

2015

Jennifer L. Mota, v. Lawrence Mota, II

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JENNIFER L. MOTA,

Petitioner/Appellee,

v.

LAWRENCE MOTA, II,

Respondent/Appellant.

No. 20150191-CA

**On appeal from the
Fourth District Court, Utah County,
Honorable Samuel McVey and
Commissioner Thomas Patton
Case No. 124401367**

**PRIVATE ADDENDA TO
BRIEF OF APPELLANT LAWRENCE MOTA, II**

**Grant Dickinson
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Provo, Utah 84604
Phone: (801) 356-8300
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Jennifer L. Mota*

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shirl@lebaronlaw.com**

*Attorneys for Appellant
Lawrence Mota, II*

ORAL ARGUMENT REQUESTED

**FILED
UTAH APPELLATE COURTS**

OCT 16 2015

IN THE UTAH COURT OF APPEALS

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*Attorneys for Appellant
Lawrence Mota, II*

ORAL ARGUMENT REQUESTED

Mota v. Mota
No. 20150191-CA


Private Addenda

- A Second Amended Protective Order (R.243-38)
- B Amended Protective Order (R.208-03)
- C Request for Protective Order (R.8-1) and Temporary Protective Order (R.17-14)
- D Respondent's Objection to Protective Order (R.90-89), Memorandum in Support of Respondent's Objection to Protective Order (R.96-91), and Affidavit in Support of Respondent's Objection to Protective Order (R.108-97)
- E Respondent's Request to Dismiss Protective Order (issued more than 2 years ago) (R.162-61)
- F Police Report (R.102-100) and clean non-record copy of police report
- G Transcript of September 30, 2014 motion hearing (R.252)

Certificate of Service

This is to certify that on the 16th day of October, 2015, I caused two true and correct copies of the Private Addenda to Brief of Appellant Lawrence Mota, II (included on the CD containing the courtesy pdf) to be served on the following via first class mail, postage prepaid:

Grant Dickinson
MOODY BROWN LAW
2525 North Canyon Rd.
Provo, UT 84604



Tab A

MAY 05 2015

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

Second Amended Protective Order

Case Number: 124401367

District: Fourth

County: Utah

State: Utah

Judge: _____

Commissioner: Patton

Petitioner (protected person):

Jennifer L. Mota
First Name Middle Last

Other people protected by this order

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

Name (Initials only if under
18)

Age

Relationship to
Petitioner

Street _____

P.S.M

13

Child

H.W.M

11

Child

City — State — Zip _____

T.L.M

8

Child

S.L.M

6

Child

Phone # _____

Petitioner's date of birth: _____

Petitioner's attorney (if any): D. Grant Dickinson Phone # (801) 356-8300

Respondent

Describe Respondent

(person Petitioner is protected from):

Sex

Race

Date of Birth

Height

Weight

Lawrence Mota
First Name Middle Last

Male

White

5'10"

220

Other Names Used Larry Mota

Eye

Hair

Social Security Number
(last four digits only)

Color

Color

blue

brown

Relationship to Petitioner:

Ex-spouse

Distinguishing features (like scars, tattoos, limp, etc.)

Southern California star w/ children's initials on back, left
shoulder

Address

1259 North 500 West

Driver's license issued by (State): 10/22/2015

Street

Expires 10/22/2015

Orem, UT 84057

City — State — Zip

Phone Number _____

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

There was a hearing on (date): September 30, 2014 on Respondent's Motion to Dismiss Protective Order. The following people were present at the hearing:

☒ Petitioner ☒ Petitioner's attorney (name): D. Grant Dickinson
☒ Respondent ☒ Respondent's attorney (name): Shirley Don LeBaron
☐ Other (name): _____

The Court considering the record, including memoranda for this instant hearing, proffered evidence, stipulations, argument of counsel and for reasons orally assigned denies Respondent's Motion to Dismiss and further orders that the Protective Order be amended as the parties have agreed and to remain in place. (☒ 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.

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 3 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 3, 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.

- 1 ☒ YDP **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 ☒ YDP **No Contact Order** -- Do not contact, phone, mail, e-mail, or communicate in any way with the Petitioner, either directly or indirectly.

3 ☒ **TRP** **Contact for Mediation** -- You are 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 ☒ **TRP** **Stay Away Order** -- The children's school, the children's church, and anywhere the children are having activities outside the home address are no longer protected locations and the Father is permitted to attend activities with the children at the aforementioned locations, however he is to have no contact with the Mother at the events. Respondent shall stay away from:

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

Home address: 2182 North 1450 East, Provo, UT

Work address: _____

School address: _____

Vehicle description: _____

☐ 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 ☒ **TRP** **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: _____

Warning! If a final protective order is issued against you after the hearing, you will then become subject to federal law making it a crime to possess, transport, ship or receive any firearm or ammunition, including a hunting weapon.

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 ☐ services.

Property Orders -- Do not interfere with or change the Petitioner's phone, utility or other

8 ☐

Child Custody & Parent-time Orders -- The Petitioner (the protected person) will have temporary 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 Utah.

11 ☐

Child Support, Spousal Support and other Expenses -- The Respondent will:

- ☐ a. Pay \$ _____ / month in 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.

"Essential personal belongings" means daily use items, such as clothing, medications, jewelry, toiletries, financial or personal records solely in one person's name, or items needed to work at a job or go to school.

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.

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 09/16/2016.

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 may amend or dismiss a protective order after one year if it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent.

This Order is entered without finding of fault.

This is the final Order of the Court. No additional Order is necessary.

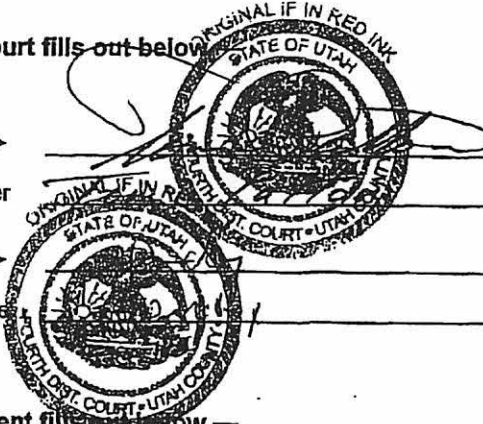
— The Court fills out below —

DATE MAY 1 2015
Date

Sign here ►
Commissioner

Sign here ►
Judge

— 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
1259 North 500 West

City
Orem

State
UT.

Zip
84057

Respondent's Signature /s/ Larry Mota

Order is signed when electronically stamped by the Court on the first page

Approved as to form:

/s/ D. Grant Dickinson
D. Grant Dickinson
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Protective Order was sent to Counsel for the Petitioner this 23rd day of April, 2015 via the Court's electronic filing system.

/s/ Mindy L. Horne
Mindy L. Horne, Paralegal

Tab B

FILED ✓

FEB 18 2015

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

**Amended
Protective Order**

Case Number: 124401367

District: Fourth

County: Utah

State: Utah

Judge: _____

Commissioner: Patton

Petitioner (protected person):

Jennifer

First Name

L

Middle

Mota

Last

Other people protected by this order

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

Name (Initials only if under
18)

Age

Relationship to
Petitioner

Street

P.S.M

13

Child

H.W.M

11

Child

City — State — Zip

T.L.M

8

Child

S.L.M

6

Child

Phone #

Petitioner's date of birth:

Petitioner's attorney (if any): D. Grant Dickinson Phone # (801) 356-8300

Respondent

Describe Respondent

(person Petitioner is protected from):

Sex

Race

Date of Birth

Height

Weight

Lawrence

First Name

Mota

Last

Male

White

5'10"

220

Other Names Used Larry Mota

Eye
Color

Hair
Color

Social Security Number
(last four digits only)

blue

brown

Relationship to Petitioner:

Ex-spouse

Distinguishing features (like scars, tattoos, limp, etc.)

