

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Brian P. Carr
Plaintiff

versus

Sam Reed, in his official capacity as Secretary of State of the State of Washington, Wanda Briggs in her official capacity as Chair of the State of Washington Commission of Judicial Conduct, and Rob McKenna, in his official capacity as Attorney General of the State of Washington and representing in their official capacity as representatives of the State of Washington and, separately, as private individuals the Honorable Robert L. Harris, John F. Nichols, Barbara D. Johnson, Kenneth Eiesland, Rich Melnick, John Hagensen, Kelli E. Osler, Joel Penoyar, (J.) C. C. Bridgewater, J. Robin Hunt, Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson as well as other currently unnamed parties as determined by the Court
Defendants

Civil No. 3:07-cv-05260-RJB

Declaration of
Brian P. Carr,
September 24, 2007

I, Brian P. Carr, am the Plaintiff in this matter, have knowledge of the facts of this matter, and make the following statements under oath and penalty of perjury.

1. On August 29, 2004, I received a copy of the Dissolution papers which my former wife had filed on August 18, 2004 in case 04-3-02728-9 of the Lincoln County Superior Court. On February 13, 2006, the Decree of Dissolution was signed Judge Borst in that case. A substantial cause of the delay in that matter was our inability to resolve property disputes due to restrictions on my contact with my wife.

2. At the [hearing](#) held on October 27, 2007 in case 04-2-008824-4 before defendant Melnick, at no time was any party sworn under oath or penalty of perjury in that case or any other case which I heard. If there is any dispute as to whether parties were under oath, the audio and video of the hearing is available for any party to review. The hearing was announced as session of the Clark County District Court and defendant Melnick was announced as a judge, but the paperwork presented was that of the Clark County Superior Court with no explanation of jurisdiction or how decisions could be appealed.
3. On November 12, 2004 I submitted a Petition which initiated the action of case 04-2-008908-9 which was denied without any hearing, ex parte or otherwise. The clerk simply handed out the completed Orders. On November 23, 2004, I attempted to file Notice of Appeal (Document 17, page 12, Exhibit B), but was not permitted. Instead I filed a Motion for Review scheduled for December 10, 2004. At that hearing the Motion was denied and later that morning I filed a Notice of Appeal which is attached as Exhibit A.
4. On submitting the [Notice of Appeal](#) (Exhibit A), it was apparent that there was no deciding authority listed or signature for the decision ([document 30-3](#)) appealed from in case 04-2-008908-9. I informally inquired into who the deciding authority was. I learned that the clerk who processes these requests keeps notes outside the record and that it was defendant Melnick who was the deciding authority. This is consistent with the normal process for these matters, defendant B. Johnson's [statements](#) earlier on December 10, 2004, and the hand writing on the different orders. However, it contradicts the letter of defendant B. Johnson of January 7, 2005 ([document 30-2](#)).
5. At no time did I submit another petition in case 04-2-008908-9 nor am I aware of any such document being included in the record. The record in the matter indicates that there was another hearing in case 04-2-008908-9 on [January 19, 2005](#) before defendant Eiesland, but this hearing was [scheduled](#) by defendant Nichols earlier in the month at a time when there were no motions before the court in that matter.
6. Attached as Exhibit B on page 5 and Exhibit C on page 18 are copies of the Affidavits of

Jurisdiction submitted in case 04-2-08908-9 on January 24, 2005 and March 30, 2005 together with the associated Orders. The affidavits have been adjusted to refer to my former wife as Karyn and remove other identifying information for her as she is not a party to this matter. The Orders are attached both as scanned images converted to formatted text as well as scanned images (attached as a separate document). If there are any conflicts between the two versions, the scanned image version should rule. I separately declare that these orders are true and accurate copies of the Orders which I received under the circumstances described in the affidavits.

7. Attached as Exhibit D on page 27 is a copy of the Unpublished Opinion, Carr v. Karyn, Court of Appeals, Division II No. 32671-0-II / 32811-9-II. This copy was scanned into formatted text rather simple images (relying on OCR software) which allowed the replacement of references to my former wife to be her first name only, Karyn. This formatted text copy is provided as a convenience for all parties as it can be easier to read and search. If there are any conflicts with the version which was scanned into an image and provided by the defense in [document 27-2](#), pages 52-60, then the version provided by the defense should rule.
8. Attached as Exhibit E is the Brief I submitted on May 10, 2005 in case 32671-0-II. It is the same document as submitted by the defendants as [document 27-2](#), pages 1-26, except that it is formatted for electronic submission (pdf) making easier access for the court and other parties. As before, all references to my former wife have been changed to her first name only, Karyn.

