

Superior Court of Washington
For King County

No. 17-2-01981-0 KNT

Michelle Watts
Petitioner (Protected Person)
vs.

Denial Order
 Domestic Violence
 Antiharassment
 Vulnerable Adult
 Sexual Assault
 Stalking
(Optional Use) (ORDYMT)
 Clerk's Action Required
Next Hearing Date/Time: _____
At: _____

Michael Gains
Respondent (Restrained Person)

This Matter having come on for hearing upon the request of (name) Michelle Watts,
for a:

- Temporary Order Full Order Renewal Order
- Modification Order Termination Order

and the Court Finding:

- Petitioner Respondent did not appear.
- Petitioner requested dismissal of petition.
- The order submitted has not been completed or certified upon penalty of perjury.
- This order materially changes an existing order. A hearing after notice is necessary.
- No notice of this request has been made or attempted to the vulnerable adult opposing party.
- The petitioner has failed to demonstrate that there is sufficient basis to enter a temporary order without notice to the vulnerable adult opposing party.

Domestic Violence:

- The domestic violence protection order petition does not list a specific incident and approximate date of domestic violence.
- A preponderance of the evidence has not established that there is domestic violence.*
- The respondent proved by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the protection order expires.

* See supplement findings attached hereto

- For Respondent's motion to modify or terminate a domestic violence Order for Protection effective longer than two years,
 - A preponderance of the evidence **failed** to establish that:
 - the modification is warranted.
 - for a modification to shorten the duration or remove restrictions against domestic violence acts or threats, or for termination, there has been a substantial change of circumstances such that the respondent is unlikely to resume acts of domestic violence against the petitioner or other persons protected in the order, to wit:
 - since the protection order was entered, the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts; has exhibited suicidal ideation or attempts; has been convicted of criminal activity; neither acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order nor successfully completed domestic violence perpetrator treatment or counseling;
 - the respondent has continued to abuse drugs or alcohol, if such was a factor in the protection order.
 - the petitioner has has not voluntarily and knowingly consented to terminating the protection order
 - the respondent or petitioner moving further away from the other party will stop acts of domestic violence.
 - other _____.
 - the respondent proved that there has been a substantial change of circumstances; however, the court declines to terminate the Order for Protection because the acts of domestic violence that resulted in the issuance of the Order for Protection were of such severity that the order should not be terminated.

Sexual Assault:

- The sexual assault protection order petition does not list a specific incident and approximate date of nonconsensual sexual contact or nonconsensual sexual penetration.
- For a temporary sexual assault protection order, reasons for denial of the order are:

- A preponderance of the evidence has not established that there has been nonconsensual sexual contact or nonconsensual sexual penetration.

Vulnerable Adult:

- The vulnerable adult protection order petition does not list specific incidents and approximate dates of abandonment, abuse, neglect, or financial exploitation of an alleged vulnerable adult.
- A preponderance of the evidence has not established that there has been abandonment, abuse, neglect, or financial exploitation of an alleged vulnerable adult.
- The vulnerable adult protection order petition does not demonstrate that the petitioner is an "interested person" under the definition as stated in RCW 74.34.020(9).

Stalking:

- The stalking protection order petition does not list specific incidents and approximate dates of stalking conduct.
- A preponderance of the evidence has not established that there has been stalking conduct. *see supplemental findings attached hereto.*

- The respondent proved by a preponderance of the evidence that the respondent will not resume acts of stalking conduct against the petitioner or the petitioner's children or family or household members when the protection order expires.

