of Appeals Division III denied the appeal in a letter on April 17th 2025. I submitted a motion for reconsideration which the appeals court also denied on April 29th 2025.

I am seeking the Supreme Court of Washington's review due to several factors, 1) sexual assault is clear in this case and outlined in both parties testimonies agreeing that sexual assault did, in fact, happen (RP 5/30/24 1-38), 2) the respondent engaged in threatening behavior after the assault in question (RP 5/30/24 1-38), 3) any sexual assault is grounds for a DVPO, (RCW 7.105.010(9)(a), 4) the appellate court wrote in their letter that they did not consider the lower court's ruling only the superior court's potential abuse of discretion. The lower court made the correct ruling on May 30th 2024 based on the language of the law and the facts of the case at hand (RP 90-100, RP 5/30/24 1-38), and 5) I am asking the supreme court to consider whether the commissioner made the correct ruling on May 30th 2024 and respond with opinion as well as respond with issuing a protection order for the following year.

II. Assignments of Error

1. The lower court made the correct ruling granting a protection order on May 30th, 2024. The appeals court did not assess or fully consider the commissioner's ruling,

only the superior court's ruling and wrote this explanation in their letter (CP opinion 4/17/25).

2. The appeals court in their letter, uses inappropriate language, characterizing subjective language as statement of fact (example, "intimate misunderstanding") (CP opinion 4/17/25).

3. Regardless of the appeals court finding a lack of abuse of discretion by the superior court, a protection order should still have been entered because it was already determined that sexual assault did occur.

III. Issues Pertaining to Assignments of Error

1. Was the court commissioner correct in granting a protection order for one year based on documentation, testimony on May 30th and preponderance of the evidence?
2. Does the court concur that sexual assault occurred based on the facts of the case after reviewing court transcripts from May 30th 2024 and August 29th 2024?

3. Can the court issue a protection order for the following year based on the facts of the case?

IV. Argument for review

As stated above, RAP 13.3(a) states: A party may seek discretionary review by the Washington Supreme Court of a Court of Appeals' decision. This case warrants the Supreme Court's discretion due its nature surrounding the sexual assault at hand and due to a significant safety risk that this process has posed to me, the petitioner.

The lower court made the correct ruling granting a protection order on May 30th, 2024. The appeals court did not assess or fully consider the commissioner's ruling, only the superior court's ruling and wrote this explanation in their letter (CP opinion 4/17/25).

Evidence based on both parties' written documentation and verbal testimony in a hearing on May 30th 2024 support that on preponderance of the evidence Mr. Sieg engaged in unwanted sexual misconduct (RP 05/30/24 28-31). The commissioner in that hearing ruled on that evidence and issued

a protection order for one year following. This was revised by a visiting judge who did not engage in due process and later upheld on appeal.

The commissioner during the original ruling, conducted extensive questioning of both parties on May 30th 2024 and provided a detailed breakdown of RCW 7.105.010 explaining how, under preponderance of the evidence, consent was not met (RP 05/30/24 28-31). The commissioner examines the words used in both testimonies and states "I am not interpreting whatever either of you said to be actual words saying take the condom off, you cannot use a condom" (RP 05/30/24 30). Then she addresses conduct stating "According to Mr. Sieg, there was 15 or 20 seconds that passed, there were some things going on, and Ms. McAvoy could see what was happening potentially and didn't stop it. According to Ms. McAvoy, she couldn't see. She didn't know what was going on. And actually, that's consistent with what both of you said" (RP 05/30/24 30). She notes that the respondent claims the assault was in error saying "Mr. Sieg apologized and he acknowledged something went wrong. I thought you gave permission. You didn't give, you're

saying you didn't give permission. So, I'm turning to the sentence very strongly, 'Conduct short of voluntary agreement does not constitute consent as a matter of law.' There was not voluntary agreement. Both of you seem to acknowledge that." (RP 05/30/24 31). She ultimately stated "We don't have a word—actual words that give permission to do this. And we don't have conduct that is voluntary agreement. What that all adds up to is that this was a sexual assault" (RP 05/30/24 31).

The visiting judge, Judge Lawler from Lewis County, in the following hearing a few months later did not apply the same discretion to the case asking the respondent follow up questions but asking me, the petitioner, no other questions (RP 08/29/24 20-21), used degrading language, and demonstrated bias, all detailed in my brief to the court of appeals (See appellant's brief). Frankly, the judge had already made up his mind before that hearing began. Additionally, the judge struck all of the respondent's arguments for the revision yet still ruled in the respondent's favor without offering additional explanation (RP 08/29/24 21-32).