Southern California star w/ children's initials on back, left
shoulder

Address

1259 North 500 West

Driver's license issued by (State): 10/22/2015

Street

Expires 10/22/2015

Orem, UT 84057

City — State — Zip

Phone Number _____

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

There was a hearing on (date): September 30, 2014 on Respondent's Motion to Dismiss Protective Order. The following people were present at the hearing:

☒ Petitioner ☒ Petitioner's attorney (name): D. Grant Dickinson

☒ Respondent ☒ Respondent's attorney (name): Shirl Don LeBaron

☐ Other (name) _____

The Court considering the record, including memoranda for this instant hearing, proffered evidence, stipulations, argument of counsel and for reasons orally assigned denies Respondent's Motion to Dismiss and further orders that the Protective Order be amended as the parties have agreed and to remain in place. (☒ 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.

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 3 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 3, 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.

- 1 ☒ *YJP* **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 ☒ *YJP* **No Contact Order** – Do not contact, phone, mail, e-mail, or communicate in any way with the Petitioner, either directly or indirectly.

3 ☒ **Contact for Mediation** – You are 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** – The children's school, the children's church, and anywhere the children are having activities outside the home address are no longer protected locations and the Father is permitted to attend activities with the children at the aforementioned locations, however he is to have no contact with the Mother at the events. Respondent shall stay away from:

☒ a. The Petitioner's current or future: ☒ Vehicle ☐ Job ☐ School ☒ Home, premises and property (list current addresses below):
Home address: 2182 North 1450 East, Provo, UT
Work address: _____
School address: _____
Vehicle description: _____

☐ 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: _____

Warning! If a final protective order is issued against you after the hearing, you will then become subject to federal law making it a crime to possess, transport, ship or receive any firearm or ammunition, including a hunting weapon.

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 temporary 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 Utah.

11 ☐ **Child Support, Spousal Support and other Expenses** -- The Respondent will:

- ☐ a. Pay \$ _____ / month in 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.

"Essential personal belongings" means daily use items, such as clothing, medications, jewelry, toiletries, financial or personal records solely in one person's name, or items needed to work at a job or go to school.

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.

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 09/16/2016.

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 may amend or dismiss a protective order after one year if it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent.

This Order is entered without finding of fault.

— The Court fills out below —

FEB 17 2015
Date

Sign here ►

Commissioner

February 18, 2015
Date

Sign here ►

Judge

— 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
1259 North 500 West

City
Orem

State
UT

Zip
84057

Respondent's Signature /s/ Larry Mota

Modified Protective Order

Approved Board of District Court Judges May 21, 2008
Revised June 20, 2014

Page 5 of 6

000204

Order is signed when electronically stamped by the Court on the first page

Approved as to form:

/s/ D. Grant Dickinson
D. Grant Dickinson
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Protective Order was sent to Counsel for the Petitioner this 10th day of February, 2015 via the Court's electronic filing system.

/s/ Mindy L. Home
Mindy L. Home, Paralegal

Tab C

Request for Protective Order



Case Number: 13 P 339 124401347 District: 4th

County: Utah State: Utah

Judge: _____

Commissioner: Futton

1 Petitioner (person asking for protection):

Jennifer L. Mota

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

Other people protected by this order (relatives or people who live with you):

Name (Initials only if under 18) Age Relationship to Petitioner

P.S.M. (0) - child

H.W.M. (0) - child

T.L.M. (0) - child

S.L.M. (0) - child

Name and phone number of Petitioner's attorney (if any): _____

What is your date of birth? _____

If you are under 16 years old, have you ever been married or emancipated by a court? ☐ Yes ☐ No

2 Respondent (person you need to be protected from):

Lawrence "Larry" Mota, II

First Middle Last

Other names used: Larry Mota

Relationship to Petitioner: Divorced couple

Address:

1259 N. 500 W.
Orem, Utah 84057
801-377-0899

Respondent's Employer (Name and address):

Mota Lawn

Self-employed

Describe Respondent:

Sex	Race	DOB	Ht.	Wt.
Male	White (Not Hispanic)		5'10"	220
Eyes	Hair	Social Security # (only the last 4 numbers)		
Blue	Brown			
Distinguishing features (like tattoos, scars, limp. etc.): <i>Southern California Star with children's initials on it on back left shoulder</i>				
Driver's license issued by: <i>Utah</i>				
Expires: <i>10/22/2015</i>				

Other places to find Respondent (other work locations, relatives, friend, hangouts, etc. - include city/state/zip on each address, if possible)	Location type (work, relative, friend, etc.)	Best Time to find at this address	Phone number
<u>Larry's House</u>	<u>Home</u>	<u>anytime</u>	<u>801-377-0899</u>

Describe Respondent's vehicle(s):

Make	Model	Color	License Plates
<u>Chevy</u>	<u>Duramax Diesel</u>	<u>Silver w/ Mota Lawn logo</u>	
<u>Ford</u>	<u>3-door Truck</u>	<u>White w/ Logo</u>	

Has the Respondent used weapons or been violent in the past? ☒ Yes ☐ No If yes, describe here:

In April 2011, after I filed for divorce Larry became suicidal and threatened to kill himself with a gun, taking a hand gun and leaving, saying he wasn't coming back. I called the police as soon as he left and they said there wasn't anything they could do but they did come to the house to talk with me. Larry came back just as the police were driving away. The police didn't see him but he saw them. He came in and went upstairs to get ready for bed. He told me that he knew that I called the police. There were two friends downstairs at that time and they called the police to notify them that he was alright. I refused to talk with the police at that time because I was fearful of Larry's reaction. In the morning Larry started arguing with me about calling the police and some other family things. I told him to stop manipulating me and if he was going to kill himself to just go ahead and do it because I was done with the controlling behavior. He pulled out a hand gun and started to put the clip in it saying, "You don't think I will do it?" I picked up the phone and started to dial 911 and he pointed the gun at me and my youngest child who I was holding and said, "If you dial that last number it will be the last thing you ever do." I threw the phone onto the bed and he pointed the gun back at himself. After a minute he released the clip out of the gun and put the gun away. I left the room, got my kids ready for school and drove them to school. I then called the police.

Last fall, after our divorce, my kids came home from visiting him one week and said to me, "If anything were to ever happen to you, daddy's new wife would be our new mommy." I told them I would never intentionally go anywhere and that I would always be there. They then said, "No, like if something bad happened to you, like if you died or disappeared or something." I was very scared that Larry was planning on killing me so he could get custody of the children.

On May 4, 2012, my oldest son came into the house in tears because he was supposed to be going to his dad's house for visitation. P.S.M. was scared that his dad was going to get him an air soft gun for his birthday. He told me that he did not want the gun because he "didn't want another air soft gun for his dad to shoot him with." I asked him what he meant by his dad shooting him and he told me that before any of the kids can play video games at their dad's house, they have to let their dad shoot them with an air soft gun and it hurts. I told him that if his dad did get him an air soft gun that he could wait for his dad to not be watching and then take it to the neighbors and they would keep it.

Then on 6/12/2012, I overheard my two oldest sons arguing about being shot with the air soft gun by their father. P.S.M. was saying that their dad says that they are going to play a game and they have to run and he is going to try and shoot them and they have to run into the bedroom and lock the door. I am so scared that he is trying to desensitize them to guns so if he does "loose it" and try to kill us all that they won't be scared and run from him. All of this coupled with a text I received from Larry on May 19, 2012, which reads, "For the time being it seems like it is your game in your rules the way you want it that you have a big surprise coming to be ready sweetie" I am fearful for my life and for the life of my children.

