

2008

Jennifer R. Hedgcock v. Lee E. Hedgcock : Brief of Appellant

Utah Court of Appeals

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Jennifer Hedgcock; Pro Se.

Zachary E. Peterson, Lincoln Harris; Richards, Brandt, Miller and Nelson; Attorneys for Appellant.

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IN THE UTAH COURT OF APPEALS

Jennifer R. Hedgcock,
Petitioner/Appellee,

vs.

Lee E. Hedgcock,
Respondent/Appellant.

Case No. 20080907⁹⁷⁰

BRIEF OF APPELLANT

**Appeal from Final Order from the Third District Court, Salt Lake County, State of
Utah, Judge Sandra N. Peuler**

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MAR - 4 2009

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PARTIES TO THE PROCEEDING

The front caption contains all of the parties to the appeal.

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QUESTIONS PRESENTED FOR REVIEW

Issue 1: Did the trial court err in entering a protective order where the trial court's findings had no supporting evidentiary basis?

STANDARD OF REVIEW: A trial court's factual findings are entitled to deference while whether the trial court properly entered a protective order presents a question of law. *See Bailey v. Bayles*, 2002 UT 58, 52 P.3d 1158.

ISSUE PRESERVED: Respondent preserved his objection to the entry of the protective order in the Record at pages 18-21, 38-41, 58-59, 72.

JURISDICTIONAL STATEMENT

This court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(h).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES,

RULES, AND REGULATIONS

Utah Code Ann. § 78B-7-101, et seq. The relevant portions of this Act are set forth verbatim in the attached Addendum.

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from the entry of a protective order in favor of petitioner and against respondent. The sole issue on appeal is whether the trial court had a proper evidentiary basis on which to enter the protective order. This action is collateral to the parties' divorce proceeding.

Facts

On July 29, 2008, respondent was served with a Request for Protective Order. (R.at 8-10, 11-14) In paragraph 4(e) of her petition for a protective order, petitioner alleges that on July 24, 2008 respondent told her that if she knew what was good for her she would keep her doors locked (paragraph 4(e) also contains others allegations that the Court considered as allegations of past threatened abuse). (R. at 2) After entry of an ex parte protective order, the court set a hearing to determine whether to make the protective order permanent. At the August 12, 2008 hearing, respondent's counsel proffered respondent's testimony that on July 24, 2008, during the conversation respondent had with petitioner, there was no yelling and there were no threats during that conversation. (R. at 59) At the August 12, 2008 hearing, respondent's counsel proffered respondent's testimony that respondent denied that he ever threatened petitioner. (R. at 59) Notwithstanding respondent's unequivocal denial, the Commissioner's basis for

recommending the protective order was that respondent failed to deny petitioner's allegation from July 24, 2008. (R. at 60)

Respondent objected to the entry of the protective order and requested the trial court judge to review the Commissioner's recommendation to enter the protective order. (R. at 18-21) The trial court judge agreed with respondent's argument; however, the trial court viewed the "totality" of the allegations and determined the allegations were sufficient to warrant the entry of a protective order. (R. at 72, p.13) In this review, the trial court did not receive any evidence. (R. at 72) Furthermore, the trial court did not allow respondent the opportunity to put on evidence regarding the alternate basis it relied to issue the protective order. (R. at 72) In short, the trial court's entry of a protective order was based on alternative grounds, not supported by any admissible evidence. (R. at 72) Respondent timely appeals whether the trial court properly entered a protective order based only on unsworn and unsubstantiated allegations. (R. at 67-69)

Procedural Details of Case and Disposition of the case below

Petitioner requested and was granted an ex parte protective order on July 28, 2008. Respondent was served with the ex parte order on July 29, 2008. Pursuant to the statutory requirement, a hearing was held before a Commissioner to determine whether the protective order should be made permanent. This hearing was held on August 12, 2008. At this hearing, the parties proffered limited evidence. The Commissioner specifically agreed that much of the evidence was not admissible to support the entry of

the protective order. The Commissioner, however, relied on one incident to support her recommendation that the protective order be made permanent.

Respondent objected to the Commissioner's recommendation on the grounds that the Commissioner's expressed finding was inconsistent with the evidence proffered at the hearing. Respondent requested a hearing before the trial court judge on his objection. Absent the disputed testimony, respondent argued that the Commissioner lacked an evidentiary basis for the entry of the protective order.

Although the trial court agreed that the Commissioner's finding was incorrect and insufficient, the trial court examined the totality of the allegations in the petition and determined that the protective order should be made permanent. The trial court did not request petitioner to put on any evidence to support the allegations in the petition. In addition, respondent was given no opportunity to cross-examine petitioner or to put on any evidence of his own. Based on the evidentiary deficiencies, respondent appealed the trial court's entry of a permanent protective order.