Harassment:

- The harassment protection order petition does not list specific incidents and approximate dates of harassment.
- A preponderance of the evidence has not established that there has been harassment.
- The respondent proved by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the protection order expires.
- Other: _____

The court orders that:

- The request to waive the filing fee is denied.
- The request for a temporary order is denied and the case is dismissed.
- The request for a full order is denied, and the petition is dismissed. Any previously entered temporary order expires at 11:59 am on today: 5/18/17
- The request for a temporary order is denied and the clerk is directed to set a hearing on the petition.
- The request before the court is denied, provided that it may be renewed after notice has been provided to the vulnerable adult opposing party according to the Civil Rules.
- The request to modify, terminate, or renew the order dated _____ is denied.
- The request for a temporary/final Order to Surrender Weapons is denied.
- If any firearms or dangerous weapons have been surrendered under this cause number, they shall be released to the respondent, absent some other legal reason that may exist prohibiting the respondent from possessing them.
- The parties are directed to appear for a hearing as shown on page One. The requesting party shall make arrangements for service of the petition/motion and this order on (name) _____

_____ by
law enforcement, professional process server, a person who is 18 or older, competent to be a witness, and not a party to the case. A Return of Service shall be filed with the clerk at or before the hearing.

Failure to Appear at the Hearing May Result in the Court Granting All of the Relief Requested in the Petition or Motion.

This order is dated and signed in open court.

Date: 5-23-17 / Time 1:15 pm



Judge/Commissioner MARK J. HILLMAN

I acknowledge receipt of a copy of this order:

➤ _____
Signature of Respondent/Lawyer WSBA No. _____ Print Name _____ Date _____

➤ _____
Signature of Petitioner/Lawyer WSBA No. _____ Print Name _____ Date _____

Supplemental Findings and Conclusions

1. There are three King County Superior Court cause numbers associated with these parties all filed since January 30, 2017, to wit: 17-301263-1 KNT, a Parenting Plan action filed by the mother on March 3, 2017, 17-2-03892-0 KNT, a Petition for a Writ of Habeas Corpus, filed by the father on February 17, 2017, and this matter, 17-2-01981-0 KNT, a Petition for an Order of Protection filed by the mother on January 30, 2017.
2. In all three matters, King County Superior court has determined that Illinois has jurisdiction over the parties' minor child. In an order dated May 15, 2017 Judge Tanya Thorpe set forth in detail the procedural history of this matter and the basis for the court declining jurisdiction over the child under the UCCJEA. While that determination is relevant in this decision, it is not essential in this matter because on February 13, 2017 this court in this action declined to exercise emergency jurisdiction. That decision was not appealed or revised. The remaining issue in this action was whether the Petitioner (mother) should be granted a DVPO that would not include the child.
3. By way of some background, On April 20, 2015 the Illinois Court ordered that the parties were to begin reunification so that the father could have visitation with the child, and further, the Illinois Court denied the Petitioner's request to extend her Domestic Violence Protection Order. In November 2015, The Petitioner fled that State of Illinois, without notice as required by Illinois statute, changed her name and registered the child in school under an alias. She secreted herself and the child in Washington State. On February 29, 2016 the Respondent (father) was awarded primary placement of the

parties' minor child by the Illinois court. On March 18, 2016 the Illinois Court supplemented the order directing law enforcement to pick up the minor child.

4. The child was eventually located and law enforcement (Bellevue PD) picked up the child from school on January 27, 2017. Shortly thereafter, the child was returned to the father, and per the Illinois order he removed the child to his home in Florida.
5. On January 30, 2017, the first court date after the child was picked up by law enforcement, the Petitioner filed this action. She obtained an ex parte Temporary Order of Protection placing the child back with her and was able to enforce that order in Florida on February 6, 2017. On February 13, 2017, the court held a hearing on this matter. The father appeared in court and was served in court. This court declined to exercise emergency jurisdiction in that the Illinois was clearly exercising jurisdiction and had continuing jurisdiction. Thus, the only issue before the court was whether the Petitioner was entitled to a Domestic Violence Protection Order.

Jurisdiction

6. RCW 26.50.240 provides in pertinent part as follows:
 - (1) In a proceeding in which a petition for an order for protection under this chapter is sought, a court of this state may exercise personal jurisdiction over a nonresident individual if:
 - (a) The individual is personally served with a petition within this state;
7. The Respondent was served in this State and although he objected to jurisdiction, he defended the matter on the merits. While the court is somewhat concerned about the "minimal contacts" required under International Shoe Co. v Washington, 326 U.S. 310 (1945), the court cannot find that the Respondent specifically plead a lack of personal jurisdiction. (This court recognizes that this finding deviates from the oral ruling).