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

Dated September 24, 2007 at Vancouver, Clark County, WA.

s/ Brian P Carr
Signature of Plaintiff
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

CERTIFICATION

I hereby certify that on September 24, 2007, a true and accurate copy of the foregoing Plaintiff's Declaration was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system as all parties have elected electronic filing as indicated on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.

s/ Brian P Carr
Signature of Plaintiff
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

Exhibit B

Affidavit of Jurisdiction
of Brian P Carr in
Carr v. Karyn
Clark County Superior Court
January 24, 2005
04-2-08908-9

In the Superior Court of Clark County
State of Washington

		Number
Karyn Petitioner/Respondent		04-2-08824-4 and
versus		04-2-08908-9
Brian Patrick Carr Respondent/Petitioner		Affidavit of Jurisdiction

I, Brian P Carr, am the respondent/petitioner in these matters, have knowledge of the facts of these matters and make the following statements under oath and penalty of perjury.

1. When inquiring at the Clark County Superior Court Chief Administrator's Office as to how District Court Judges could make decisions on Superior Court matters, I received four Orders appointing different Clark County District Court Judges as Superior Court Commissioners in 2004. These four orders are attached as Exhibit A.
2. These orders include the appointment Orders for the Honorable Eiesland who initially reviewed the petition in case 04-2-08824-4 and the Honorable Melnick who later heard case 04-2-08824-4 and appears to have initially reviewed the petition in 04-2-08908-9.
3. As Article IV, Section 23 of the Washington State Constitution states that in each county the Superior Court can appoint Commissioners 'not exceeding three in number' there is a question as to whether these Commissioners ever had jurisdiction in these matters.
4. As the order for the Honorable Melnick expired on December 31, 2004, I also obtained the Order appointing him for 2005 which is Exhibit B. As there was a seven day gap before he was reappointed, any jurisdiction which he would have had in these matters expired with his 2004 appointment.
5. As such, I concluded that all jurisdiction for these cases now resides with the Honorable Johnson who last heard each of the cases.

Notice of Service:

On January 23, 2005, I mailed a copy of this affidavit to Karyn in an envelope addressed to Karyn XXXX, XXXXXX, Vancouver, WA XXXX with first class postage attached which I placed in a U.S.P.S. mail box located at Stark Street and SW 5th Ave, Portland, OR.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. I also certify that this affidavit was prepared personally without the advice of any attorney and that I understand that the court by entering a decree or other order does not relieve myself of the responsibility for any omissions, defects, or inaccuracies in the file or matters presented or any consequences resulting therefrom.

January 24, 2005
Dated

Vancouver, WA
Location

s/ Brian P Carr
Signature of Respondent/Petitioner

Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
360-607-0556

Petitioner/Respondent:
Karyn XXXX
XXXXXX

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)	
OF COURT COMMISSIONER)	ORDER AND OATH
)	
_____)	

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Kenneth R. Eiesland, a citizen of the United States, is appointed Court Commissioner of the above-entitled Court to hold office from January 1, 2004 through December 31, 2004, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 15 day of January, 2004.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

IIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)	
OF COURT COMMISSIONER)	ORDER AND OATH
)	
_____)	

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Richard Melnick, a citizen of the United States, is appointed part-time Court Commissioner of the above-entitled Court, to hold office from April 30, 2004 through through December 31, 2004, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 30 day of April, 2004.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)
OF COURT COMMISSIONER) ORDER AND OATH
)
)
_____)

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Scott S. Anders, a citizen of the United States, is appointed Court Commissioner of the above-entitled Court to hold office from January 1, 2004 through December 31, 2004, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 15 day of January, 2004.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)
OF COURT COMMISSIONER) ORDER AND OATH
)
)
_____)

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Vernon L. Schreiber, a citizen of the United States, is appointed Court Commissioner of the above-entitled Court to hold office from January 1, 2004 through December 31, 2004, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 15 day of January, 2004.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)
OF COURT COMMISSIONER) ORDER AND OATH
)
)
_____)

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Richard Melnick, a citizen of the United States, is appointed Court Commissioner of the above-entitled Court to hold office from January 1, 2005 through December 31, 2005, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 7th day of January, 2005.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

Exhibit C

Affidavit of Jurisdiction
of Brian P Carr in
Carr v. Karyn
Clark County Superior Court
March 30, 2005
04-2-08908-9

In the Superior Court of Clark County
State of Washington

Brian Patrick Carr Petitioner	Number
versus	04-2-08908-9
Karyn Sue Huntting Respondent	Affidavit of Jurisdiction

I, Brian P Carr, am the petitioner in these matters, have knowledge of the facts of these matters and make the following statements under oath and penalty of perjury.