SUMMARY OF ARGUMENTS

The trial court erred when it issued a permanent protective order on alternative grounds that were not supported by any evidence in the Record. Furthermore, the trial court failed to comply with the statutory requirements when it did not allow respondent a meaningful opportunity to be heard before entering a permanent protective order. The

trial court should have conducted an evidentiary hearing in which respondent was allowed to hear the allegations, cross-examine the witnesses on the allegations, and present evidence to rebut the allegations. Because respondent was not provided this opportunity and because the trial court did not have any admissible evidence to support its findings, the issuance of a permanent protective order was error. As such, the permanent protective order should be vacated, or at a minimum, an evidentiary hearing should be conducted.

ARGUMENT

I. The Commissioner erred in finding that respondent had failed to deny the only allegation that petitioner offered in support of her petition for a protective order.

In her petition for a protective order, petitioner offered three sets of allegations against respondent. First, petitioner made reference to a series of allegations that were the subject of a prior order. (R. at 2, ¶4.e.) The parties stipulated to the dismissal of this prior order as part of their divorce proceedings. (R. at 58-59) Second, petitioner made reference to statements made by the parties' son. (R. at 2, ¶4.b. & e.) Finally, petitioner offered one new incident of a direct threat made on July 24, 2008. (R. at 2, ¶4.a. & e.) None of these allegations, however, were based on admissible evidence, and therefore, were insufficient to support the entry of the protective order.

The prior allegations of threats were the subject of a prior order, and the parties stipulated dismissal of the prior order. (R. at 58-59, 60) Specifically, the Commissioner

made the following finding: “It is agreed by both counsel that the parties previously had stipulated in a protective order to have that dismissed and to have restraining orders pit in the divorce case.” (R. at 60) Accordingly, these allegations could not be part of the petition for a protective order that is at issue in this case. Moreover, petitioner offered no evidence to support these past allegations, and respondent timely objected to these statements being considered at the hearing before the Commissioner. (R. at 56-59) Accordingly, the Commissioner noted that the parties had stipulated to the dismissal of the past protective order, and the Commissioner’s ruling did not address any of the prior allegations as a basis for entering the protective order. (R. at 60)

Next, the allegations made by the parties’ son were inadmissible hearsay. Respondent objected to this evidence in the hearing before the Commissioner. (R. at 58) In a similar case where a party attempted to introduce a videotape of a child’s testimony, this Court had substantial concerns about whether it was admissible hearsay. *See N.D. v. A.B.*, 2003 UT App 215, 73 P.3d 97. In *N.D.*, the trial court made substantial findings regarding the admissibility of a child’s out-of-court statements, and this Court concluded the trial court had erred in admitting the statements as evidence. *See id.* at ¶¶17-21.

In this case, respondent timely objected to his son’s statements. The Commissioner made no findings that the child’s out-of-court statements were admissible. (R. at 58-61) Absent the detailed findings necessary to admit these statements, it would be error for the Commissioner to consider these statements as grounds for entry of the

protective order. Nothing in the Commissioner's ruling, however, suggested that the child's statements were a basis for entering the protective order. Specifically, the Commissioner stated: "Since that time, Ms. Hedgcock outlined concerns with regards to her own physical safety, agreeing with Mr. Harris that the statement with regard to the child was not made directly to Ms. Hedgcock and without a guardian ad litem, we cannot be clear exactly as to what the child said and what the child may have witnessed" (R. at 60.)

After noting that neither the prior allegations nor the child's statement were admissible grounds for the protective order, the Commissioner went on to state: ". . . but there is a statement after the entry of the stipulation. That statement was on 07/24/2008, where the respondent made a statement to the petitioner that I believe was intended to be a threat. He has not denied that during the course of this hearing, that the statement was made but he does state that all the allegations previously should not be the basis of the protective order." (R. at 60 (emphasis added)). Thus, the Commissioner made clear that she was entering the protective order on the basis of the alleged threat made on July 24, 2008. Furthermore, the Commissioner stated that respondent had not denied this allegation. (R. at 60) Thus, based on the one allegation on July 24, 2008 and the Commissioner's erroneous conclusion that respondent had not denied the allegation, the Commissioner entered the protective order.

In fact, respondent did deny the allegation at the hearing before the Commissioner. (R. at 59) At the hearing, respondent proffered the following denial of the allegation: “July 24th, the day before Ms. Hedgcock took out this protective order, the parties had a 45-minute conversation on the phone. They talked about several issues. They talked about getting back together. They talked about care of the children, but there were no yelling, there were no threats during that conversation. What Mr. Hedgcock did say was that he believed that the boyfriend was abusing the children and the next day he was going down to protective services and get the kids put in State custody. That’s what he told her. And the next morning, he did that.” (R. at 59 (emphasis added)).