Is the Respondent on probation or parole? ☐ Yes ☒ No If yes, list the name of the probation/parole agency, the officer, and the telephone number here:

3 What is your relationship to the Respondent? (Check all that apply)

- ☐ a. We are married now.
☒ b. We used to be married. *Date of divorce:*
 06/08/2011
☐ c. We live together as a couple.
☐ d. We used to live together as a couple.
☒ e. We live or used to live in the same home.
☐ f. We are relatives, in-laws, or related by adoption
 Specify relationship:
☐ g. We are expecting a child now.
 Due date:
☒ h. We have a child or children together (under 18
 years old) *List below:*

Child's Name	Date of Birth	Address
P.S.M.		
H.W.M.		
T.L.M.		
S.L.M.		

4 Describe the most recent abuse:

- a. When did it happen? **05/19/2012**
- b. Where did it happen? **2182 N 1450 E, Provo, UT**
- c. Did the police come? ☐ Yes ☒ No
- d. If the police came, answer these questions:
 What police department came? Was anyone arrested? ☐ Yes ☐ No
 What is the case number? Did anyone get a ticket? ☐ Yes ☐ No
- e. Describe the abuse or domestic violence:
no physical abuse on this occassion
- f. What did the other person do or say to make you afraid?
He said that I had a big surprise coming so to get ready. To me that was a threat for my life because of all of the other things that have happened over the last year - the kids talking about having a new mommy if I disappeared or died and them having to be shot by an air soft gun by their dad before they can play video games. It all feels like a pattern of "what's to come."
- g. Did the other person use or threaten to use a gun or other weapon? ☒ Yes ☐ No *(If yes, describe any weapons the Respondent owns and how they were used against you):*
Walther P22 handgun, nickel and black. He pointed it at my face and told me if I called 911 it would be the last thing I ever did. He also owns about 10 or more other guns (hand guns, shotguns, airguns, and one german WWII rifle with a bayonnette). These are all I know of.
- h. Were any children present when this happened? ☒ Yes ☐ No If "Yes," who?
The text: P.S.M. & H.W.M; The Gun in face: S.L.M.
- i. Who else was there?

no one

j. Was anyone hurt?

k. Other facts:

5 Describe past abuse *(If none, skip to 6)*

- a. When did it happen? :
- b. Where did it happen?
- c. Did the police come? ☐ Yes ☐ No
- d. If the police came, answer these questions:
 What police department came? Was anyone arrested? ☐ Yes ☐ No
 What is the case number? Did anyone get a ticket? ☐ Yes ☐ No
- e. Describe the abuse or domestic violence:

6 Other Court Cases

- a. Are you or the Respondent on probation now for domestic violence? ☐ Yes ☒ No *(If yes, who?)*
- b. Have you or the Respondent ever been involved in any other court case involving either of you or your children?
☒ Yes ☐ No *(If yes, list ALL court cases below):*

Type of Case	County and State	Court Case # (NOT the police report #)	Person Involved	Did the judge make an order?
Divorce: 114401007; 12PR02959 to be filed	Utah, Utah	114401007	<input checked="" type="checkbox"/> You <input checked="" type="checkbox"/> Respondent	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

- c. Fill out below if any child listed on page 1 of this form is involved in any other court case, like adoption, juvenile, or custody, or has been investigated by the Division of Child and Family Services.

Type of Case	County and State	Court or DCFS case number (if you know it)
DCFS Investigation; Juvenile Protective Order	Utah, Utah	DCFS #: 1885102; Juv. PO will be filed 6/14/12
DCFS & Juvenile Protective Order	Utah, Utah	DCFS #: 1885102; Juv. PO will be filed 6/14/12
DCFS & Juvenile Protective Order	Utah, Utah	DCFS #: 1885102; Juv. PO will be filed 6/14/12
DCFS Investigation; Juvenile PO	Utah, Utah	DCFS #: 1885102; Juv. PO will be filed 6/14/12

Please, Judge, I am asking you to:

- ☒ Order the Respondent to go to a court hearing
- ☒ Make temporary (ex parte) orders, and
- ☒ After the hearing, make permanent the protective orders I have checked below:

- 7 ☒ **Personal Conduct** Order the Respondent not to commit, try to commit or threaten to commit any form of violence against me or any person listed in item 1 of this form. This includes stalking, harassing, threatening, physically hurting, or causing any other form of abuse.
- 8 ☒ **No Contact** Order the Respondent not to contact, phone, mail, email, or communicate with me in any way, either directly or indirectly.
- 9 ☒ **Contact for Mediation** Order that the Respondent may contact me **only** during mediation sessions for our divorce or custody case that are scheduled with a Court Qualified Mediator.

10 ☒ Stay Away Order the Respondent to stay away from:

- ☒ a. My current or future: ☒ Vehicle ☐ Job ☐ School ☒ Home, premises and property (*My current addresses are listed below*):

Home address: *2182 N. 1450 E., Provo, UT*

Work address:

School address:

Vehicle description: *2000 Chevy Venture, Silver*

- ☒ b. The school or childcare of the children listed on page 1 of this form. (*The current school and childcare addresses are listed here*):

Wasatch Elementary, 1080 N. 900 E., Provo, UT

- ☐ c. Other (*specify*):

11 ☒ No Guns or Weapons Order the Respondent not to use, possess, have, or buy a gun or firearm or any of these weapons: *he has 10+ guns (hand guns, shot guns, air guns, etc.)*

12 ☐ Property Control Order that only I can use, control and possess the following:

- ☐ a. Home at (*address*):

- ☐ b. Car, truck or other essential personal belongings (*describe*):

Orders 12-18 can last up to 150 days after the hearing. If you want them to last longer, explain why on a separate sheet of paper and attach it to this form.

13 ☐ Property Control Order the Respondent not to interfere with or change my phone, utility or other services.

14 ☒ Child Custody & Parent-time Orders

Give me custody of the minor children listed here:

P.S.M., H.W.M., T.L.M., S.L.M.

Give the Respondent parent-time as follows:

I want him to have no visitation for right now. I ask the court to order no visitation. If that is not possible, I ask the court to have the transfer take place at the Provo Police department or at either of our Bishop's houses.

If you asked for a *No Contact Order* above, who can communicate only parent-time information to the Respondent? (*Name*):

My parents: Scott & Susan Smith or Andrea Mosher

15 ☒ **No Alcohol or Drugs** Order the Respondent not to use alcohol or illegal drugs before or during visitation.

16 ☒ **Supervised Visitation** Provide the Respondent with supervised parent-time as follows: *(list name and phone number of supervising agency or person):*

ACAFS, 839 N. University Ave., Provo, UT

17 ☒ **Travel Restrictions** Order the Respondent not to take the children listed above out of the state of Utah.

18 ☐ **Child Support, Spousal Support and Other Expenses.**

Order the Respondent to:

- ☐ a. Pay \$ **0.00** / month in child support according to Utah Child Support Guidelines.
- ☐ b. Pay \$ **0.00** / month in spousal support.
- ☐ c. Pay child support by withholding from the Respondent's earnings. *(Utah Code § 62A-11, Parts 4 and 5)*
- ☐ 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 \$ **0.00** for the minor children's medical expenses related to the abuse and \$ **0.00** for my medical expenses related to the abuse.

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

I also ask for these Orders to Agencies:

20 ☐ **Law Enforcement to Assist**

Order a law enforcement officer from:
to enforce the orders checked below:

- ☐ a. Help me gain and keep control of home, car or other personal belongings.
- ☐ b. Help me obtain custody of the children.
- ☐ c. Help the ☐ Respondent or ☐ me remove essential personal belongings from the home.

21 ☐ **Investigate Possible Child Abuse**

Refer this matter to the Division of Child and Family Services for review and possible investigation of child abuse.

