IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JONATHAN J. ARRAS,	)	No. 68454-0-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
LAURA G. McCABE,	)	UNPUBLISHED
	)	
Appellant.	)	FILED: November 5, 2012
	)	
	)	

Cox, J. — Laura G. McCabe[1] appeals the entry of an anti-harassment order against her, ordering her not to make any attempts to surveil or contact Jonathan J. Arras. Because the evidence is sufficient to support the court's decision to enter the order, we affirm.

In December 2011, Laura McCabe called the City of Bellevue and several other utilities, requesting copies of the residential utility bills of Jonathan Arras, her former husband. McCabe later claimed that she was accessing these records to provide information to her mother, who resides in an apartment on Arras's property and pays Arras a percentage of each month's utility bills.

Upon learning of these calls, Arras filed a petition for an anti-harassment

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[1] McCabe is an attorney and member of the Washington State Bar Association. She represents herself in this action. See Kay v. Ehrler, 499 U.S. 432, 437, 111 S. Ct. 1435, 113 L. Ed. 2d 486 (1991) ("Even a skilled lawyer who represents himself is at a disadvantage in contested litigation.").

against McCabe. After a hearing, the court entered an anti-harassment order, restraining McCabe from surveilling or contacting Arras, with exceptions for contact to discuss the parties' children.

McCabe appeals.

SUFFICIENCY OF THE EVIDENCE

McCabe argues that there was insufficient evidence to support the trial court's imposition of an anti-harassment order. We disagree.

At a hearing on a petition for an anti-harassment order, "if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil anti-harassment protection order shall issue prohibiting such unlawful harassment."[2] Under RCW 10.14.020(1), unlawful harassment consists of (1) a knowing and willful (2) course of conduct (3) directed at a specific person, (4) which seriously alarms, annoys, harasses, or is detrimental to that person, and (5) serves no legitimate or lawful purpose.

"Course of conduct" is defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. [It] includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech."[3] This conduct "may be brief, but must

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[2] RCW 10.14.080(3).

[3] RCW 10.14.020(1).

evidence 'continuity of purpose.'"[4]

To demonstrate that a defendant's actions had no lawful purpose, we look to RCW 10.14.030. This statute enunciates a number of factors to be considered in assessing "whether the course of conduct serves any legitimate or lawful purpose."[5] These include whether (1) "[t]he respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner," (2) "[t]he respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner," and (3) the "[c]ontact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order."[6] Further, a court will affirm the findings that the victim experienced substantial emotional distress and that the course of conduct would have caused substantial emotional distress to a reasonable person so long as substantial evidence supports these findings.[7]

We review the trial court's imposition of an anti-harassment order for substantial evidence. As the supreme court held in In re Marriage of Rideout, where the court holds a hearing and weighs contradictory evidence prior to the

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[4] Burchell v. Thibault, 74 Wn. App. 517, 521, 874 P.2d 196 (1994) (quoting RCW 10.14.020(2))

[5] RCW 10.14.030.

[6] Id.

[7] State v. Noah, 103 Wn. App. 29, 39, 9 P.3d 858 (2000).

entry of a protection order, the proper standard of review is one of substantial evidence.[8]

> [T]he substantial evidence standard of review should be applied . . . where competing documentary evidence had to be weighed and conflicts resolved. The application of the substantial evidence standard in cases such as this is a narrow exception to the general rule that where a trial court considers only documents, such as parties' declarations, in reaching its decision, the appellate court may review such cases de novo because that court is in the same position as trial courts to review written submissions.[9]

Here, the court had sufficient evidence to support its imposition of the anti-harassment order. There is no dispute that the conduct here was "knowing and willful," as the statute requires. The trial court specifically found in its oral ruling that McCabe's three separate phone calls constituted a "pattern of conduct." This finding was supported by substantial evidence. In his Petition for Order for Protection, submitted under penalty of perjury, Arras stated that "on 12/29/11, Laura McCabe called ***several of my utility companies***. . . ." Further, at the court hearing Arras stated that McCabe "called multiple utility providers using her previous name, accessed [his] accounts and requested financial records." Arras made these statements while under oath. "Credibility determinations are for the trier of fact and cannot be reviewed on appeal."[10]

Additionally, by obtaining private information regarding Arras's utility bills,

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[8] 150 Wn.2d 337, 351, 77 P.3d 1174 (2003).