In addition to denying petitioner’s allegation, respondent proffered additional evidence regarding the parties’ contact during the time of the alleged threat. Respondent offered evidence which suggested that petitioner did not believe she was in imminent danger of physical harm. In fact, petitioner and respondent had almost daily contact and discussions regarding visitation and child care issues. (R. at 59) In contrast to petitioner’s bare and unsubstantiated allegation of a physical threat, respondent provided a detailed series of dates, conversations, and text messages. (R. at 59) All of which occurred after the date of the alleged physical threat when petitioner alleged she was in fear of imminent physical harm. Far from failing to deny the allegation, respondent unequivocally denied the allegation and offered compelling rebuttal evidence. Thus, the Commissioner’s

reliance on this one incident and her erroneous conclusion that respondent failed to deny the allegation was error.

II. The trial court erred when it relied on other allegations only contained in the petition but not supported by any evidentiary basis.

Based on the admissible evidence before it, the trial court erred when it entered the protective order based on the “totality” of the allegations. In *N.D.*, this Court declined to consider the excluded hearsay evidence in determining whether sufficient evidence existed to enter a protective order. *See N.D.*, 2003 UT App 215 at ¶23. Specifically, this Court stated: “we do not consider the trial court’s findings based upon [the excluded evidence] in our review of its decision to issue the protective order. As a result, we are left with the remainder of the trial court’s findings from the relevant portion of its ruling as the basis for its decision to issue the protective order.” *Id.*

In this case, respondent objected to the Commissioner’s granting of the ex parte protective order and requested a hearing pursuant to Utah Code Ann. § 78B-7-107. Respondent argued that the Commissioner erred in her conclusion that respondent had failed to deny the alleged threat on July 24, 2008. (R. at 18-21) At the hearing, before the trial court respondent argued: “The crux of my argument, your Honor, is that there wasn’t sufficient evidence to enter the protective order to begin with. One self-serving statement made by one party that denied by the other is simply not sufficient to enter a protective order.” (R. at 72, p. 11)

In affirming the entry of the protective order, the trial court agreed with respondent's argument that he denied the allegation, but then it entered the protective order on a different basis than the Commissioner recommended. (R. at 72, p. 13) The trial court's finding in support of the protective order was as follows: "I'm going to deny the motion to dismiss the protective order. And let me tell you why, there's one area in which I disagree with the Commissioner, that area is, I believe that I can look at the totality of the petition to determine whether or not there is sufficient evidence to enter a protective order and—and so, I—I believe that I don't need to just look at one statement in isolation, which has been denied. I believe that I can look at all of the allegations that are in the petition to determine whether or not there is a sufficient basis for that protective order to enter." (R. at 72, p. 13) In summary, the trial court stated: "And so, in looking at all of the allegations, I find that the Commissioner did not make an error and entered an appropriate recommendation, albeit on a different basis than I find." (R. at 72, p. 13 (emphasis added)).

The Commissioner, however, did not receive any competent or admissible evidence to warrant the entry of a protective order by the trial court on an alternative basis. While the facial allegations in a petition for a protective order may be sufficient for entry of an ex parte protective order, those allegations in a petition are insufficient for entry of a permanent protective order after a hearing. In other words, petitioner was required to put on competent and admissible evidence in the hearing in order to warrant

the entry of a permanent protective order. In this case, petitioner proffered evidence regarding the July 24th threat at the hearing before the Commissioner. The Commissioner improperly relied on this evidence because it mistakenly found that respondent had failed to deny the allegation.

The trial court properly recognized the July 24th threat was disputed and was not satisfied that this “isolated” statement was proper grounds. In going beyond this incident, however, the trial court necessarily relied on other grounds that were not supported by any evidence submitted to the Commissioner. Specifically, the petition for a protective order referenced the testimony from the son. Respondent objected to this evidence as hearsay, and the Commissioner also noted the inherent limitations of this allegation. (R. at 58-61.) The remaining allegations were the subject of a prior order that the parties agreed could be dismissed. Moreover, petitioner did not proffer or offer any of this evidence to the Commissioner or the trial court. Respondent was not given any opportunity to cross-examine the petitioner with respect to these allegations. Respondent did deny the allegations and offered compelling evidence to the Commissioner to contradict these alleged events and to contradict that petitioner was in fear of imminent physical harm.

