

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the matter of the Marriage of

JEFF JOSEPH ANNIS,)

Respondent,)

and)

AMANDA JO KOEHN, f/k/a AMANDA JO ANNIS,)

Appellant.)

No. 65974-0-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: May 29, 2012

Appelwick, J. — Koehn claims that the trial court improperly terminated a long-term continuing protection order entered under a decree of dissolution. However, the court had declined to impose the continuing order of restraint and instead extended the temporary order when it bifurcated the proceeding, entered the agreed decree, and deferred the contested parenting plan proceeding. The court properly denied the long-term protection order after that proceeding. Therefore, it did not abuse its discretion in granting Annis’s motion to dismiss the protection order referenced in the decree. In doing so, the court merely reconciled the written orders. We affirm.

FACTS

Amanda Koehn and Jeff Annis were married in 2002 and had three children. The couple separated in December 2008. Around the time of separation, there was an incident in which Annis assaulted Koehn by pushing her. The State charged Annis with fourth degree assault, and on January 14, 2009, the Whatcom County Superior Court

entered a protection order. The protection order excluded Annis from the residence Koehn shared with the three minor children as well as other areas, and precluded him from having any contact with Koehn or the children. However, the order expressly allowed Annis to work at a separate shop building located approximately 200 feet from the residence during daytime working hours and also allowed supervised visitation with the children during specified hours several times per week. The protection order was valid for one year, with an expiration date of January 14, 2010.

Although the assault charge based on the pushing incident was later dismissed, Annis was arrested and pleaded guilty to violating the protection order twice in early 2009. Neither incident involved allegations of violence, nor actual contact with Koehn.

The parties' dissolution was scheduled for trial in December 2009. Koehn was represented by counsel; Annis was not. In accordance with the visitation provisions in place under the protection order, Koehn took the position that Annis's visitation with the children should continue to be limited, supervised, and overnight visitation should not be permitted. Koehn also wanted the court to impose a long-term protection order, essentially to renew the January 2009 order and extend it until June 2026, the expected high school graduation date of the parties' youngest child.

On December 16, 2009, the court continued the trial on contested parenting plan issues at Annis's request, but entered agreed final orders: the decree of dissolution and findings of fact and conclusions of law. These two final orders were prepared by Koehn's counsel. In accordance with her position, the decree of dissolution set forth a continuing restraining order with a 2026 expiration date. Likewise, the findings of fact

and conclusions of law included a finding that Annis “has a history of domestic violence,” “is likely to commit further acts of domestic violence” and therefore Koehn “should be protected with a permanent protection order.”

Before signing the presented orders, the court included interlineations to clarify that it was reserving its decision on renewal of the protection order. In light of the fact that the 2009 protection order was about to expire, the court interlineated as follows in the decree:

The parties shall comply with the Domestic Violence Protection Order [sic] signed by the court on Jan 14, 2009 until a Parenting Plan is signed by the court and is approved and incorporated as part of this decree.

Likewise, in the findings, the court expressly reserved its right to vacate the proposed extended protection order at the time of trial on the parenting plan.

At the January 25, 2010 hearing on the final parenting plan, Koehn argued several bases for imposing restrictions on Annis’s contact with the children including mental health issues, drug and alcohol issues, nonperformance of parenting functions and domestic violence history. Annis, on the other hand, contended that he should be allowed unsupervised visitation. With respect to domestic violence, Koehn testified that Annis had not physically assaulted her before or since the December 2008 pushing incident. She did not dispute Annis’s account of the conduct that resulted in his two 2009 convictions for violating the protection order. According to Annis, one violation occurred when he was unchaining the dog and came too close to the residence. The other occurred when he arrived at church to take the children to a wedding, which was not a scheduled visitation in accordance with the order.

Following trial, the court determined that there was not a “history of acts, plural, of domestic violence” to justify parenting plan restrictions on Annis under RCW 26.09.191. However, the court found that other bases for restriction existed, including impairment resulting from drug and alcohol use, substantial nonperformance of parental functions, and medical, physical, or psychiatric conditions. Accordingly, the court imposed conditions on Annis’s visitation consistent with those that had been in place under the January 2009 protection order.

The court further ruled that that the evidence did not warrant imposition of a long-term protection order to protect Koehn:

As far as the domestic violence protection order as a part of the dissolution, I’m not going to order one. The evidence does not justify that. I know that the existing domestic violence protection order expired about 10 days ago and I have heard no evidence that satisfies me that Mr. Annis, that there needs to be a concern as far as Mr. Annis being a danger physically to his wife, certainly not to the kids, other than the issues I have already mentioned.

The court’s ruling denying Koehn’s proposed extension of the 2009 order of protection was not reduced to writing. The final parenting plan prepared by Koehn’s counsel and entered two months after the hearing does not mention the protection order, nor does it strike any findings or provisions of the previously entered orders. Neither party alerted the court that the finding in the earlier decree that Annis was likely to commit further acts of domestic violence was in direct conflict with its later oral ruling.

In April 2010, Annis filed a pro se motion to dismiss the restraining order as reflected in the decree and the findings. Koehn filed a declaration opposing the

motion. Koehn did not allege any new acts of intimidation or violence, but asserted that she had endured mental and emotional abuse during the marriage. Koehn maintained that the protection order should remain in place to give her “peace of mind.”