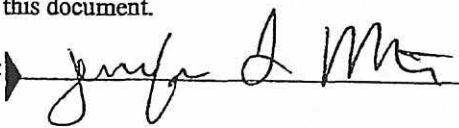
22 ☒ **Guardian for your children**

Appoint an attorney to speak for the best interests of the children in this case.

The Petitioner must read and sign below:


I swear that:

- I am the Petitioner and I have read this *Request for Protective Order*.
- I understand it is a serious crime to lie to get a Protective Order. If I lie, I can be charged with a felony, punishable by up to 5 years in prison.
- The statements in this *Request* are true and correct to the best of my knowledge.
- I believe I have the right to the protective orders I have asked for in this *Request*.
- I am not using this *Request* to harass the Respondent or to abuse the judicial process.
- I have not included any non-public information in this document.

Date: 6/13/12 Petitioner's signature: 

Clerk or Notary Public fills out below:

Subscribed and sworn to before me on (date): 6-13-12 in Utah County, Utah

 Clerk / Notary Public

Clerk or Notary's Signature: 

FILED

Online Court Assistance Program

JUN 18 2012

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY**Temporary Protective Order**
Ex Parte OrderCase Number: 174401367 District: 4th
County: Utah State: Utah
Judge: _____
Commissioner: FATTON**Petitioner (protected person)**Jennifer L. MotaFirst Middle Last
Address and phone # (to keep private, leave blank):**Other people protected by this order**

Name (Initials only if under 18) Age Relationship to Petitioner

P.S.M. (0) - child
H.W.M. (0) - child
T.L.M. (0) - child
S.L.M. (0) - child

Petitioner's Date of Birth: _____

Petitioner's attorney (if any): _____

Name

Phone #

Respondent (person Petitioner is protected from)Lawrence "Larry" Mota, II

First Middle Last

Other names used: Larry Mota

Relationship to Petitioner:

Divorced couple

Address:

1259 N. 500 W.
Orem, Utah 84057
801-377-0899**Describe Respondent:**

Sex	Race	DOB	Ht	Wt
Male	White (Not Hispanic)		5'10"	220
Eyes	Hair	Social Security # (only the last 4 numbers)		
Blue	Brown			
Distinguishing features (like scars, tattoos, limp, etc.): <u>Southern California Star with children's initials on it on back left shoulder</u>				
Driver's license issued by: <u>Utah</u> Expires: <u>10/22/2015</u>				

Warning! ☒ Weapon Involved (Box to be initialed by Court, if applicable)**Findings:** The Court finds there is reason to believe: it has jurisdiction over the parties and this case, the Respondent and Petitioner are cohabitants, the Respondent will be served notice of his/her opportunity to be heard at the scheduled hearing, and the Respondent has abused or committed domestic violence against Petitioner, or that there is a substantial likelihood that Respondent immediately threatens Petitioner's physical safety. (Utah Code § 78B-7-106.)

(The court fills out below.)

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.☒ You must not have any contact with the Petitioner.**Warnings to the Respondent:**

- This is a court order. No one except the court can change it. You can tell your side when you go to court. 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.

This order lasts until the hearing on:
JUNE 27, 2012
Month Day Year
Or later, if the Court extends time for service.

000017

- 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)

To: Lawrence "Larry" Mota, II



Go to the court hearing on the date listed below. If you do not go to the hearing, the judge can make orders without hearing your side.

Date: 6/27/12 Time: 11:00 ☒ a.m. ☐ p.m. Judicial Officer: PATTON
Address: 125 N. 100 W. Provo, UT 84601 Room: 303

Obey all orders initialed by the judge.

Violation of orders 1-6 below is a criminal Class A Misdemeanor, punishable by up to one year in jail and a fine. A second or subsequent violation can result in more severe penalties. Utah Code § 78B-7-106.

- 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.
- 3 ☒ **Contact for Mediation** You are allowed to have contact with the Petitioner only during court 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: 2182 N. 1450 E., Provo, UT
Work address:
School address:
 - ☒ b. The school or childcare of the children listed on page 1 of this form. (List current school and childcare addresses here): Wasatch Elementary, 1080 N. 900 E., Provo, UT
 - ☐ 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: he has 10+ guns (hand guns, shot guns, air guns, etc.)

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** Until the hearing, 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):

If you violate orders 7 – 12, you will be in contempt of court and may be punished.

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

- 8 ☐ **Proof of Income**
You and Petitioner must bring the following proof of income to the hearing: pay stubs or employer statements for this year, and complete tax returns for the most recent year.

- 9 ☒ **Child Custody & Parent-time Orders**
The Petitioner (the person asking for protection) will have temporary 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):
P.S.M., H.W.M., T.L.M., S.L.M.

☒ You will have parent-time as follows:

I want him to have no visitation for right now. I ask the court to order no visitation. If that is not possible, I ask the court to have the transfer take place at the Provo Police department or at either of our Bishop's houses.

Per statute - Supervised by ACAFs only

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

My parents: Scott & Susan Smith or Andrea Mosher

- 10 ☐ **No Parent Time** No parent time is allowed until the scheduled hearing.
- 11 ☒ **No Alcohol or Illegal Drugs** Do not use alcohol or illegal drugs before or during visitation.
- 12 ☒ **No Travel with Children** Do not take the children listed above out of the state of Utah.
- 13 ☐ **Other Orders (List below):**

Orders to Agencies

- 14 ☐ **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.

"Essential personal belongings" means daily use items, such as clothing, medications, jewelry, toiletries, financial or personal records solely in one person's name, or items needed to work at a job or go to school.

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

- 15 ☐ **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.

- 16 ☒ **Guardian for your children**

The court appoints an attorney to speak for the best interests of the children in this case.

NOTICE TO PETITIONER: The court may amend or dismiss a protective order after one year if it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent.

Date: 6-14-12 Time: 4:30 ☐ a.m. ☒ p.m.

SO McVick
Judge (printed name)



Disability and Interpreter Services Assistive listening systems, sign language and oral language interpretation are available at no charge in protective order proceedings. Contact the clerk's office at least 5 days before your hearing.

Tab D

FILE
ms
SEP 28 2012

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

Shirl Don LeBaron, Utah State Bar # 5210
LEBARON LAW OFFICES
802 E. Bamberger Dr., Suite B
American Fork, UT 84003-6234
Phone: (801) 756-6288
Fax: (801) 772-0300
Email: shirl@lebaronlaw.com
Attorneys for Respondent

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR
UTAH COUNTY, STATE OF UTAH

JENNIFER L. MOTA,
Petitioner,

vs.

LAWRENCE MOTA, II,
Respondent.

**RESPONDENT'S OBJECTION TO
PROTECTIVE ORDER**

Case No.: 124401367

Commissioner Patton


COMES NOW Respondent, Lawrence Mota, by and through undersigned counsel, and pursuant to Rule 55(c) of the Utah Rules of Civil Procedure, hereby respectfully objects to the Protective Order filed on July 11, 2012 and the result from the oral arguments regarding the motion to set aside judgment held on September 19, 2012. This objection is based on the following reasons, more fully explained by Respondent's affidavit and the memorandum attached to and made a part of this objection.

1. Evidence exists that Petitioner did not meet the criteria of issuing a Protective Order under the statute; no corroborative testimony was proffered.

2. The court should exercise its discretion to reach the merits of Respondent's arguments.

WHEREFORE, for these reasons, Respondent respectfully requests that the Protective Order be set aside and that an expedited evidentiary hearing be held on the matter of the Protective Order, and Petitioner should pay attorney fees.

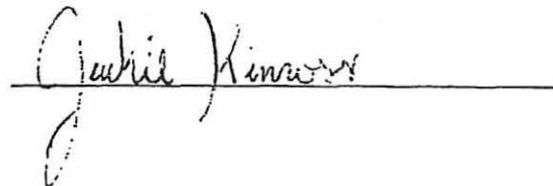
DATED this 28th day of September, 2012.