In this case, the trial court was presumably relying on the past allegations as the “totality” of the allegations in the petition. Those past allegations, however, were as much as two years earlier and had no corroborating evidence. In *N.D.*, this Court

examined a lone event that was several years prior to the allegations in the petition for a protective order and concluded: the [earlier event], even if proven to have occurred, was too remote in time to [petitioner's] filing of the petition for the protective order to be a sufficient basis for the trial court's conclusion under section 30-6-2(1).” *N.D.*, 2003 UT App 215 at ¶25.

In this case, the trial court was required to conduct an evidentiary hearing if it was going to rely on an alternative basis for entering the protective order. The Commissioner only received proffered evidence about the July 24, 2008 alleged incident. Because the trial court agreed with respondent's objection to this alleged incident and whether it was a sufficient basis for entering a protective order, the trial court was left with no other evidence on which to enter the protective order. Indeed, the trial court's findings only to reference the totality of the circumstances as set forth in the petition. The findings are not tied to any admitted evidence. The trial court was within its right to examine other possible bases, but those bases had to be supported by admissible evidence. The unsupported allegations of the petition were not sufficient and do not amount to competent or admissible evidence. Furthermore, the trial court had to allow respondent the opportunity to be heard on the alternative basis. Respondent was not provided opportunity to hear the petitioner's testimony on the alleged other incidents, was not given an opportunity to cross-examine the petitioner on these events, and was not afforded an opportunity to put on his own evidence to rebut the alleged incidents.

In the end, the trial court's decision to enter the protective order was deficient because the trial court did not have an adequate evidentiary basis and because the respondent was denied his due process right to confront his accuser and put on his own evidence. The trial court agreed that the Commissioner had erred in her conclusions, but the trial court was still concerned about the allegations. At this point, the trial court should have requested the parties put on evidence on the alternative allegations. Instead, the trial court relied on the unsubstantiated allegations in the petition as the basis for the protective order. This was error.

III. Unsubstantiated allegations in a petition are not a sufficient evidentiary basis for entry of a protective order.

The trial court's findings to support its conclusion that a permanent protective order should be entered reference only the totality of the allegations in the petition. The allegations in the petition are sufficient only for entry of the ex parte order. *See* Utah Code Ann. § 78B-7-106. The statute contemplates the issuance of a temporary order based on the facial validity of the allegations of the petition. *See id.* After the entry of the ex parte temporary protective order, the statute mandates a hearing within 20 days in order to determine whether the temporary order should be made permanent. *See* Utah Code Ann. § 78B-7-107. The requirement for a hearing before issuing a permanent order is to allow the respondent the opportunity to be heard on the matter. *See id.*

In order to be meaningful, the opportunity to be heard must allow, at a minimum, the opportunity to hear the allegations, to cross-examine the witnesses

concerning the allegations, and to put on rebuttal evidence. If facial allegations of the petition were sufficient without any supporting and admissible evidentiary basis, the statute would not need to require a hearing with an opportunity for the respondent to be heard. Accordingly, the trial court's action in affirming on the allegations in the petition rather than the proffered evidence did not comply with the statutory requirements.

CONCLUSION

Based on the foregoing facts and authorities, respondent requests this Court to vacate the permanent protective order on the basis that the order is not supported by any admissible evidence. In the alternative, this Court should remand this matter back to the trial court with instructions to conduct an evidentiary hearing. At this hearing, petitioner must present her evidence to support the permanent protective order, and respondent must be provided the opportunity to cross-examine the petitioner and her witnesses and be allowed to present any rebuttal evidence. After hearing this evidence, the trial court should decide whether the protective order should continue, including any findings for or against continuing the protective order.

DATED this 4 day of March, 2009.

RICHARDS BRANDT MILLER NELSON



ZACHARY E. PETERSON

LINCOLN HARRIS

Attorneys for Respondent/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 4 day of March, 2009, to the following:

Jennifer Hedgcock
6463 S. Coybrook Drive
West Jordan, UT 84084

William J. Middleton
Guardian ad Litem
Office of the Guardian ad Litem
450 South State Street, #W22
P. O. Box 140403
Salt Lake City, Utah 84114-0403

A handwritten signature in black ink, appearing to read "William J. Middleton", with a large, stylized loop at the end.