At the outset of the June 2010 hearing on Annis’s motion, the court set forth its understanding of the procedural posture. The court stated that although it extended the terms of the protection order until the January 2010 trial on the parenting plan, it denied Koehn’s motion to renew and extend the 2009 protection order after consideration of the evidence. In view of this, the court believed that Annis was entitled to an order stating that the January 2009 protection order as incorporated in the decree and findings was of no force and effect. Koehn’s counsel disagreed with the court’s characterization of its prior ruling, and argued that the court had ruled only that domestic violence was not a basis for parental restrictions. Koehn claimed that as a matter of law, she was a victim of domestic violence, due to the entry of the protective order and Annis’s convictions for violating that order.

The court rejected Koehn’s arguments and entered an order terminating the restraining order set forth in the decree. The order includes a provision stating that if Annis “in any way intimidates or harasses” Koehn, “she may file a motion with this court for immediate reinstatement of the protection order without going through the regular process of obtaining another [domestic violence] protection order.” Koehn appeals.

ANALYSIS

As a threshold matter, Koehn contends that because Annis did not appeal the

December 2009 decree of dissolution and findings and conclusions nor file a CR 60 motion for relief from those orders, the trial court “lacked jurisdiction to deviate from the terms” set forth in the 2009 decree and the findings and conclusions. We reject this argument. A domestic violence protection order, regardless of whether it stands alone or is incorporated within another court order, is an order under the Domestic Violence Prevention Act (DVPA), ch. 26.50 RCW. The dissolution statute expressly authorizes a protection order under that chapter. RCW 26.09.050(1). As Koehn acknowledges, the DVPA provides a mechanism for a restrained party to seek relief from or modification of an order of protection. RCW 26.50.130. The statute imposes no time constraints for doing so. Id. In this case, Annis was entitled to call the court’s attention to the fact that, although contrary to the court’s intention, he remained arguably subject to a protection order.

Koehn further claims that the court abused its discretion when it terminated the order. Koehn argues that Annis failed to meet his burden to establish grounds to terminate or modify the long-term protection order and the court’s ruling was based on a misunderstanding of the law.

The premise of Koehn’s argument is flawed. The trial court’s interlineations make it clear that it extended the protection order only for a short period after its expiration date and reserved its ruling on the issue of a continuing protection order until the trial on the parenting plan. In order to impose the requested renewal and extension of the protection order advocated by Koehn, the trial court was required to find that

Annis was “likely to resume acts of domestic violence” against Koehn when the 2009 order expired. RCW 26.50.060(2). After considering the parties’ positions and the evidence presented at trial, the court expressly declined to make this finding. The court granted Annis’s 2010 motion to dismiss the restraining order simply because the 2009 order expired when the court previously declined to extend it.¹

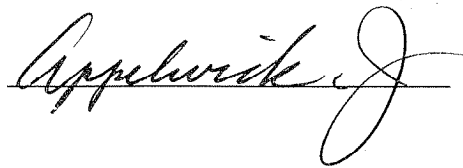
Whether to grant, modify, renew, or terminate a protection order is a matter of judicial discretion. In re Marriage of Freeman, 169 Wn.2d 664, 671, 239 P.3d 557 (2010); RCW 26.50.060(2), (3); RCW 26.50.130(1). Although the court was authorized to impose a fixed length order of protection if it found that Annis was “likely to resume acts of domestic violence” against Koehn when the order expired, it expressly rejected such a finding. RCW 26.50.060(2). Koehn points to “overwhelming” and unrebutted evidence that Annis “committed domestic violence many times.” RCW 26.50.010(1) defines domestic violence as “[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members,” sexual assault, or stalking. The only evidence in the record that qualifies as domestic violence under this definition was the 2008 pushing incident. Many of the other allegations Koehn relies on, such as mental illness, possible drug use,

¹ In her brief, Koehn suggests that the court rescinded the order based on misperceptions of the law. For instance, Koehn relies on the court’s remark questioning whether violence between former spouses qualifies as domestic violence. After consulting the statute, the court acknowledged that it does. RCW 26.50.010(2). The court also observed, correctly, that violation of a protection order does not necessarily qualify as domestic violence. See RCW 26.50.010(1). This discussion arose during the course of Koehn’s attempt to relitigate the issue of whether there was a history of domestic violence and was not the basis for the court’s ruling.

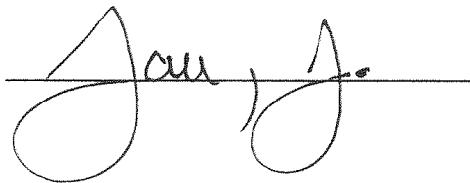
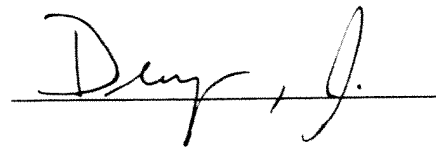
unemployment, lack of parental skills, had no bearing on the issue of whether Annis was likely to commit future acts of domestic violence. There was a tenable basis for the court's ruling that the evidence failed to demonstrate a likelihood that Annis would resume acts of domestic violence against Koehn without a protection order in place.

We affirm the court's order on Annis's motion to dismiss the protection order. We remand so that the court may strike finding 2.14 in the findings of fact and conclusions of law which is inconsistent with the court's order on the motion and oral ruling after trial.

Affirmed.

A handwritten signature in cursive script, reading "Appelwick, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, reading "Jan, J.", written over a horizontal line.A handwritten signature in cursive script, reading "Dery, J.", written over a horizontal line.