Additionally, RCW 7.113.010 went into effect July 1st of 2024. It adds language around sexually protective devices like condoms. It says that "A person who engaged in sexual contact or sexual penetration with another person may bring a civil action against that other person if prior to sexual contact or sexual penetration both persons understood and agreed that a sexually protective device would be used and the other person; (a) engaged or continued to engage in sexual contact or sexual penetration after the other person; (i) removed the sexually protective device without consent of the person bringing the action; or (ii) knew or became aware that the sexually protective device had been unintentionally removed, but did not obtain consent from the person bringing the action to engage or continue engaging in sexual contact or sexual penetration without the use of a sexually protective device"

Both the respondent and I agree that we had a conversation about using a condom before the sexual interaction began (RP 05/30/24 9-18). The respondent also agrees that he was wearing a condom when the sexual encounter began (RP 05/30/24 16) indicating in his behavior

that he understood what the limitation was. RCW 7.113.010 makes it clear that even if the respondent made a mistake and misinterpreted something I said as he claims, he should have sought consent before continuing with the action as a matter of law.

Finally, RCW 7.105.010 defines consent as (5) "Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law.” The respondent did not engage in ongoing consent, as the commissioner ruled on May 30th 2024. The respondent also agrees that sexual contact stopped for an extended period of time in which there was no consent to continue in any capacity regardless of the issue of a sexually protective device (RP 05/30/24 1-30).

V. Conclusion

In summary, the revising judge made an error in granting the respondent's motion for revision on the protection order previously granted. The respondent did not meet burden of proof for establishing the original ruling was in error as the revising judge struck the respondent's arguments regarding issues of consent. The revising judge did not provide any basis or details for his decision about why he found insufficient evidence. There was an act of domestic violence in the form of sexual assault under preponderance of the evidence that was made clear in areas in which both party's testimonies align and analysis of the RCWs involving sexual conduct proves consent was not met. I ask the court to consider the lower court's opinion and experience in matters like these and determine that the lower court did, in fact, make the correct ruling. I ask the court to issue a protection order for the following year.

Certificate of Service

I certify that on the 7th day of May, 2024,

I caused a true and correct copy of this Statement of

Arrangements to be served on the following in the manner

indicated below:

Name (Alexander Sieg)

Email: alexander.t.sieg@gmail.com

Certificate of compliance

This document was prepared using word processing software and contains 1,531 words excluding title page, table of contents, certificate of service, and certificate of compliance. This document is compliant with RAP 10.4 for a brief of appellant and is, in total, 11 pages and a title page.

I certify under penalty of perjury under the laws of the state of

Washington that the foregoing is true and correct.

Respectfully submitted,

Signed at (City) Tumwater (State) WA on

(Date) 5/7/25

Taylor McAvoy

Signature

Taylor McAvoy, Pro Se

TAYLOR MCAVOY - FILING PRO SE

May 07, 2025 - 7:10 PM

Transmittal Information

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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of the Domestic Violence Protection Order for TAYLOR McAVOY.	)))))))	No. 40696-2-III UNPUBLISHED OPINION

LAWRENCE-BERREY, C.J. — Taylor McAvoy appeals after the superior court granted revision of a commissioner's order that had granted her petition for a domestic violence protection order (DVPO). We review the superior court's denial of a DVPO for an abuse of discretion. We find no abuse of discretion and affirm.

FACTS

Taylor McAvoy and Alexander Sieg had a romantic relationship for over one year, but an intimate misunderstanding led to McAvoy losing trust with Sieg. As the relationship unraveled, various requests were made, including to return gifts and personal items. The loss of trust felt by McAvoy increased, and she perceived Sieg as becoming controlling. As a result, she petitioned for a DVPO.

A court commissioner heard and granted McAvoy's petition. Sieg moved for revision, and the superior court granted his motion. In its ruling, the court agreed with McAvoy's earlier description of the dispute as "he said/she said," and found that

McAvoy had not met her burden of proof. Report of Proceedings (RP) (Aug. 29, 2024) at 21-22.[1]

McAvoy appeals.

ANALYSIS

REVISION MOTION AND PROTECTION ORDER

RCW 2.24.050 states that "[a]ll of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court."