ADDENDUM

AMENDED

Protective Order



Case Number: 084903296 District: 3rd
County: Salt Lake State: Utah
Judge: Peuler
Commissioner: Blomquist

Petitioner (protected person):

Jennifer R. Hedgcock

First Middle Last

Address and phone # (to keep private, leave blank):

6463 S. Coybrook Drive

Street

West Jordan, UT 84084

City

State

Zip

Phone #: _____

Petitioner's attorney (if any): Steven H. Gunn

Other people protected by this order

Name Age Relationship to Petitioner

Respondent (person Petitioner is protected from):

Lee Evans Hedgcock

First Middle Last

Other names used: _____

Relationship to Petitioner: estranged husband

Address (street): 314 E. Park Creeke Lane

Salt Lake City UT 84115

City

State

Zip

Describe Respondent:

Sex	Race	Date of Birth	Ht	Wt
M	White	7/5/1972	6'1"	180
Eyes	Hair	Social Security # (only the last 4 numbers)		
Hazel	Brown	0341		
Distinguishing features (like scars, tattoos, limp, etc.)				
Balding				
Driver's license issued by (State):			Expires:	

Warning!

XXX

Weapon involved (Box to be initialed by Court, if applicable)

There were hearings on 8/12/08.

The Respondent was given notice and an opportunity to be heard in the hearing that gave rise to this order. The following people were present at the hearings:

- ☒ Petitioner ☒ Petitioner's attorney (name): Steven H. Gunn
☒ Respondent ☒ Respondent's attorney (name): Lincoln Harris
☐ Other (name): _____

The Court reviewed the Request for Protective Order and: ☒ received argument and evidence, ☐ accepted the stipulation of the parties, ☐ entered the default of the Respondent for failure to appear, finds that domestic violence or abuse has occurred or there is substantial likelihood of immediate danger of abuse or domestic violence by the Respondent, ☐ finds that a minor child witnessed the abuse or domestic violence, and makes the orders initialed below. Utah Code 30-6-4.2

The Court orders the Respondent to obey all orders initialed on this form and to not abuse or threaten to abuse anyone protected by this order.

The criminal orders on page 2 do not expire unless dismissed by the Court.

Warnings:

- This is a court order. No one except the court can change it. If you do not obey this order, you can be arrested, fined, and face other charges.
- This order is valid in all U.S. states and territories, the District of Columbia, and tribal lands. If you go to another U.S. state, territory or tribal land to violate this order, a federal judge can send you to prison.
- No guns or firearms! (See page 2, item 5.)

Violence Against Women Act of 1994, 18 U.S.C. §§ 2265, 2262, 18 U.S.C. § 922(g)(8)

The Respondent must obey all orders initialed by the judicial officer.

If you do not obey orders 1 – 6 below, the court can send you to jail for up to 1 year and order you to pay a fine.

A second or subsequent violation can result in more severe penalties.

(Violation of orders 1 – 6 below is a criminal Class A misdemeanor Utah Code §§ 30-6-4 2, 76-5-108, 77-36-1 1, 77-36-2 4)

1 ☒ Personal Conduct Order

Do not commit, try to commit or threaten to commit any form of violence against the Petitioner or any person listed on page 1 of this form. This includes stalking, harassing, threatening, physically hurting, or causing any other form of abuse.

2 ☒ No Contact Order Do not ~~contact~~ phone, mail, e-mail, or communicate in any way with the Petitioner, either directly or indirectly; except you may contact her by text-messaging concerning issues relating to the children, including parenting-time visits

3 ☒ Contact for Mediation and pick-up and delivery of the children.
You are ^{also} allowed to have contact with the Petitioner ~~only~~ during mediation sessions for your divorce or custody case that are scheduled with a Court Qualified Mediator.

4 ☒ Stay Away Order

Stay away from:

- ☒ a. The Petitioner's current or future: ☒ Vehicle ☒ Job ☐ School ☒ Home, premises and property (list current addresses below):

Home address: 6463 S. Coybrook Drive – West Jordan, UT 84084

Work address: 11850 S. Election Road – Draper, UT 84020

School address: _____

Vehicle description: 2006 Hyundai Sonata (Silver)

- ☐ b. The school or childcare of the children listed on page 1 of this form. (List current School/Childcare addresses here): _____

- ☐ c. Other (specify): _____

5 ☒ No Guns or Other Weapons

The Court finds that your use or possession of a weapon poses a serious threat of harm to the Petitioner. You cannot possess, have, or buy a gun or firearm or any of these weapons: _____

See Utah Code 30-6-4 2(2)(d)

Warning! It is a federal crime for you to have, possess, transport, ship, or receive any firearm or ammunition, including hunting weapons, while this protective order is in effect, even if 5 above is not initialed.

6 ☐ Property Orders

Unless a judicial officer makes a different order later, only the Petitioner can use, control and possess the following property and things, but cannot dispose of this property without court approval:

- ☐ a. Home at (address) _____

☐ b. Car, truck or other property *(describe)*

You must obey orders 7 – 12 initialed by the judge. If you do not, you will be in contempt of court and may be punished. These orders will ☐ expire ☐ be reviewed by the court in ____ days.