Shirl Don LeBaron
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, RESPONDENT'S OBJECTION TO PROTECTIVE ORDER, was mailed on the 23 day of September 2012, to the following:

Amy Morgan
Attorney for Petitioner
Utah Legal Services
205 N 400 W
Salt Lake City, Utah 84103



FILE
ms
SEP 28 2012

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

Shirl Don LeBaron, Utah State Bar # 5210
LEBARON LAW OFFICES
802 E. Bamberger Dr., Suite B
American Fork, UT 84003-6234
Phone: (801) 756-6288
Fax: (801) 772-0300
Email: shirl@lebaronlaw.com
Attorneys for Respondent

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR
UTAH COUNTY, STATE OF UTAH

JENNIFER L. MOTA,
Petitioner,

vs.

LAWRENCE MOTA, II,
Respondent.

MEMORANDUM IN SUPPORT OF
RESPONDENT'S OBJECTION TO
PROTECTIVE ORDERS

Case No.: 124401367

Commissioner Patton

RESPONDENT, Lawrence Mota, by and through counsel, hereby submits the following
Memorandum in support of Respondent's Objection to Protective Orders.

FACTS

1. On or about June 13, 2012 Petitioner filed a Request for a Protective Order.
2. In support of her request, Petitioner alleges fear, and cites an incident where police were called more than a year prior in April 2011. Orem City Officers responded to a welfare check call from Petitioner who appeared to be concerned that Respondent was suicidal. Repeated statements in the police report indicate she did not feel threatened or concerned for her safety. The report also indicated that Petitioner did not believe that Respondent

intended to harm her or himself; and that she felt she could call 911 or leave the room at any time; rather, she was calling to get the incident reported. *See Respondent's Affidavit In Support Of Respondent's Objection To Protective Orders (the Affidavit) Exhibit A: Police Report.*

3. Further, the report indicated it was screened by an Orem City attorney who advised the circumstances of the incident did not rise to the level of criminal conduct.
4. A hearing was scheduled for June 27, 2012.
5. Respondent made a mistake and missed the scheduled June 27, 2012 hearing and consequently, a completed protective order was entered July 11, 2012.
6. Attempting to advocate for himself, Respondent wrote a letter to the Court, which explained his mistake and excusable neglect for missing the June hearing date. This letter was filed on August 3, 2012 (August letter). As a result, the Court scheduled a Notice of Oral Arguments and regarded the August letter as a motion to set aside the default judgment. Oral Arguments were scheduled for September 19, 2012 (September hearing). *See the Affidavit Exhibit B: Letter from Respondent, filed August 3, 2012.*
7. At the September hearing, Respondent appeared pro se.
8. At the September hearing, Mr. Mota, as a pro se litigant, did not give the Court what it needed to set aside the judgment because he thought the Court already knew that information and was looking for arguments on the merit. *See the Affidavit ¶10 -13.*
9. In other words, Mr. Mota did not orally state directly to the Court that the basis to set aside the judgment was pursuant to Utah Rules of Civil Procedure 60(b) "(1) mistake,

inadvertence, surprise, or excusable neglect”; even though Mr. Mota explained the reasons and his mistake in his August letter. *See the Affidavit Exhibit B: Letter from Respondent, filed August 3, 2012.*

10. Respondent did not directly orally state that the grounds to set aside the judgment were pursuant to Utah Rules of Civil Procedure 60 (b) (1) mistake, inadvertence, surprise, or excusable neglect; though Respondent had explained those same reasons and his mistake in his August letter, for the reasons outlined in his affidavit.
11. As it stands, Mr. Mota faces harm, in reduced interaction with his children, the burden of paying 100% of the costs of being with his children, possible employment implications, and many other complications.
12. This was Mr. Mota’s first hearing in this case. He does not have a history of repeat appearances before the Court, either as a *pro se* litigant or with counsel.

ARGUMENT

I. Evidence exists that Petitioner did not meet the criteria of issuing a Protective Order under the statute; no corroborative testimony was proffered.

13. Allegations of violence in Petitioner’s statements do not rise to the level needed for issuance of a Protective Order. Utah Code Ann. § 78B-7-103(1) provides for the issuance of a protective order if a “cohabitant . . . has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence.” As indicated in his affidavit, Respondent has evidence that Petitioner cannot meet this

standard.

14. Further, in *Bailey v. Bayles*, 2001 UT App 34 ¶12; 18 P.3d 1129, the court explained that to obtain a protective order, as a cohabitant, or former cohabitant, the person is required to demonstrate, “she had suffered physical abuse or domestic violence, as defined by Utah Code Ann. § 77-36-1 (1999); and (3) she had an imminent fear of physical harm or, put another way, a present fear of future abuse” (internal quotation marks and citation omitted). Petitioner failed to allege sufficient reason to support feeling threatened or that abuse had occurred. None of the alleged acts stemming from the April 2011 incident and reported in the police report rise to that level, on the contrary it appears Orem City attorney office indicated the circumstances of this incident did not rise to the level of criminal conduct which would be required to meet the elements of U.C.A. § 78B-7-103.

II. The court should exercise its discretion to reach the merits of Mr. Mota’s arguments.

15. In *Osborne v. Osborne*, 2011 UT App 150, 260 P.3d 202, the Respondent appealed the district court’s findings. Osborne was a pro se litigant and according to the Court he “wholly fails to marshal the evidence in support of those findings.” However, the court allowed him to present his arguments because, as the court explained, “although these violations, in their totality, are grounds for affirming without discussing the issues, we afford leniency to Mr. Osborne as a pro se litigant, see *Lundahl v. Quinn*, 2003 UT 11, ¶4, 67 P.3d 100 (per curiam), and exercise our discretion to reach the merits of his arguments.” *Id.* ¶1 *fn. 1*, (bolded in original).

16. Further, the court explained in *Lundahl v. Quinn*, 2003 UT 11, ¶4, 67 P.3d 100 that

“Accordingly, this court generally is lenient with pro se litigants. Individuals have a right to represent themselves without being compelled to seek professional assistance. Where they are largely strangers to the legal system, courts are understandably loath to sanction them for a procedural misstep here or there.” Further, the Petitioner in *Lundahl v. Quinn*, Mr. Mota does not have a history of many appearances before the court.

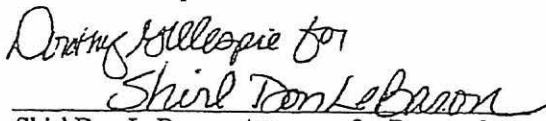
17. Petitioner was awarded the Protective Order by default originally because Respondent had mistaken the day of the hearing and was not present; arguments on the merits of whether or not the Protective Order should be issued have not been heard.

CONCLUSION

Therefore, because Mr. Mota has contradicting that of Petitioner evidence, the matter did not meet the criteria of issuing a Protective Order under the statute, no corroborative preferred testimony was proffered. The court should exercise its discretion to allow the Protective Order to be heard in order to reach the merits of the matter.

WHEREFORE, for these reasons, Respondent respectfully requests that the Protective Order be set aside and that an expedited evidentiary hearing be held on the matter of the Protective Order.

DATED this 28th day of September, 2012.


Shirl Don LeBaron, Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, MEMORANDUM IN SUPPORT OF RESPONDENT'S OBJECTION TO PROTECTIVE ORDERS, was mailed on the 28 day of September, 2012, to the following:

Amy Morgan
Attorney for Petitioner
Utah Legal Services
205 N 400 W
Salt Lake City, Utah 84103

Cherie Kinnross

FILE

SEP 28 2012

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

Shirl Don LeBaron, Utah State Bar # 5210
LEBARON LAW OFFICES
802 E. Bamberger Dr., Suite B
American Fork, UT 84003-6234
Phone: (801) 756-6288
Fax: (801) 772-0300
Email: shirl@lebaronlaw.com
Attorneys for Respondent

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR
UTAH COUNTY, STATE OF UTAH

JENNIFER L. MOTA,
Petitioner,

vs.