[9] Id.

[10] State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

McCabe did "unreasonably [interfere] with the petitioner's privacy. . . ."[11] And, though McCabe argues otherwise, this interference was not pursuant to any statutory authority. Thus, the court's finding that McCabe's acts did not support any lawful or legitimate purpose was supported by substantial evidence.

Finally, there was sufficient evidence to demonstrate that McCabe's actions caused substantial emotional distress. Arras testified that he discovered McCabe had accessed his utility bills when "whatever changes were made for whatever reason" resulted in his not receiving his billing statement. This testimony and McCabe's invasion of Arras's privacy were sufficient to support a finding that her actions caused Arras emotional distress and would have caused a reasonable person in a similar circumstance emotional distress.

McCabe argues that Arras failed to present a sufficient factual basis to support a finding that she engaged in a "course of conduct." But, the court could and did consider Arras's testimony under oath in the hearing, as well as his statement in his petition for an anti-harassment order. This evidence was sufficient to support the court's finding.

McCabe also contends that because Arras already shared the utility information with McCabe's mother, he had no reasonable claim to distress when she accessed this same information. But this argument is without merit. Arras's sharing of information with one person does not indicate that he abandoned all privacy protections. Similarly, McCabe's argument that she had a lawful right to

[11] RCW 10.14.030(5).

access this information because her mother is Arras's co-tenant is unpersuasive. The question before the court was whether McCabe herself, not her mother, had a legitimate or lawful purpose in accessing Arras's utility records. She did not.

McCabe points to RCW 10.14.030(6), whether court "[c]ontact by the respondent with the petitioner . . . has been limited in any manner by any previous court order." She argues that because a parenting plan limiting her contact with Arras was already in place, the entry of a protection order was improper. But the provisions of these orders do not overlap. Nor does the fact that a parenting plan had already limited McCabe's contact with Arras, in and of itself, invalidate the court's anti-harassment order.

Finally, McCabe contends that the court "assumed an ultimate disputed fact" when it addressed her as "Ms. Arras." She argues that announcing the case as "Jonathan Arras versus Laura Arras, also known as McCabe" and by addressing her as "Ms. Arras," the trial court assumed that she had represented herself as "Mrs. Arras" when she contacted the utility companies. But the court did not assume anything. Arras produced evidence that when McCabe spoke to at least one utility representative, she identified herself as "Ms. Arras . . . the wife of Jonathan Arras." Further, the issuance of the protection order did not turn on McCabe's identification of herself as Ms. Arras.

ANTI-HARASSMENT ORDER AND FREE SPEECH

McCabe also argues that the court's anti-harassment order infringes upon her First Amendment rights of free speech because it constituted a vague and

overbroad limitation. We disagree.

RCW 10.14.020(2) provides that "[c]onstitutionally protected activity is not included within the meaning of 'course of conduct.'" Additionally, RCW 10.14.190 provides that "[n]othing in this chapter shall be construed to infringe upon constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly." But, if substantial evidence supports an anti-harassment order, and the court in entry of that order focuses on "the speaker's conduct and not the message," the entry of an order has not violated a defendant's first amendment rights. [12]

In In re Marriage of Suggs, the supreme court held that the order entered by the court was so vague as to infringe on Suggs free speech.[13] There, the anti-harassment order forbade Suggs from "knowingly and willfully making invalid and unsubstantiated allegations or complaints . . . designed for the purpose of annoying, harassing, vexing, or otherwise harming [Sugg's former husband] for no lawful purpose."[14] The supreme court held that this language lacked the specificity necessary for a constitutional anti-harassment order.[15]

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[12] Trummel v. Mitchell, 156 Wn.2d 653, 668, 131 P.3d 305 (2006); see Noah, 103 Wn. App. at 38-39 ("Our inquiry is whether there was a factual basis for the antiharassment order, excluding consideration of the protection speech and picketing.").