7 ☐ **Property Orders** Do not interfere with or change the Petitioner's phone, utility or other services.

8 ☐ **Child Custody & Parent-time Orders**

The Petitioner (the protected person) will have custody of the minor children listed below. The Petitioner may give a copy of this order to the principal or director of the child's school or daycare. If you do not obey the custody and parent-time orders listed here, the Petitioner may ask for the court's help (such as an order to show cause for contempt): _____

You will have parent-time as follows: _____

If there is a "No Contact" order, you can communicate with the Petitioner only about parent-time matters through: _____

9 ☐ **No Alcohol or Illegal Drugs** Do not use alcohol or illegal drugs before or during visitation

10 ☐ **No Travel with Children** Do not take the children listed above out of the state of Utah.

11 ☐ **Child Support, Spousal Support and other Expenses**

The Respondent will:

- ☐ a. Pay \$ _____ / month in guidelines child support.
- ☐ b. Have child support withheld from the Respondent's earnings. (*Utah Code § 62A-11, Parts 4 and 5*)
- ☐ c. Pay \$ _____ / month in spousal support.
- ☐ d. Pay 50% of the minor children's childcare expenses.
- ☐ e. Pay 50% of the minor children's medical expenses, including premiums, deductibles and co-payments.
- ☐ f. Pay \$ _____ for the minor children's medical expenses related to the abuse and \$ _____ for the Petitioner's medical expenses related to the abuse.

12 ☐ **Other Assistance Needed** (*List below any other orders needed to protect you and other protected people listed on page 1 of this form*) _____

Orders to Agencies

13 ☐ **Law Enforcement to Assist** A law enforcement officer from: _____ will enforce the orders checked below:

- ☐ a. Help the Petitioner gain and keep control over home, car or other personal belongings.

- ☐ b. Help the Petitioner obtain custody of the children.
☐ c. Help the ☐ Respondent or ☐ Petitioner remove essential personal belongings from the home.

Warning to the Respondent: Do not go into the home or other protected places without the officer..
Law enforcement can evict you or keep you away from protected places, if needed.

14 ☐ **Investigate Possible Child Abuse**

This matter will be referred to the Division of Child and Family Services for review and possible investigation of child abuse.

15. XX A guardian ad litem should be appointed for the divorce case.

To the Petitioner: In 2 years, the Respondent may ask the Court to dismiss the orders on this page. If that happens, we will need your address so the Court can give you notice. If your address changes, you must let the Court know at least 30 days before the 2-year period ends on __/__/__.

If you receive services from the Office of Recovery Services (ORS) and want to keep your address confidential, you must give ORS a copy of your current Protective Order.

— The Court fills out below —

Date: _____
Commissioner (printed name) _____

Date: _____
Judge (printed name) Sandra N. Peuler

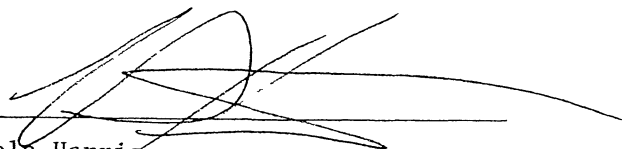
— The Respondent fills out below —

By signing here, the Respondent approves the form, and accepts service of this Protective Order and waives the right to be personally served.

Respondent's Address _____
Street City State Zip

Respondent's Signature _____

APPROVED AS TO FORM:


Lincoln Harris
Attorney for Respondent

Westlaw

U C A 1953 § 78B-7-106

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Formerly cited as UT ST § 30-6-4 2

West's Utah Code Annotated Currentness

Title 78B Judicial Code

▣ Chapter 7 Protective Orders

▣ Part 1 Cohabitant Abuse Act (Refs & Annos)

→ **§ 78B-7-106. Protective orders--Ex parte protective orders --Modification of orders--Service of process--Duties of the court**

(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition, or

(b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears

(2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte

(a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member,

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly,

(c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member,

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court,

(e) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings,

(f) grant to the petitioner temporary custody of any minor children of the parties,

(g) order the appointment of the office of the Guardian Ad Litem to represent the interests of any minor children of the parties, if abuse or neglect of the minor children is alleged, or appoint a private guardian ad litem, if appropriate, pursuant to Section 78A-2-228,

(h) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member, and

(i) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year

(3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears

(a) grant the relief described in Subsection (2), and

(b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child

(4) Following the protective order hearing, the court shall

(a) as soon as possible, deliver the order to the county sheriff for service of process,

(b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present,

(c) transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner, and

(d) transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113

(5)(a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows

(i) criminal offenses are those under Subsections (2)(a) through (e), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (e), and

(ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a) as it refers to Subsections (2)(f), (h), and (i)

(b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor

(c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings

(6) The protective order shall include:

(a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;

(b) information the petitioner is able to provide to facilitate identification of the respondent, such as Social Security number, driver license number, date of birth, address, telephone number, and physical description; and

(c) a statement advising the petitioner that:

(i) after two years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;

(ii) the petitioner should, within the 30 days prior to the end of the two-year period, advise the court of the petitioner's current address for notice of any hearing; and

(iii) the address provided by the petitioner will not be made available to the respondent.