LAWRENCE MOTA, II,
Respondent.

AFFIDAVIT IN SUPPORT OF
RESPONDENT'S OBJECTION TO
PROTECTIVE ORDERS

Case No.: 124401367

Commissioner Patton

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

I, LAWRENCE MOTA, being duly sworn under oath depose and say:

1. I am the Respondent and am familiar with the facts and circumstances herein. I make these statements based upon my personal knowledge, information, and belief.

Protective Order allegations not true

2. Most of the alleged facts presented to support the Protective Order are incorrect.
3. In April 2011, during an argument with the Petitioner, I never hurt or threatened her. I never pointed a gun at her and definitely not at our youngest child. Additionally, the police report,

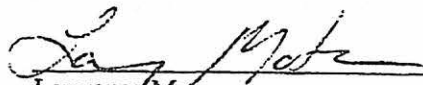
attached as Exhibit A, does not include any information about our youngest child being involved in the altercation contrary to her later statements. *See Exhibit A: Police Report.*

4. The April 2011 argument ensued over whether to get a divorce. I had wanted to get a divorce and leave for several years, Petitioner would always make deals with me to get me to stay, promising to help me move if I would stay longer.
5. I do keep an unloaded gun at all times as I have a concealed weapons permit. My instructor drilled into us the reasons why we should keep an unloaded gun with us at all times. The police report also confirms that the gun was never loaded.
6. As I read the police report, from the multiple statements, it appears to me that Petitioner did not feel threatened or concerned for her safety and she never believed I intended to harm her.
7. I have never spoken badly about the Petitioner in front of our children. I have never made threats to my children or anyone else that I would harm the Petitioner.
8. I have never shot my children with an air soft gun toy as a punishment or before they are allowed to play video games or do any other activity. The children will ask me to play games with them using their air soft gun toys.
9. In regards to the text message that I sent to Petitioner on May 19, 2012, when I stated that Petitioner would be getting a "big surprise," the surprise I was referring to was the filing of document to modify child custody, which I filed on June 20, 2012.
10. At the September hearing, I represented myself and now understand that the Court initially was interested to see if the parties wanted to decide only whether to set aside the protective order, or if set aside then re-argue on the merits. However, at the time, the court asked me,

"How do you want to proceed." I began by repeating my apology similar to my letter as to my mistake that caused me to miss the June hearing. But, the court stopped me and tried to clarify by stating, "No, I did not ask you that, I asked you if you have a preference as to how we proceed?" I understood from the "No" that the Court was not interested in hearing anymore about why I missed the hearing; he indicated he had read my letter. So, I was at a loss of what the Court was asking. Eventually just saying I had no preference. I did not understand that this was just a procedural question that was being asked.

11. The court then asked Petitioner and Ms. Morgan replied they did want to argue the merits that day. I thought then, that I would need to present all my arguments.
12. After much further discussion on various issues, the Court stated something like, "Mr. Mota you have not given me a legal basis to set aside the Protective Order." For reasons explained above, I understandably thought the court did not want to hear again why I had had missed the June hearing. I did not know this was the time to explain my mistake and excusable neglect. I thought the Court was looking for further argument on the merits.
13. However, those reasons to set it aside were stated clearly in my letter that instigated the September hearing as follows and highlighted in the exhibit: In the first line, "due to my own excusable negligence." And on the second page of the letter I stated: "I could not wait for the morning to come so I could get to the court house to find out what I could do to fix my mistake." *See Exhibit B: Letter from Respondent filed August 3, 2012.*
14. I thought I could manage and did not want to spend money needless on an attorney; I was mistaken as to the procedure at the September hearing. I have since retained legal counsel.

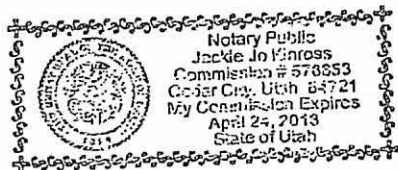
Dated this 27 day of September, 2012.


Lawrence Mota

STATE OF UTAH)
 ss.
COUNTY OF UTAH)

Lawrence Mota, the Respondent, appeared before me today and proved to me Respondent's identity in the form of drivers license. Respondent then signed this document in my presence and affirmed that he had read this document, understood its contents, and that the contents were true of his own personal knowledge, unless an allegation was made on information and belief.

SUBSCRIBED AND SWORN to before me this 27 day of September, 2012.




NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, AFFIDAVIT IN SUPPORT OF RESPONDENT'S OBJECTION TO PROTECTIVE ORDERS, was mailed on the 28 day of September, 2012, to the following:

Amy Morgan
Attorney for Petitioner
Utah Legal Services
205 N 400 W
Salt Lake City, Utah 84103

_____

EXHIBIT A
POLICE REPORT

000103

06/27/12
2368
13:55
1

Orem Department of Public Safety

Deputy Report

Page:

Incident Number: 11OR15818
Nature: MENTAL SUBJECT

Case Numbers:

Addr: 1259 N 500 WEST ST
S1600N/E800W/N1200N/W4
City: Orem

Area: OR013

St: UT Zip: 84057

Contact:

Complainant: 314227

Alert Codes:

Lst:
Adr:

Fst:

Mid:

DOB:

SSN:

Rac: Sx: F Tel:

Cty:

St: Zip:

Reported: MENT Mental Subject
Observed: MENT Mental Subject
Offense
Codes: MENT Mental Subject

Circumstances:

Responding Officers: Thompson J 3J352
Johnson K (OR) 3J345

Rspnsbl Officer: Thompson J Agency: ORPD

Received By: Hicken K

Last RadLog: **:**:** **/**/**

How Received: T Telephone
Supervis

Clearance: RBS Reviewed by

When Reported: 21:13:25 04/25/11
04/26/11

Disposition: CLO Disp Date:

Occurrd between: 21:13:13 04/25/11
and: 21:13:13 04/25/11

Judicial Sts: CMPL

Misc Entry: Fredrickson

Modus Operandi:

Factor

Description

Method

INVOLVEMENTS:

Date

Description

Relationship

USE OF THIS INFORMATION
IS REGULATED BY LCM
OREM DEPARTMENT OF PUBLIC SAFETY

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*Never
mentions
Shayjee!
States
Never felt
threaten; gun
not loaded*

USE OF THIS INFORMATION
IS REGULATED BY LAW
OREM DEPARTMENT OF PUBLIC SAFETY

06/27/12
2368
13:55
2

Orem Department of Public Safety

Deputy Report

Page:

Narrative Section

Initial Report

Officers responded to a welfare check at 1259 North 500 West. stated that she and her husband, Larry, had a verbal argument today. Jennifer said that Larry became very upset and stated that he was going to leave. Larry packed some clothing and took a .380 handgun, and left the house. Was concerned that Larry may attempt to harm himself. A short time after Officers left Larry returned home. stated that she did not need any further assistance from Officers.

Officer J. Thompson

SUPPLEMENTAL REPORT

called back and asked to speak with me when I was off duty.
asked to be transferred to my voicemail and left a message.
stated that her husband, Larry, had begun making suicidal comments again.

stated that Larry got a handgun and threatened to kill himself.
said that when she told Larry that she would call the police he threatened her. ~~stated that she did not feel threatened,~~ but she did not call the police.

specifically requested that Officers do not make contact with Larry. ~~said that that she did not feel like her life was in danger.~~
said that she did not want me to call her back. stated that ~~she only wanted the incident documented.~~

I made contact with from a phone in the report room of the police station. stated that Larry had calmed down and she was not concerned that he would harm himself. said that Larry had packed some

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items and left the house.