> While revision is much like an appeal, under RCW 2.24.050 and the developed case law the superior court judge is not required to defer to the fact-finding discretion of the commissioner like we defer to the superior court's exercise of fact-finding discretion on appeal. A revision court may, based upon an independent review of the record, redetermine both the facts and legal conclusions drawn from the facts. Thus, the superior court on revision may review factual determinations for substantial evidence, but is not limited to a substantial evidence inquiry under RCW 2.24.050.

In re Marriage of Dodd, 120 Wn. App. 638, 645, 86 P.3d 801 (2004) (citations omitted). On appeal, we review the superior court's ruling, not the commissioner's. *Faciszewski v. Brown*, 187 Wn.2d 308, 313 n.2, 386 P.3d 711 (2016).

Our review does not look to whether we would have come to the same conclusion as the superior court. Rather, we review the court's decision to grant or deny a DVPO for

[1] The intimate details of the misunderstanding are omitted from our statement of facts because even an unpublished opinion is a public record, and we believe that decorum and respect for the parties requires this.

abuse of discretion. *Rodriguez v. Zavala*, 188 Wn.2d 586, 590, 398 P.3d 1071 (2017). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect legal standard or the facts do not meet the requirements of the correct standard." *Id.* at 47.

RCW 7.105.225 provides in relevant part that:

> (1) The court shall issue a protection order if it finds by a preponderance of the evidence that the petitioner has proved . . . .
> (a) For a domestic violence protection order, that the petitioner has been subjected to domestic violence by the respondent.
> . . . .
> (3) In proceedings where the petitioner alleges that the respondent engaged in nonconsensual sexual conduct or nonconsensual sexual penetration, the court shall not require proof of physical injury on the person of the petitioner or any other forensic evidence. Denial of a remedy to the petitioner may not be based, in whole or in part, on evidence that:
> . . . .
> (c) The petitioner engaged in limited consensual sexual touching.

"Domestic violence" in this context is defined in relevant part as "nonconsensual sexual conduct or nonconsensual sexual penetration; [or] coercive control." RCW 7.105.010(9)(a). "Sexual penetration" in this context is defined as "any contact,

however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person . . . into the sex organ or anus of another person." RCW 7.105.010(33). "Consent" means "at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law." RCW 7.105.010(5).

The superior court was presented with two different versions of the intimate misunderstanding. Both parties presented some corroborating evidence for their version of events. But there is no indication that the revising court misunderstood the law or applied the wrong legal standards in this case. So our role is limited to determining whether the court's decision was within the range of acceptable choices, given the evidence before it.

The court found the evidence to be equally strong on both sides and agreed the evidence was a "he said/she said type of thing," stating, "I'm faced with those differing versions of these events, and I cannot find that that is proof by a preponderance of the evidence." RP (Aug. 29, 2024) at 21-22. This finding was within the range of acceptable choices for the revision court, given that the two versions of events were equally plausible. We conclude that the superior court did not abuse its discretion by granting

revision and denying McAvoy's petition for a DVPO.

PROCEDURAL ISSUES[2]

McAvoy raises various procedural challenges. We address each in turn.

McAvoy first contends she was never served with a copy of the transcript of the hearing before the commissioner after Sieg filed his motion for revision. Thurston County Local Rule 53.2(e)(3)(A) requires the party moving for revision to provide a transcript of the hearing before the commissioner to the *court* but it contains no requirement that the other party needs to be similarly served.

McAvoy next contends Sieg improperly served her with court documents by e-mail when she should have been served by a third party. But, in a pleading, McAvoy agreed to accept legal papers by e-mail and did not provide a street address or post office box where she could have accepted legal papers.

McAvoy further contends the revision hearing was untimely because, although there was good cause to continue it, no one filed a motion to continue. CR 1 states that the rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." Here, the local superior court judges recused themselves, due to Sieg's work before them, and there was delay obtaining a visiting judge to hear the

[2] Although not in her assignments of error, McAvoy raises issues related to superior court procedure as applied to her case. We address the arguments because the issues are sufficiently briefed.

revision motion. The delay is understandable and, in such a case, we will not place procedure over substance to overturn a result fairly reached.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, C.J.

WE CONCUR:

Staab, J.

Murphy, J.

Tristen L. Worthen
Clerk/Administrator

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April 17, 2025

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CASE # 406962
Taylor Rae McAvoy, Appellant v. Alexander Thomas Sieg, Respondent
THURSTON COUNTY SUPERIOR COURT No. 2423031234

Mr. Sieg and Ms. McAvoy:

Enclosed please find a copy of the opinion filed by the court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or, if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TW/pb
Enc.

c: **E-mail** info copy to Kristin Jensen (Hon. James Lawler's case)