[13] 152 Wn.2d 74, 84, 93 P.3d 161 (2004).

[14] Id. at 78-79.

[15] Id. at 83-84.

Here, in contrast to Suggs, the court's order was specific about the behavior it was prohibiting. In its anti-harassment order, the lower court restrained McCabe from "making any attempts to keep [Arras] under surveillance," and "from making any attempts to contact" him, aside from email contact regarding their children. Unlike the court order in Suggs, which prohibited behavior which was "annoying, harassing, or vexing," the words "surveil" and "contact" are clear and not overly vague or broad. Thus, the court order was not an unconstitutional infringement of McCabe's right to free speech.

McCabe argues that because she "was never accused of conduct that could be described as 'surveillance,' the orders present[ed] a vague, overbroad warning not to assist her mother during the complex, eminent litigation . . . ." But it is clear that the court considered her phone calls to determine Arras's utility charges to be "surveillance." It was this conduct that the court consequently targeted in its anti-harassment order.

McCabe also contends that her conduct was reasonably necessary to protect property or liberty interests of her mother. But, as noted above, McCabe's infringement of Arras's privacy was not necessary or reasonable.

APPEARANCE OF FAIRNESS

McCabe argues that lower court's hearing lacked the appearance of fairness. We disagree.

The appearance of fairness doctrine requires that a judge disqualify herself if she is biased against a party or her impartiality may reasonably be

questioned.[16] "A party claiming bias or prejudice must, however, support the claim; prejudice is not presumed . . . . Evidence of a judge's actual or potential bias is required before the appearance of fairness doctrine will be applied."[17]

Here, to show a violation of this doctrine, McCabe must present evidence of the hearing judge's actual or potential bias.[18] She is not able to do so. She points to the judge's decision not to allow her witness to testify. But, it is within the court's discretion to admit or deny rebuttal testimony, and McCabe does not demonstrate why the court abused its discretion here.[19] McCabe also argues that the court's rejection of her arguments demonstrated its prejudice. But the court properly rejected McCabe's arguments, as we have discussed above.

FORUM SHOPPING

McCabe argues that Arras engaged in forum-shopping when he filed his anti-harassment petition. She contends that because she and Arras had previously litigated the dissolution of their marriage in "Family Court," it was "forum shopping" and "illegimate" for Arras to bring this separate action in King County Superior Court. These arguments are without merit.

Black's Law Dictionary defines "forum-shopping" as "[t]he practice of choosing the most favorable jurisdiction or court in which a claim might be

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[16] State v. Dominguez, 81 Wn. App. 325, 328, 914 P.2d 141 (1996).

[17] Id. at 328-29.

[18] State v. Post, 118 Wn.2d 596, 619, 826 P.2d 172 (1992).

[19] State v. White, 74 Wn.2d 386, 395, 444 P.2d 661 (1968).

heard."[20] Here, Arras did not engage in forum-shopping as he did not select a different forum from the one in which he and McCabe had litigated their family law matter. Both proceedings occurred in King County Superior Court. It is irrelevant that these separate matters were heard by different judges of the superior court.

PROTECTION ORDER IS NOT HARMLESS

McCabe argues that, though the protection order entered by the court restricts her actions less than Arras originally requested, it is still not harmless. But McCabe does not cite any authority to explain what she means by this statement. We do not consider arguments unsupported by legal authority.[21]

We affirm the anti-harassment order.

Cox, J.

WE CONCUR:

[20] Black's Law Dictionary 726 (9th ed. 2009).

[21] RAP 10.3(a)(6).