~~said that she was not concerned for her safety.~~

I asked to tell me about the incident she had described in her voicemail. said that she and Larry were in their bedroom talking when Larry became upset. stated that Larry got a handgun and threatened to kill himself.

said that she got a phone and told Larry that she would call the police. said that Larry pointed the gun at her and said, "Don't do that." stated that she did not call the Police. stated that Larry then pointed the gun at himself again. said that she talked to Larry for a minute and he put the gun down and calmed down.

~~stated that she did not feel threatened because she saw that the gun was unloaded, said that she also did not believe that Larry intended to harm her or himself. stated that she felt that she could have dialed 911 and Larry would not have stopped her. said that Larry did nothing to prevent her from leaving, and that she felt she could have left the bedroom at any time.~~

again stated that she did not want me to make contact with Larry. said that Larry was no longer in the house, or staying at the house. said that that she did not feel like her life was in danger. stated that she only wanted the incident documented.

I encouraged to contact the Victim's Advocates and explained to her how to obtain a protective order. I instructed to call if she had any further confrontations with Larry and she said that she would. I contacted Orem City Attorney Paul Johnson and asked for a recommendation regarding possible criminal charges in this case.

I explained to Attorney Johnson the circumstances of the incident, and statements that she did not feel threatened, she knew the gun was not loaded, and that she did not want to pursue criminal charges. Attorney Johnson advised that the circumstances of this incident did not meet the elements required to pursue criminal charges.

~~stated that she did not feel that her life was in danger.~~ Larry is not in the home, and therefore does not pose any immediate threat to well being. declined to pursue any criminal charges in this incident. No further action will be taken at this time.

Officer J. Thompson

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EXHIBIT B

LETTER FROM RESPONDENT, FILED AUG. 3, 2012

000099

Case Number: 124401367

District: 4th County: Utah

Commissioner Patton,

~~I am writing you due to my own excusable negligence.~~ My former wife Jennifer Mota filed a temporary protective order against me on June 15, 2012. I went to her home this day to pick up our children (not knowing that this was filed) for my regular weekend visitation including Fathers Day. I sat out front of her home for 15 minutes waiting for the children to come out. When they didn't come out I text Jennifer to inform her that I was there to pick up the kids. Jennifer did not respond to this text so I called her cell phone and her home phone and there was still no response. I then called her cell phone again and left a voicemail stating I was going to go to the police station to file a report because this was not the first time I had difficulty picking up the children. I then left her home and traveled to the police station. On my way there I received a text from her stating the children would be out in a minute. I turned around and headed back to her home when I noticed some police cars headed towards her home and I figured they were there to meet me. I followed them to the park next to Jennifer's home. The police officer asked me to exit my vehicle and asked if I had any weapons in the vehicle. I told him yes I have a concealed weapons permit and always have a gun in my vehicle. I exited the vehicle and two more police officers showed up at this time. One officer went over to my wife's window and asked her if there was a weapon in the vehicle and she said yes. He asked her to exit the vehicle as well. The police officers then asked me what was going on. I told them I was there to pick up the children for my regular visitation time and that Jennifer would not send the children out to me. At this time, another police officer showed up and informed that there was more to the situation. I was then informed that Jennifer had filed a protective order against me and that I was to have no contact what so ever with her. I said ok that is fine how do I get the children? I was informed that I was not allowed to have any contact with my children as well. At this time my wife started crying and I was confused as to why this was happening. The police officer then gave me the written protective order. The police officers informed that a hearing was scheduled for June 27th. They asked me if I had any guns at home besides the one that is in my vehicle. I told them yes I do. They said you are no longer allowed to be in possession of any fire-arms. They told me that my wife needed to collect any and all the fire-arms and to get them out of our home immediately. At this time my wife took possession of all the guns and vacated them from our home. I have not had possession of or in contact with any fire-arms since that day. I followed the temporary protective order exactly as stated. On June 19th I was served with the full temporary protective order. As I read through this order I was in disbelief at the lies that Jennifer told to get this protective order. I knew that I was going to need to collect information to prove my side of this story.

For the next week I had to contact the Orem Police station and the Provo Police station to get copies of police reports that were filed by me and Jennifer. I collected letters from family members, friends and co workers stating my character. I wanted to make sure I had everything I needed to prove I a good father and that I would do anything to have my children in my life. I always knew that

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my hearing was scheduled for June 27th at 11:00 am. I was not going to miss this hearing and I was going to be prepared for it. On Wednesday (the 27th) my wife and I were getting everything together. We had to go back to the police station and pick up the final reports because it took a few days to get them and that's when my wife looked at the protective order to double check the time and realized that today was the 27th not tomorrow. We always had it in our head that the hearing was Thursday June 27th at 11:00 am. I knew the date I just didn't get the day of the week right. I don't know why I had assumed that it was Thursday and it is something that I will never forgive myself for. When I realized I had missed the hearing and that I may have lost my children I thought I was going to pass out. I was so sick to my stomach. I could not sleep at all that night and could not wait for the morning to come so I could get to the court house to find out what I could do to fix ~~my mistake~~. I was at the court house at 7:55 am. I went there and was told that it was done and there was nothing I could do at that time. I went home to research on the computer what I could do to get another hearing. I filled out the forms (or what I thought were the correct forms) and filed them that day. A week later I called the court to see what was going on with my petition and was informed that it was denied because it was incorrect and that I needed to write a letter to the judge and request another hearing.

This was a very important court hearing to me as it was a chance for me to tell my side of the story and supply all of the documents and supporting information I have prepared, as well as have a chance to have the order dismissed so I could have visitation with my children again. It has been a month and a half since I have seen or talked to my children in any way and I miss them very much. I am not a danger to Jennifer, myself, or my children as Jennifer has stated to obtain this protective order. I desperately hope that you will allow me to have another hearing (in the very near future) so I can have the opportunity to defend myself. I admit fault on missing the original court date and would guarantee I would not miss or be late if given another hearing. Please, order another hearing. I need my children and they need me. I would do anything for them.

Please advise me of your decision at your earliest convenience. Thank you for taking the time to read this letter and consider the options.

Sincerely,

Larry Mota

801-830-8887

000097

Tab E

Shirl Don LeBaron, Utah State Bar # 5210
LEBARON LAW OFFICES
802 E. Bamberger Dr., Suite B
American Fork, UT 84003-6234
Phone: (801) 756-6288
Fax: (801) 772-0300
Email: shirl@lebaronlaw.com
Attorneys for Respondent

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR
UTAH COUNTY, STATE OF UTAH

JENNIFER L. MOTA,
Petitioner,

vs.

LAWRENCE MOTA, II,
Respondent.

RESPONDENT'S REQUEST TO
DISMISS PROTECTIVE ORDER
(issued more than two years ago)

Case No.: 124401367

Judge McVey
Commissioner Patton

Respondent, by and through counsel, requests that the Court dismiss the Protective Order issued more than two (2) years ago on July 11, 2012, per Utah Code 78B-7-115 for the following reasons:

1. Petitioner no longer has a reasonable fear of future abuse as set out by the following factors by one or both parties:
 - a. Respondent has complied with the terms of the Protective Order.
 - b. Respondent has not violated the Protective Order during the time it was in force.
 - c. There have been no claims of harassment, abuse, or violence by either party during the time the protective order was in force.

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- d. There has been no counseling or therapy undertaken by either Petitioner or Respondent.
- e. The dismissal of the Protective Order will result in a positive impact on the minor children of the parties. The children will be able to communicate with their father whenever they want too. If they want to call their father they will be able to. Their father will be able to attend school events, church services, and extracurricular sports. Their father will be able to take them camping and other outdoor activities.