1. From the Clark County Superior Court Chief Administrator's Office, I received three Orders appointing Clark County District Court Judges Eiesland, Anders, and Schreiber as Superior Court Commissioners in 2005. These three orders are attached as Exhibit A.
2. As Article IV, Section 23 of the Washington State Constitution states that in each county the Superior Court can appoint Commissioners 'not exceeding three in number' there is a question as to whether these Commissioners ever had jurisdiction in these matters.
3. These orders were not presented previously because until February 19, 2005 I had no knowledge of the Order signed by the Honorable Eiesland on January 19, 2005. These orders are being added to the record as, while Judge Johnson would certainly be aware of the appointments, the Court of Appeals would not.

Notice of Service:

On March 30, 2005, I mailed a copy of this affidavit and attached exhibit along with the amended Designation or Record on Appeal of the same date to Ms. Huntting in an envelope addressed to Karyn Huntting, 14417 SE 7th St, Vancouver, WA 98683 with first class postage attached which I placed in a U.S.P.S. mail box located at Stark Street and SW 5th Ave, Portland, OR.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. I also certify that this affidavit was prepared personally without the advice of any attorney and that I understand that the court by entering a decree or other order does not relieve myself of the responsibility for any omissions, defects, or inaccuracies in the file or matters presented or any consequences resulting therefrom.

March 30, 2005

Dated

s/ Brian P Carr
Signature of Petitioner

Vancouver, WA

Location

Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
360-607-0556

Respondent:

Karyn XXXXX
XXXXX

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)
OF COURT COMMISSIONER) ORDER AND OATH
)
)
_____)

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Kenneth R. Eiesland, a citizen of the United States, is appointed Court Commissioner of the above-entitled Court to hold office from January 1, 2005 through December 31, 2005, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 7 day of January, 2005.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)
OF COURT COMMISSIONER) ORDER AND OATH
)
)
_____)

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Scott S. Anders, a citizen of the United States, is appointed Court Commissioner of the above-entitled Court to hold office from January 1, 2005 through December 31, 2005, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 7 day of January, 2005.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF THE APPOINTMENT)	
OF COURT COMMISSIONER)	ORDER AND OATH
)	
_____)	

It appearing to the Court that there is sufficient business of this court to warrant the appointment of a Court Commissioner pursuant to Article 4, Section 23, of the Washington State Constitution and RCW 2.24.010, now, therefore,

IT IS HEREBY ORDERED that Vernon L. Schreiber, a citizen of the United States, is appointed Court Commissioner of the above-entitled Court to hold office from January 1, 2005 through December 31, 2005, and to exercise such power, authority and jurisdiction concurrent with the Judges of the above-entitled Superior Court as conferred by Article 4, Section 23, of the Washington State Constitution and RCW 2.24.040 and as directed by the Judges of the above-entitled Court.

DATED this 7 day of January, 2005.

S/ Robert Harris

JUDGE OF THE SUPERIOR COURT

Exhibit D

Unpublished Opinion

Carr v. Karyn

Court of Appeals, Division II

Case No. 32671-0-II/32811-9-II

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

BRIAN P. CARR,

Appellant,

v.

KARYN

Respondent.

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 XXXXX (Karyn) 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 Karyn's house until he could secure alternate housing. He moved out of Karyn's home forty-five days after she asked him to leave.

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Carr began attending social functions where Karyn was also present. Karyn 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 Karyn's workplace and moved into an apartment just down the street from her home. On September 28, Carr called Karyn 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 Karyn's residence. She brought it inside the house and left town on a trip. Carr called her repeatedly, stating he needed the package immediately. Karyn 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 Karyn returned to her house, the package, a rolling pin, a cord, and a light fixture were all missing. Karyn filed a police report.

On October 15, Karyn received a temporary protective order against Carr. In her petition, Karyn 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. Karyn 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.

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On October 27, Carr and Karyn 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 Karyn; coming near or having any contact whatsoever with her (except as related to the couple's dissolution); entering or being within 250 feet of Karyn's current residence; and knowingly coming within, or knowingly remaining within, 300 feet of Karyn's person, workplace, day care, or school of Karyn'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 Karyn. Carr alleged that Karyn 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.

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(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. KARYN'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 Karyn. 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.

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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).

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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 Karyn was "terrified". *RP (10/27/04) at 8*. Carr broke into Karyn'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 Karyn 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 Karyn 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 Karyn. He argues that Karyn committed three acts of violence against him and that the trial court's denial was "sexual stereotyping". *Br. of Appellant at 33*.

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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 Karyn 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 Karyn'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.

s/ Penoyar, J.

Penoyar, J.

We concur:

s/ Bridgewater, J.

Bridgewater, J.

s/ Hunt, J.

Hunt, J.