IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Matter of:	)	
	)	DIVISION ONE
WANDA M. BELL,	)	
A Vulnerable Adult (Protected Person)	)	No. 65395-4-I
DOB 7/12/1926	)	
	)	UNPUBLISHED OPINION
KATHLEEN CAROVANO,	)	
	)	
Respondent,	)	
	)	
v.	)	
	)	
MAUREEN McCASLIN,	)	
	)	
Appellant.	)	FILED: June 11, 2012
_____	)	

Dwyer, J. — Maureen McCaslin appeals from the terms of a vulnerable adult protection order restraining her contact with her mother and from an order requiring McCaslin to pay an award of $11,000 in costs, including reasonable attorney fees, to her mother's estate. We affirm.

I

Eighty-five year-old Wanda Bell suffers from dementia and is unable to manage her estate or her personal affairs. In May 2008, Bell, through her daughter and legal guardian Kathleen Carovano, sought a vulnerable adult

protection order to protect Bell from her other daughter, Maureen McCaslin. The petition alleged that McCaslin interfered with Carovano's duties as attorney-in-fact for Bell by visiting Bell for several hours a day in her group home and telling Bell that Carovano was taking Bell's money. This caused Bell to become extremely agitated and upset. The petition also claimed that McCaslin had previously filed unfounded complaints with Adult Protective Services against Carovano, was spending nights in Bell's room against the rules of the facility where Bell lived, and had accepted cash gifts from Bell, knowing that Bell lacked the capacity to manage her own finances.

The trial court entered a temporary protection order, restraining McCaslin from soliciting or accepting cash gifts from Bell, and from contacting any financial institution holding Bell's assets. The order also prohibited McCaslin and Carovano from discussing any issue before the court with Bell.

On December 15, 2008, the trial court entered a permanent order, which provided, in pertinent part:

> In the event additional reports alleging abandonment, abuse, financial exploitation or neglect of the Vulnerable Adult are filed by Respondent with any governmental agency in the future, Respondent shall be liable for any costs, including reasonable attorney's fees, incurred by the Attorney-in-Fact or any third party in responding to or defending against any such complaint filed without reasonable cause.

McCaslin moved to terminate the protection order, claiming that RCW 74.34.035 permitted her to make reports to Adult Protective Services. Carovano responded to the motion and sought an award of costs, including reasonable

attorney fees, incurred in responding to McCaslin's motion. The trial court ordered that the terms of the December 15, 2008 protection order would remain in effect, and denied Carovano's request for attorney fees without prejudice.

In response to concerns that McCaslin had been surveiling and photographing her mother's care facility, disturbing other residents and staff, and causing the treatment providers to consider moving Bell to another facility as a result, Carovano moved to modify the protection order. Carovano also requested an award of attorney fees.

On February 23, 2010, the trial court entered a protection order with new restrictions on McCaslin's contact with Bell. The order contained the same language notifying McCaslin that she "shall be liable" for the costs Bell or a third party incurred in responding to reports McCaslin "filed without reasonable cause."

On March 22, 2010, following a hearing, the trial court ordered McCaslin to pay $11,000 to reimburse Bell's estate for the expense incurred in preparing Bell's motion to modify the protection order, following McCaslin's disturbing behavior at Bell's living facility. The trial court did not require McCaslin to pay Bell's attorney fees for any of the earlier proceedings.

McCaslin appeals.[1]

II

McCaslin contends that the protection order provision that she "shall be

[1]McCaslin subsequently filed with this court a motion to correct the record pursuant to RAP 9.10 and to submit additional evidence pursuant to RAP 9.11. Because the additional materials McCaslin seeks to submit are not necessary to resolve any relevant issue in her appeal, we deny McCaslin's motion.

liable" for attorney fees and costs incurred by Bell in defending any unfounded report of abuse or neglect was a prior restraint on her right to free speech. McCaslin's argument lacks merit.

Appellate courts review a superior court's decision to grant or deny a protection order for an abuse of discretion. Hecker v. Cortinas, 110 Wn. App 865, 869, 43 P.3d 50 (2002). A trial court abuses its discretion when its decision is manifestly unreasonable, based on untenable grounds, or when untenable reasons support the decision. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 347 P.2d 1062 (1971) (citing MacKay v. MacKay, 55 Wn.2d 344 (1959)). We apply the de novo standard of review to questions of law in the context of a protection order. In re Marriage of Suggs, 152 Wn.2d 74, 79, 93 P.3d 161 (2004).

Article 1, section 5 of the Washington Constitution states: "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." Article I, section 5 prohibits prior restraints against protected speech but permits prior restraints against unprotected speech. State v. Coe, 101 Wn.2d 364, 374, 679 P.2d 353 (1984). The United States Supreme Court defines prior restraints as:

> "[A]dministrative and judicial orders *forbidding* certain communications when issued in advance of the time that such communications are to occur. Temporary restraining orders and permanent injunctions— *i.e.*, court orders that actually forbid speech activities—are classic examples of prior restraints."

