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FILED

FEB 12 2007

Sherry W. Parker, Clerk, Clark Co.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BRIAN P. CARR,
Appellant,

v.

KARYN S. HUNTING,
Respondent.

No. 32671-0-II consolidated with
No. 32811-9-II

MANDATE

Clark County Cause No.
04-2-08908-9 04-2-08824-4

The State of Washington to: The Superior Court of the State of Washington
in and for Clark County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on May 9, 2006 became the decision terminating review of this court of the above entitled case on January 31, 2007. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.



IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Court at
Tacoma, this 8th day of February, 2007.

[Signature]
Clerk of the Court of Appeals,
State of Washington, Div. II

Karyn S. Hunting
14417 SE 7th St
Vancouver, WA, 98683

Brian P. Carr
11301 NE 7th St Apt J5
Vancouver, WA, 98684

FILED:
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DIVISION II

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STATE OF WASHINGTON

BY _____
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No. 32671-0-II/32811-9-II

UNPUBLISHED OPINION

PENoyer, J. — Brian P. Carr appeals a domestic violence protective order against him. He argues that there was no basis of violence or threats of violence and that court commissioners lack authority to issue protective orders. Carr also argues that his due process rights were violated and that the trial court erred in denying his request for a protective order. We affirm.

FACTS

In August 2004, Karyn S. Hunting (Hunting) filed for divorce and asked her husband, Brian P. Carr (Carr), to move out of her house. Carr refused to sign the divorce papers, and refused to move out of Hunting's house until he could secure alternate housing. He moved out of Hunting's home forty-five days after she asked him to leave.

Carr began attending social functions where Huntting was also present. Huntting asked him not to attend, but he refused to "leave her alone." Report of Proceedings (RP) (10/27/04) at 4. Carr also accepted a job approximately four blocks away from Huntting's workplace and moved into an apartment just down the street from her home. On September 28, Carr called Huntting late at night stating he needed to retrieve some belongings from her home. He arrived at her door at 11:30 P.M. and forced himself into the house even though she tried to shut the door to keep him out.

On October 7, a package addressed to Carr was delivered to Huntting's residence. She brought it inside the house and left town on a trip. Carr called her repeatedly, stating he needed the package immediately. Huntting told him she would arrange for him to pick it up when she returned. Carr stated he was going to her house to get it. When Huntting returned to her house, the package, a rolling pin, a cord, and a light fixture were all missing. Huntting filed a police report.

On October 15, Huntting received a temporary protective order against Carr. In her petition, Huntting claimed that Carr had committed residential burglary at her home on October 7; that he was stalking and harassing her through unwanted contact, phone calls, and emails; and that he stated he intended to harass and upset her. Huntting stated that she experienced severe migraine headaches as a result of the stress Carr's actions caused and that a neurologist was treating her for her condition.

On October 27, Carr and Huntting each testified about whether the temporary protective order should be extended to a period of one year. The trial court issued the protective order, prohibiting Carr from causing physical harm (including harassing, threatening, or stalking) to Huntting; coming near or having any contact whatsoever with her (except as related to the couple's dissolution); entering or being within 250 feet of Huntting's current residence; and knowingly coming within, or knowingly remaining within, 300 feet of Huntting's person, workplace, day care, or school of Huntting's son.

The trial court found that Carr's actions constituted domestic violence, trespass, and stalking. Carr disputed the findings, to which the court stated, "She is terrified. If you look at her, I can find that just looking at her . . . She's terrified, can't you see that?" RP (10/27/04) at 8-9. The protective order expired on October 27, 2005, and is no longer in effect.

Carr also petitioned for a temporary protective order and a permanent protective order against Huntting. Carr alleged that Huntting twice threw a cup of coffee at him and that she struck a plate of food that Carr was holding. He did not claim any resulting injuries. The trial court denied Carr's petitions.

Carr filed numerous subsequent motions in trial court.¹ The court scheduled a hearing for February 11, 2005 but, on February 16, 2005, the trial court found that Carr's filings "created an unreasonable burden for court staff" and denied Carr's request for a hearing. Clerk's Papers

¹ On November 23, 2004, Carr filed a motion for review of a protective order, which was denied (CP 139); on December 29, Carr filed an affidavit for record; on December 30, 2004, Carr filed a motion to revise; on January 6, 2005, Carr filed a motion to revisit and consolidate; on January 11, 2005, Carr filed a motion, memorandum in support, and affidavit, to reschedule and consolidate; on January 14, 2005, he filed a motion requesting decision and fact finding hearing, which was denied; on January 19, 2005, he filed another temporary protective order, which was denied; and on April 1, 2005, Carr filed an affidavit of jurisdiction.

(CP) at 36. The court stated that it would schedule a hearing only if a judge found an adequate basis in law and fact.

ANALYSIS

I. HUNTING'S PROTECTIVE ORDER

Carr, pro se, raises numerous arguments and mainly seems to dispute that there were no valid grounds to issue the protective order against him. He asks this court to reverse the trial court's issuance of the protective order. He argues that his actions did not constitute stalking and that the crime of trespass was not relevant. He claims he did not threaten Hunting. He argues that, even though the protective order expired on October 27, 2005, the issue is not moot because the protective order may be publicly disseminated.