Factual Findings

8. To prevail in her Petition, the Petitioner must establish by a preponderance of the evidence that the Respondent has engaged in acts of domestic violence as defined by the statute. In September of 2012, the Illinois court entered a two year order of protection in favor of this Petitioner against the Respondent. The Petitioner requested an extension of that order which was denied in April of 2015. Thus, for the purposes of this action, the court cannot consider those prior acts as a basis to issue a new order as those facts have been adjudicated. The court can consider the fact that a prior order was issued in context of subsequent conduct that may justify a current fear of imminent physical harm, bodily injury or assault, or stalking. The Petitioner presents no credible evidence that the Respondent has engaged in any conduct since entry of the Illinois protection order that would constitute domestic violence.
9. First, the court gives little credibility to the Petitioner's testimony when she states that the Respondent continued to stalk her, track her whereabouts with electronic devices, and made phantom calls to her cell phone in an effort to harass her. It took the Respondent over a year to find the child after the Petitioner left Illinois in violation of the court order. Locating her and the child is not "stalking" in that he had a lawful order placing the child in his care. The Petitioner's conduct is more designed to keep the father from reunifying than protecting herself and the child. She fabricated stories when interviewed by Bellevue police, claiming that she was in a witness protection program, that the Respondent was "heavily connected to the mob" and that he had bribed the Illinois Judge and the Guardian Ad Litem to obtain custody.

10. The Petitioner's own statement in her declaration was that since she "fled" to Washington for her safety and the safety of the child, she did not have any harassing phone calls, she was not stalked, and their lives were not threatened. Her timeline submitted in her reply declaration has no specific allegations after entry of the Illinois Protection Order in 2012. While there are vague unsubstantiated allegations about threats from anonymous numbers there is no evidence to support those allegations or that the Respondent was responsible for making the alleged threats. The Petitioner did not seek this protection order until the child was picked up and placed with the Respondent. There is insufficient evidence to for this court to conclude that the Respondent has engaged in any conduct since entry of the September 2012 Illinois Protection Order that would justify granting the Petition.

CR 11 Sanctions

11. CR 11 allows this court to impose sanctions, including reasonable attorney fees if this court finds that a pleading was submitted for the purpose to harass, delay or increase the cost of litigation. Those sanctions may be imposed on both the party and counsel. This court finds that this action was filed, not for the purposes of protection from domestic violence but rather to delay, prevent or frustrate the enforcement of the Illinois order placing the child with the father. This is further supported by the fact that shortly after this court removed the child from the Temporary Order of Protection and the child was ordered returned to the father by Judge McCullough via a Writ of Habeas Corpus, the mother filed a Petition to Establish a Parenting Plan in Washington in yet another attempt to frustrate the enforcement of the Illinois order. In reading the mother's pleadings as a whole, it is

apparent that she disagreed with the reunification and when it appeared that the father was going to have visitation, she fled. She alleges that she was unaware of the Illinois order placing the child with the father, but her own declaration and conduct makes that unlikely. She states that when she fled to Washington she did not leave a forwarding address. Apparently, she left, as her address, a P.O. Box, because she states: "As a result, the P.O. box held all mail delivered. My attorney in Illinois has in her possession and unopened envelope that was delivered directly from P.O. box which remains unopened as evidence to the Court that I never received notice of the proceedings initiated by the respondent after November of 2015." Not only does this court find that there is no basis to grant the petition it also find that the purpose of this petition and the significant supporting pleadings was to delay and frustrate the enforcement of the Illinois order. Under CR 11 sanctions are justified. The court considered seriously imposing sanctions jointly on counsel but counsel substituted into this case in April. She did not draft many of the pleadings. The court declines to impose sanctions on counsel. The court is however, awarding fees to the Respondent under CR 11 against the Petitioner and finds that the sum of \$3,000.00 is a reasonable award. The Respondent may submit a Judgement and Judgement Summary for entry within ten days of this order.

Signed this 23rd day of May 2017



Commissioner Mark J. Hillman

MARK J. HILLMAN