Suggs, 152 Wn.2d at 81 (alteration in original) (citations and internal quotations

omitted) (quoting Alexander v. United States, 509 U.S. 544, 550, 113 S. Ct. 2766, 125 L. Ed. 2d 441 (1993)).

The February 23, 2010 protection order provided, in relevant part:

> In the event additional reports alleging abandonment, abuse, financial exploitation or neglect of the Vulnerable Adult are filed by Respondent with any government agency in the future, Respondent shall be liable for any costs, including reasonable attorney's fees, incurred by the Attorney-in-Fact or any third party in responding to or defending against any such complaint filed without reasonable cause.

We conclude that the protection order contained no prior restraints on McCaslin's speech. It neither restrained nor enjoined McCaslin from making reports or complaints. Rather, it provided her with express notice that she faced financial consequences if third parties incurred expenses responding to any complaint she filed without reasonable cause.

McCaslin fails to demonstrate that the protection order at issue restrained her right to free speech.

III

McCaslin next alleges that the trial court erred in awarding $11,000 in attorney fees and costs to Bell, to be paid by McCaslin. Her argument is unavailing.

An appellate court reviews a trial court's award of attorney fees for an abuse of discretion. In re Guardianship of McKean, 136 Wn. App. 906, 918, 151 P.3d 223 (2007).

McCaslin contends that she is immune from liability for making reports to

government agencies concerning suspected abuse or neglect of a vulnerable adult, under RCW 74.34.050. Under certain circumstances, RCW 74.34.050 provides immunity for an individual attempting to report or testify mistreatment of a vulnerable adult:

> A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, financial exploitation, or self-neglect of a vulnerable adult in a judicial or administrative proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in this chapter does not create any duty to report and no civil liability shall attach for any failure to make a permissive report as allowed under this chapter.

RCW 74.34.050(1).

The evidentiary record strongly suggests that if there was any error, it was invited by McCaslin's arguments to the trial court. The invited error doctrine prohibits a party from setting up an error at trial and then complaining of it on appeal. City of Seattle v. Patu, 147 Wn.2d 717, 720, 58 P.3d 273 (2002). McCaslin's argument on appeal that she made a "report" under RCW 74.34.050 is inconsistent with the position she took before the trial court. McCaslin argued to the trial court that she filed no "report" under RCW 74.34.050. She explained that she made no allegation of suspected abuse or neglect, but merely requested a "welfare check." She also asserted that "[t]he decision to file a report [with DSHS] was made by the Bellevue Police Department." If the trial court, after considering this argument, declined to extend the immunity provided for by RCW 74.34.050, any error would have been invited by McCaslin.

McCaslin fails to meet her burden of demonstrating an abuse of discretion

by the trial court.

IV

McCaslin argues that the trial court erred by dismissing her two motions for revision as untimely. She is incorrect.

On March 24, 2010, the trial court ordered that McCaslin's motion for revision of the trial court's February 23, 2010 order be struck, because it was filed 17 days after that order was entered and applicable court rules required that such a motion be served and filed within 10 days of entry. King County Local Rule 7(b)(8)(A); RCW 2.24.050. On April 1, 2010, the trial court denied McCaslin's motion for reconsideration of its order striking McCaslin's motion for revision. And on April 6, 2010, the trial court struck McCaslin's second motion for revision, explaining that:

> The only motion provided to this court was a motion for revision of the February 23, 2010 protection order. The motion is struck for the reasons stated in this court's March 23, 2010 order striking the previous motion for revision of the protection order.

McCaslin argues that the February 23, 2010 order was not "final" on that date because the trial court "continued the hearing" to determine attorney fees. And while it is true that the order concerning attorney fees was entered on April 1, McCaslin fails to demonstrate that she made a timely motion to revise that order.

McCaslin fails to demonstrate any trial court error.

V

Carovano requested an award of attorney fees on appeal under RAP 18.1 and RCW 74.34.130(7). Under RAP 18.1, if attorney fees are allowable at trial,

the prevailing party may recover fees on appeal. Under RCW 74.34.130(7), the court may require a respondent to "reimburse the petitioner for costs incurred in bringing the [protection order] action, including a reasonable attorney's fee." Here, McCaslin appealed from the protection order, entered pursuant to RCW 74.34.130. We conclude Carovano is entitled to attorney fees on appeal, subject to compliance with RAP 18.1. The commissioner of our court will make an appropriate award upon proper application.

Affirmed.

Dwyer, J.

WE CONCUR:

Cox, J.

Grosse, J.