IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Matter of the Marriage of BRANDY LEAVITT, Petitioner, v. JOE LEAVITT, Respondent.	No. 46014-9-II UNPUBLISHED OPINION

JOHANSON, C.J. — Brandy Leavitt appeals a superior court order granting her petition for entry of a domestic violence protection order to restrain her husband, Joe Leavitt, from contacting Brandy[1] or her children. Brandy argues that the trial court erred as a matter of law by fixing the order's expiration date at 60 days rather than the one-year maximum authorized by statute. We conclude that by failing to request a one-year protection order or otherwise tell the trial court that she desired a lengthier protection order, and by failing to object to the 60-day expiration date, Brandy has failed to preserve this challenge for appellate review. We affirm.

FACTS

Brandy and Joe were married in 2002, they had one child together and Brandy had one child from a previous relationship. In 2011, Brandy filed a marriage dissolution petition. But before the dissolution proceedings became final, Brandy and Joseph rekindled their relationship, taking no further action to dissolve the marriage.

[1] We use the parties' first names for clarity, intending no disrespect.

In early 2014, Brandy filed a petition for a protection order pursuant to the Domestic Violence Prevention Act.[2] In her petition, Brandy alleged that Joe had been physically violent. Brandy sought to exclude Joe from her residence and to restrain him from having any contact with her or the children. The superior court entered a temporary protection order consistent with Brandy's requests and scheduled a hearing to provide Joe an opportunity to respond.[3]

At the February 10 hearing, the following exchange occurred:

> THE COURT: . . . I see there is a parenting plan in place.
> [BRANDY]: That was two years ago. We have been together since then.
> THE COURT: You got back together then?
> [BRANDY]: Yes.
> THE COURT: That was just a temporary parenting plan?
> [BRANDY]: No, I was filing for a divorce, but yes, I am going to go forward with the divorce.
> THE COURT: All right. Why don't I make -- usually what happens, is, in a divorce proceeding with children like this, is, you are going to need to work it out. If there are issues, a guardian ad litem will have to get involved, you can take up all issues.
> I think I will make it effective -- are you going forward with it right away?
> [BRANDY]: As soon as possible.
> THE COURT: Okay. I am going to make this for 60 days, then you can get into requesting a guardian ad litem if you believe investigation is needed to determine when he should be around the children. Do they want to see him now?
> [BRANDY]: My daughter does not.
> THE COURT: What about -- there is another child?
> [BRANDY]: My son. He is nervous, but yes, he does like to see his father.
> THE COURT: Okay, and I am sure he can bring a motion to get it in the order, if he wants to, on the parenting plan later, but for right now, I am going to sign this.
> So I will make this effective for 60 days, because as I go through the issues, obviously there is a need for an ongoing restraining order. All right. I signed the order.

Report of Proceedings at 1-2.

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[2] Ch. 26.50 RCW.

[3] Joe did not appear at the hearing.

Brandy did not request a longer duration for the order either in the protection order petition or orally at the hearing on the petition. Nor did she object to the superior court's decision to fix the order's effective period at 60 days. Brandy appeals.

ANALYSIS

As a threshold issue, we determine whether Brandy has preserved her challenge to the duration of the protection order. Brandy first argues that she has not waived her challenge and has therefore preserved the issue for review because the purpose of the rule requiring objection at trial is partially to provide the opposing party an opportunity to respond. Because Joe did not appear at any hearing, Brandy asserts that this purpose would not be furthered by declaring her challenge waived. We agree that due to Joe's absence from the hearing, this aspect of the rule is a nonissue here.

Next, Brandy contends that the rule requiring issues to be preserved for appellate review is discretionary and, therefore, we should reach the merits of her claim. We exercise our discretion and decline to reach the merits of her claim.

The general rule is that a party may not raise an issue for the first time on appeal that it did not raise below. RAP 2.5(a); *Evans v. Mercado*, 184 Wn. App. 502, 509, 338 P.3d 285 (2014). By its own terms, however, the rule is permissive and does not automatically preclude the introduction of an issue at the appellate level. *In re Welfare of B.R.S.H.*, 141 Wn. App. 39, 45, 169 P.3d 40 (2007). In addition to providing the opposing party an opportunity to respond, a second purpose behind the general rule governing preservation of issues is also to give the superior court an opportunity to correct errors and to avoid unnecessary rehearings. *Rash v. Providence*

Health & Servs., 183 Wn. App. 612, 625, 334 P.3d 1154 (2014), *review denied*, 182 Wn.2d 1028 (2015).

Here, Brandy did not object or otherwise suggest to the superior court that she took issue with the 60-day protection order. Consequently, the superior court never had an opportunity to consider or to correct the alleged error. Brandy also did not make any argument that could be construed as a challenge to the court's decision. *See Welfare of B.R.S.H.*, 141 Wn. App. at 45 (finding that, notwithstanding lack of objection during superior court hearing, party's argument concerning the issue raised on appeal was sufficient to preserve for appellate review).

As Brandy correctly recognizes, RAP 2.5 is discretionary. *Welfare of B.R.S.H.*, 141 Wn. App. at 45. After a careful review of the facts and the issues presented, we exercise our discretion and decline to reach the merits of Brandy's argument.

Affirm.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Bjorgen, J.
BJORGEN, J.

Melnick, J.
MELNICK, J.