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.

(8)(a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 78B-7-113.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9)(a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless

the petitioner

(a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order, or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order

(11) A protective order may be modified without a showing of substantial and material change in circumstances

(12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern

CREDIT(S)

Laws 2008, c 3, § 1103, eff Feb 7, 2008, Laws 2008, c 163, § 1, eff May 5, 2008

HISTORICAL AND STATUTORY NOTES

Laws 2008, c 163, § 1, inserted subsec (2)(g), redesignated subsecs (2)(g) and (2)(h) as subsecs (2)(h) and (2)(i), and in subsec (5)(a)(ii), twice substituted “(2)(f), (h), and (i), and” for “(2)(f) through (h) and”

Composite section by the Office of Legislative Research and General Counsel of Laws 2008, c 3, § 1103 and Laws 2008, c 163, § 1

Prior Laws

Laws 1995, c 300, § 7

Laws 1996, c 244, § 5

Laws 1997, c 10, § 35

Laws 2001, c 255, § 16

Laws 2003, c 68, § 4

Laws 2005, c 156, § 1

C 1953, § 30-6-4 2

CROSS REFERENCES

Attempt, elements and classification, see §§ 76-4-101 and 76-4-102
 Conspiracy and solicitation, elements and penalties, see § 76-4-201 et seq
 Fines upon conviction of misdemeanor or felony, see § 76-3-301


Inchoate offenses, limitations on sentencing, see §§ 76-4-301 and 76-4-302
 Penalties for misdemeanors, see § 76-3-204
 Protective orders pertaining to discovery, see Rules Civ Proc , Rule 26
 Protective orders, sanctions, see Rules Civ Proc , Rule 37

LAW REVIEW AND JOURNAL COMMENTARIES

Stalkers and firearms A dangerous mix, Utah's civil stalking injunction statute Monica Maio, 7 J L & Fam Stud 263 (2005)

State v Hardy Reading between the lines Why love letters may amount to veiled threats when sent by an abusive spouse Tajha Lee Cederholm, 6 J L & Fam Stud 139 (2004)

LIBRARY REFERENCES

Breach of the Peace  16, 20
 Westlaw Key Number Searches 62k16, 62k20
 C J S Breach of the Peace §§ 14, 18 to 19, 21, 25
 C J S Domestic Abuse and Violence §§ 2 to 4, 6 to 14, 18 to 21, 23



UNITED STATES CODE ANNOTATED

Violence against women prevention, interstate stalking, see 18 U S C A § 2261A



NOTES OF DECISIONS

Effect of guilty plea 2
 Sufficiency of evidence 3
 Validity 1

1 Validity

Statutes governing orders for protection and criminal penalty for violations were not unconstitutionally overbroad by prohibiting innocent speech by defendant directed at wife who obtained order for protection, in light of state's interest in preserving the wife's health and well-being, and court's ability to apply statutes only after it found that defendant and wife were cohabitants and that wife had been victim of domestic abuse U C A 1953, 30-6-4 2(2)(b), 76-5-108 *State v Hardy* 2002 54 P 3d 645, 452 Utah Adv Rep 3, 2002 UT App 244 Breach Of The Peace  15 1, Constitutional Law  90 1(1)


2 Effect of guilty plea

By pleading guilty to misdemeanor count of violation of order for protection, defendant admitted all essential elements of offense, and thus, waived challenge to constitutionality of statute governing offense U C A 1953, 30-6-4 2(2)(b) *State v Hardy*, 2002, 54 P 3d 645, 452 Utah Adv Rep 3, 2002 UT App 244 Criminal Law  273 3, Criminal Law  273 4(1)

3 Sufficiency of evidence

U C A 1953 § 78B-7-106

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Evidence that defendant wrote letters and mailed them to wife's home was sufficient to demonstrate that defendant was contacting wife, in violation of order for protection, even though letters were addressed to children, reading skills of two children who were old enough to read were rudimentary, and letters contained information regarding marital relationship with wife U C A 1953, 30-6-4 2(2)(b) State v Hardy, 2002, 54 P 3d 645, 452 Utah Adv Rep 3, 2002 UT App 244 Breach Of The Peace  15 1

U C A 1953 § 78B-7-106, UT ST § 78B-7-106

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U.C.A. 1953 § 78B-7-107

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Formerly cited as UT ST § 30-6-4.3

West's Utah Code Annotated Currentness

Title 78B. Judicial Code

Chapter 7. Protective Orders

Part 1. Cohabitant Abuse Act (Refs & Annos)

→ **§ 78B-7-107. Hearings on ex parte orders**

(1)(a) When a court issues an ex parte protective order the court shall set a date for a hearing on the petition within 20 days after the ex parte order is issued.

