

Tamara Mettling filed a “Petition for an Order for Protection-Harassment” in April 2011 in an effort to restrain Larry and Tami Hutchison from allowing their dogs to run loose on her property. Her certified statement in support of her request for the relief recounted an incident occurring the prior August, during which one of the Hutchisons’ dogs killed 20 of her farm animals before she could shoot it. She identified at least 19 other instances of the Hutchisons’ dogs creating disturbances on her property between that August massacre and the date of her petition. She alleged that her children were afraid of being attacked by the dogs after seeing what they did to the family’s livestock. She alleged that the Hutchisons had threatened to kill Ms. Mettling’s dog in retaliation.

The superior court granted Ms. Mettling’s request for a temporary protection order and scheduled a hearing. No witnesses were called at the time of the hearing and no facts alleged in the petition were disputed. The parties instead debated the propriety of entering a protection order in light of the undisputed facts. The Hutchisons argued that there was no allegation that they knowingly or intentionally directed harassing behavior toward Ms. Mettling or her children, a necessary element before a protection order can be entered.

The court commissioner granted the requested order, finding unlawful harassment as defined in RCW 10.14.080, noting that Ms. Mettling’s children had reasonably become fearful of the Hutchisons’ dogs under the circumstances. Its order restrained the

Hutchisons “from allowing their dogs to enter the property of” Ms. Mettling. Clerk’s Papers (CP) at 17. It set the order to expire on April 15, 2015, more than the presumptive one-year term of such an order, based on a finding that the Hutchisons were likely to resume unlawful harassment of Ms. Mettling when the order expires. *See* RCW 10.14.080(4) (“An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order.”).

The Hutchisons filed a motion for revision, again arguing that Ms. Mettling’s allegations were insufficient to support a protection order and challenging the greater-than-one-year duration of the order. The superior court denied their motion, explaining in its order that “[t]he harassing conduct of the Hutchisons is repeated refusal to control their animals, causing fear and annoyance in their neighbors.” CP at 150.

The Hutchisons appealed.

ANALYSIS

The Hutchisons argue that the superior court’s issuance of a protective order was improper because Ms. Mettling’s allegations, even if true, do not satisfy the definition of “unlawful harassment” provided in RCW 10.14.020. Ms. Mettling has not filed a brief in

response.

When an appeal is taken from an order denying revision of a court commissioner's decision, we review the superior court's decision, not the commissioner's. *In re Marriage of Williams*, 156 Wn. App. 22, 27, 232 P.3d 573 (2010). However, "when the superior court denies a motion for revision, it adopts the commissioner's findings, conclusions, and rulings as its own." *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 423, 154 P.3d 243 (2007). Our focus is therefore on the findings and conclusions contained in the order of protection as issued by the commissioner and adopted by the superior court.

When reviewing the issuance of a protective order, we review any contested findings for substantial evidence, questions of law de novo, and the issuance and scope of the order for abuse of discretion. *Trummel v. Mitchell*, 156 Wn.2d 653, 668-69, 131 P.3d 305 (2006). Since the evidence is not disputed in this case, the superior court's determination of unlawful harassment is reviewed as a pure question of law. *See Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 725, 225 P.3d 266 (2009) (Schultheis, C.J., dissenting) (recognizing that "[t]his court reviews de novo the trial court's interpretation and application of a statute to undisputed facts"). Where the facts amount to unlawful harassment, we may still review the issuance and scope of the order for abuse of discretion. A court abuses its discretion when its decision is manifestly

unreasonable, or exercised on untenable grounds, or for untenable reasons. *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 278, 267 P.3d 998 (2011). When a court bases its ruling on an incorrect interpretation of the law, it acts on untenable grounds. *Guillen v. Contreras*, 169 Wn.2d 769, 774, 238 P.3d 1168 (2010).

RCW 10.14.040 creates an action known as a petition for an order of protection in cases of unlawful harassment. A court shall enter an antiharassment protection order if the victim shows by a preponderance of the evidence that unlawful harassment exists.

RCW 10.14.080(3); *State v. Noah*, 103 Wn. App. 29, 38, 9 P.3d 858 (2000). Unlawful harassment is defined by statute as follows:

“Unlawful harassment” means a *knowing and willful course of conduct directed at a specific person* which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

RCW 10.14.020(2) (emphasis added). The course of conduct may be brief, but must evidence “continuity of purpose.” RCW 10.14.020(1).¹

The Hutchisons argue that nothing in the record supports a finding that they

¹ Before the 2009 adoption of RCW 1.08.015, which alphabetized all definition sections in the Revised Code of Washington, “unlawful harassment” was defined at RCW 10.14.020(1) and “course of conduct” was defined at RCW 10.14.020(2).

knowingly and willfully directed their dogs to harass Ms. Mettling and her children.

They cite to *Burchell v. Thibault* in support of their position, in which this court made the following observations about the unlawful harassment definition:

RCW 10.14.020[2] provides that harassing conduct be “directed at a specific person”. The words “directed at” cannot be ignored, and the only way to give them meaning is to conclude that the scienter aspect goes not only to the commission of the conduct, but to the identity of the targeted victim as well.

The statute is not designed to penalize people who are overbearing, obnoxious or rude. It is geared to protect those victims to whom objectionable behavior is directed.

74 Wn. App. 517, 522, 874 P.2d 196 (1994). The *Burchell* court went on to reverse the issuance of a protective order in that case because the petitioner was “an incidental victim not the target of [the] harassment.” *Id.* at 523; *see also Trummel*, 156 Wn.2d at 667-68 (upholding the trial court’s finding of unlawful harassment where an apartment resident regularly threatened and spied on neighbors).

From the undisputed record, we can reasonably conclude that the Hutchisons have knowingly and willfully allowed their dogs to roam free, knowing that the dogs have caused damage and injury to others. We cannot conclude, however, nor has Ms. Mettling alleged, that the Hutchisons knowingly and willfully directed this course of conduct at her or her children, as required by RCW 10.14.020(2). While the Hutchisons are certainly less than considerate dog owners, nothing in the petition suggests that their

irresponsible ownership was with a view to targeting or harassing Ms. Mettling. Ms. Mettling's petition does no more than establish that the Hutchisons' dogs are frequently loose; we are left to guess as to why.

As the Hutchisons note on appeal, there are other remedies potentially available to the Mettling family that are subject to different procedures and different proofs. *See, e.g.*, Kennewick Municipal Code §§ 8.02.050-.350. Given the conclusion that the petition did not establish unlawful harassment as a matter of law, the trial court necessarily abused its discretion in issuing a protection order. RCW 10.14.080(3).

We reverse the order of protection.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, A.C.J.

WE CONCUR:

Brown, J.

Kulik, J.