A case is considered moot if there is no longer a controversy between the parties, if the question is merely academic, or if a substantial question no longer exists. *Pentagram Corp. v. City of Seattle*, 28 Wn. App. 219, 223, 622 P.2d 892 (1981) (citing *State ex. rel. Chapman v. Superior Court*, 15 Wn.2d 637, 131 P.2d 958 (1942); *Grays Harbor Paper Co. v. Grays Harbor County*, 74 Wn.2d 70, 442 P.2d 967 (1968); *Sorenson v. Bellingham*, 80 Wn.2d 547, 496 P.2d 512 (1972)). A case is not moot if a court can still provide effective relief. *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983) (citing *Pentagram Corp.*, 28 Wn. App. at 223). Even though the protective order has expired, Carr claims the court can still provide relief in correcting the record as to his propensity to domestic violence.

This case arguably is not moot, since part of the relief Carr seeks is to cleanse his record of the protective order. Thus, we will review the substance of Carr's claims.

The Domestic Violence Prevention Act creates “an action known as a petition for an order for protection in cases of domestic violence.” RCW 26.50.030. “Domestic violence” includes the infliction of fear of imminent physical harm, bodily injury or assault, or stalking as defined in RCW 9A.46.110. RCW 26.50.010(1). The protective order petition must be accompanied by a sworn affidavit, setting forth the facts supporting the request for relief. RCW 26.50.030(1). To receive a temporary order, the petitioner must allege that irreparable injury could result if an order is not immediately issued. RCW 26.50.070(1). The temporary order may not exceed 14 or 24 days, depending on the type of service. RCW 26.50.070(4).

The court may restrain the respondent from committing domestic violence, from entering the petitioner’s residence or workplace, and from contacting the petitioner. RCW 26.50.060(1) (a), (b), (h). If the court finds that the respondent “is likely to resume acts of domestic violence against the petitioner . . . when the order expires,” the court has discretion to enter a permanent protective order. RCW 26.50.060(2). We will not disturb an exercise of discretion on appeal absent a clear showing of abuse. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

A trial court’s findings will be upheld on appeal if substantial evidence in the record supports them. *In re the Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *In the Matter of the Contested Election of Schoessler*, 140 Wn.2d 368, 385, 998 P.2d 818 (2000) (citing *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994)); *Pilcher v. State Dep’t of Revenue*, 112 Wn. App. 428, 435, 49 P.3d 947 (2002).

In *Hecker v. Cortinas*, 110 Wn. App. 865, 43 P.3d 50 (2002), we found sufficient evidence to support the issuance of a protective order when the respondent appeared uninvited at the petitioner's house, pounded on the exterior wall, demanded that petitioner come outside, followed the petitioner, and threatened to shoot the petitioner. We pointed out that the Domestic Violence Prevention Act does not require infliction of physical harm; rather, the infliction of "fear" of physical harm is sufficient. *Hecker*, 110 Wn. App. at 870.

Here, the trial court found that the crimes of stalking and trespass had occurred and that Huntting was "terrified". RP (10/27/04) at 8. Carr broke into Huntting's home while she was out of town and also forced himself through her doorway, into her house on another occasion when she was home. The trial court observed that Huntting was terrified during the hearing and specifically stated this to Carr.

Given these facts, we find no error in the trial court's issuance of the protective order. There are facts sufficient to persuade a fair-minded, rational person that Carr was stalking Huntting and that she feared Carr would commit acts of domestic violence against her. We hold that the trial court did not err in issuing a protective order against Carr.

II. CARR'S PROTECTIVE ORDER

Carr argues that the trial court erred in not granting him a protective order against Huntting. He argues that Huntting committed three acts of violence against him and that the trial court's denial was "sexual stereotyping". Br. of Appellant at 33.

Again, a trial court's findings will be upheld on appeal if substantial evidence in the record supports them. *Schoessler*, 140 Wn.2d at 385. In his petition, Carr stated that Hunting threw a cup of coffee at him and struck a plate of food he was holding. The trial court did not abuse its discretion by denying Carr's petition and finding that Hunting's actions did not constitute domestic violence.

III. DUE PROCESS VIOLATIONS

Carr argues that his due process rights and his right to have a judge adjudicate his case were violated because Clark County allegedly appointed more than three court commissioners. However, a family law commissioner is not a "commissioner" within the meaning of the constitutional provision limiting the number of court commissioners in counties. *Ordell v. Gaddis*, 99 Wn.2d 409, 409-10, 662 P.2d 49 (1983). Furthermore, in *State v. Karas*, 108 Wn. App. 692, 700-02, 32 P.3d 1016 (2001), we held that a domestic violence protective order did not violate the defendant's right to procedural due process and the statute granting authority to court commissioners included power to issue permanent protective orders under the Domestic Abuse Prevention Act. Therefore, Carr's challenge to the constitutionality of a protective order under the Domestic Violence Protection Act and to the commissioner's authority to issue the order must fail.

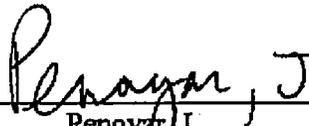
Finally, Carr argues that he was unable to appeal the protective order issued against him and that his motions were denied without a hearing. The trial court specifically found that a hearing was not necessary. Carr's motions did not comply with Civil Rule (CR) 7(b)(1), which

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requires an application for order to state with particularity the grounds for the motion, and to set forth the relief or order sought. We find no due process violation.

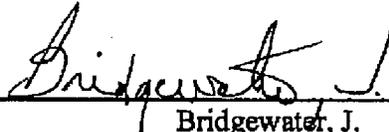
We affirm.

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

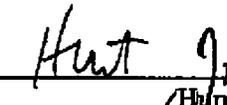


Penoyar, J.

We concur:



Bridgewater, J.



Hunt, J.