(b) If at that hearing the court does not issue a protective order, the ex parte protective order shall expire, unless it is otherwise extended by the court. Extensions beyond the 20-day period may not be granted unless:

- (i) the petitioner is unable to be present at the hearing;
- (ii) the respondent has not been served;
- (iii) the respondent has had the opportunity to present a defense at the hearing;
- (iv) the respondent requests that the ex parte order be extended; or
- (v) exigent circumstances exist.

(c) Under no circumstances may an ex parte order be extended beyond 180 days from the date of initial issuance.

(d) If at that hearing the court issues a protective order, the ex parte protective order remains in effect until service of process of the protective order is completed.

(e) A protective order issued after notice and a hearing is effective until further order of the court.

(f) If the hearing on the petition is heard by a commissioner, either the petitioner or respondent may file an objection within ten days of the entry of the recommended order and the assigned judge shall hold a hearing within 20 days of the filing of the objection.

(2) Upon a hearing under this section, the court may grant any of the relief described in Section 78B-7-106.

(3) When a court denies a petition for an ex parte protective order or a petition to modify an order for protection ex parte, the court shall set the matter for hearing upon notice to the respondent.

(4) A respondent who has been served with an ex parte protective order may seek to vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a) by filing a verified motion to vacate. The

respondent's verified motion to vacate and a notice of hearing on that motion shall be personally served on the petitioner at least two days prior to the hearing on the motion to vacate

CREDIT(S)

Laws 2008, c 3, § 1104, eff Feb 7, 2008, Laws 2008, c 163, § 2, eff May 5, 2008

HISTORICAL AND STATUTORY NOTES

Laws 2008, c 163, § 2, rewrote subsec (1)(b), added subsec (1)(c), and redesignated subsecs (1)(c) to (1)(e) as subsecs (1)(d) to (1)(f) Subsection (1)(b) formerly read

“(b) If at that hearing the court does not issue a protective order, the ex parte protective order shall expire, unless it is otherwise extended by the court ”

Composite section by the Office of Legislative Research and General Counsel of Laws 2008, c 3, § 1104 and Laws 2008, c 163, § 2

Prior Laws


Laws 1995, c 300, § 8

Laws 1998, c 83, § 1

Laws 2001, c 247, § 1

C 1953, § 30-6-4 3

LIBRARY REFERENCES

Breach of the Peace  20

Westlaw Key Number Search 62k20


C J S Breach of the Peace §§ 14, 18 to 19, 21, 25

C J S Domestic Abuse and Violence §§ 2 to 3, 7 to 14, 18 to 21, 23

NOTES OF DECISIONS

In general 1


1 In general

Respondent was not wrongfully denied hearing before judge on petition for protection order, respondent could have filed objection to court commissioner's recommendation, which would have required judge to conduct hearing within 20 days, but failed to do so Buck v Robinson, 2008, 177 P 3d 648, 596 Utah Adv Rep 15, 2008 UT App 28 Breach Of The Peace  20

Defendant violated a protective order when he broke into his estranged wife's home, though defendant had not been served with permanent protective order, as defendant had notice of the hearing at which the permanent pro-

U C A 1953 § 78B-7-107

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tective order was issued, so that court's prior ex parte protective order remained in effect until the permanent order was served U C A 1953, 30-6-4 3(c), U C A 1953, 76-5-108 (1994), U C A 1953, 30-6-5(6) (Repealed) State v Rudolph, 1998, 970 P 2d 1221, 349 Utah Adv Rep 11, rehearing denied, dismissal of habeas corpus reversed 208 F 3d 227, on remand 2000 WL 33407004, denial of post-conviction relief affirmed 43 P 3d 467, 439 Utah Adv Rep 8, 2002 UT 7, dismissal of habeas corpus affirmed 111 Fed Appx 565, 2004 WL 2166171, certiorari denied 125 S Ct 1593, 544 U S 906, 161 L Ed 2d 281 Breach Of The Peace  15 1

U C A 1953 § 78B-7-107, UT ST § 78B-7-107

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