I, the Respondent, swear that:

- I am the Respondent and I have read this *Request to Dismiss*.
- The statements in this *Request to Dismiss* are true and correct to the best of my knowledge.
- I am not using this *Request to Dismiss* to harass the Petitioner or to abuse the judicial process.
- I have not included any non-public information in this document.

Date: 8/25/2014 Respondent's signature: /s/ Larry Mota

Clerk or Notary Public fills out below:

Subscribed and sworn to before me on 8/25/2014 in Utah County, Utah.

Jackie Jo Kinross, Clerk / Notary Public

Clerk or Notary's Signature: /s/ Jackie Jo Kinross

Notary Public-State of Utah
Commission #667073
Comm. Exp. 05-29-2017

000161

Tab F

06/27/12
2368
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1

Orem Department of Public Safety

Deputy Report

Page:

Incident Number: 11OR15818
Nature: MENTAL SUBJECT

Case Numbers:

Addr: 1259 N 500 WEST ST
S1600N/E800W/N1200N/W4
City: Orem

Area: OR013

St: UT Zip: 84057

Contact:

Complainant: 314227 Alert Codes:

Lst: Fst: Mid: DOB: SSN:
Adr:
Rac: Sx: F Tel: Cty: St: Zip:

Reported: MENT Mental Subject
Observed: MENT Mental Subject
Offense
Codes: MENT Mental Subject

Circumstances:

Responding Officers: Thompson J 3J352
Johnson K (OR) 3J345
Rspmsbl Officer: Thompson J Agency: ORPD
Received By: Hicken K Last RadLog: **:**:** **/**/**
How Received: T Telephone Clearance: RBS Reviewed by
Supervis

When Reported: 21:13:25 04/25/11 Disposition: CLO Disp Date:
04/26/11

Occurrd between: 21:13:13 04/25/11 Judicial Sts: CMPL
and: 21:13:13 04/25/11 Misc Entry: Fredrickson

Modus Operandi:
Factor Description Method

INVOLVEMENTS:
Date Description Relationship

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*Never
mentions
S. States
Never felt
threaten; gun
not loaded*

USE OF THIS INFORMATION
IS REGULATED BY LAW
OREM DEPARTMENT OF PUBLIC SAFETY

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Orem Department of Public Safety

Deputy Report

Page:

Narrative Section

Initial Report

Officers responded to a welfare check at 1259 North 500 West. stated that she and her husband, Larry, had a verbal argument today. Jennifer said that Larry became very upset and stated that he was going to leave. Larry packed some clothing and took a .380 handgun, and left the house. Was concerned that Larry may attempt to harm himself. A short time after Officers left Larry returned home. stated that she did not need any further assistance from Officers.

Officer J. Thompson

SUPPLEMENTAL REPORT

called back and asked to speak with me when I was off duty.
asked to be transferred to my voicemail and left a message.
stated that her husband, Larry, had begun making suicidal comments again.

stated that Larry got a handgun and threatened to kill himself.
said that when she told Larry that she would call the police he threatened her. ~~stated that she did not feel threatened~~, but she did not call the police.

specifically requested that Officers do not make contact with Larry. ~~said that she did not feel like her life was in danger.~~
said that she did not want me to call her back. stated that ~~she only wanted the incident documented~~.

I made contact with from a phone in the report room of the police station. stated that Larry had calmed down and she was not concerned that he would harm himself. said that Larry had packed some

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items and left the house.
safety?

said that she was not concerned for her

I asked to tell me about the incident she had described in her voicemail. said that she and Larry were in their bedroom talking when Larry became upset. stated that Larry got a handgun and threatened to kill himself.

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again stated that she did not want me to make contact with Larry. said that Larry was no longer in the house, or staying at the house. said that that she did not feel like her life was in danger. stated that she only wanted the incident documented.

I encouraged to contact the Victim's Advocates and explained to her how to obtain a protective order. I instructed to call if she had any further confrontations with Larry and she said that she would. I contacted Orem City Attorney Paul Johnson and asked for a recommendation regarding possible criminal charges in this case.

I explained to Attorney Johnson the circumstances of the incident, and statements that she did not feel threatened, she knew the gun was not loaded, and that she did not want to pursue criminal charges. Attorney Johnson advised that the circumstances of this incident did not meet the elements required to pursue criminal charges.

stated that she did not feel that her life was in danger. Larry is not in the home, and therefore does not pose any immediate threat to well being. declined to pursue any criminal charges in this incident. No further action will be taken at this time.

Officer J. Thompson

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CLEAN NON-RECORD COPY

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Orem Department of Public Safety

Deputy Report

Page:

Narrative Section

Initial Report

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Officer J. Thompson

SUPPLEMENTAL REPORT

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. . . . stated that Larry got a handgun and threatened to kill himself. . . . said that when she told Larry that she would call the police he threatened her. . . . stated that she did not feel threatened, but she did not call the police.

. . . . specifically requested that Officers do not make contact with Larry. . . . said that that she did not feel like her life was in danger. . . . said that she did not want me to call her back. . . . stated that she only wanted the incident documented.

I made contact with . . . from a phone in the report room of the police station. . . . stated that Larry had calmed down and she was not concerned that he would harm himself. . . . said that Larry had packed some

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said that she got a phone and told Larry that she would call the police. said that Larry pointed the gun at her and said, "Don't do that." stated that she did not call the Police. stated that Larry then pointed the gun at himself again. said that she talked to Larry for a minute and he put the gun down and calmed down.

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Officer J. Thompson

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Tab G

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FOURTH DISTRICT COURT
PROVO

4TH DISTRICT COURT - PROVO

UTAH COUNTY, STATE OF UTAH

=====

JENNIFER L. MOTA,)	MOTION HEARING
)	
PETITIONER)	
)	
vs.)	
)	
LAWRENCE MOTA, II,)	CASE 124401367
)	APPEAL 20150191
)	
RESPONDENT)	COMM. THOMAS PATTON

=====

BE IT REMEMBERED that this matter came on for hearing
before the above-named court on September 30, 2014.

WHEREUPON, the parties appearing and represented by
counsel, the following proceedings were held:

ONLINE REQUEST # 14492

OFFICIAL CERTIFIED TRANSCRIPT

(From Electronic Recording)

ORIGINAL

PENNY C. ABBOTT, REPORTER-TRANSCRIBER
LIC. 102811-7801
EMAIL: abbpe@yahoo.com

PAGE 1

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A-P-P-E-A-R-A-N-C-E-S

FOR PETITIONER:

D. GRANT DICKINSON, ESQ.
MOODY BROWN LAW
2525 N. CANYON RD
PROVO UT 84604

FOR RESPONDENT:

SHIRL DON LEBARON, ESQ.
LEBARON LAW OFFICES
802 E. BAMBERGER DR. STE B
AMERICAN FORK UT 84003-6234

=====

TABLE OF CONTENTS

=====

PAGE REF

ARGUMENT

BY MR. LEBARON. 5, 21
BY MR. DICKINSON. 9

RULING 22

1 P-R-O-C-E-E-D-I-N-G-S

2 (September 30, 2014)

3 THE COMMISSIONER: Calling Mota versus Mota.
4 Make your appearances please.

5 MR. DICKINSON: Grant Dickinson on behalf of
6 Jennifer Mota. She's present with me.

7 MR. LEBARON: Shirl LeBaron present with Larry
8 Mota, the mover in this matter.

9 THE COMMISSIONER: Have we resolved any of the
10 issues before the court?

11 MR. DICKINSON: One, Your Honor. There was one
12 concern about the, Mr. Mota going to events for the
13 children. It's our understanding that that part should
14 not be included in the protective order anymore so the school
15 should not be a protected place nor the children's church, or
16 any other location where the children have a special event
17 except to my client's home. So whatever the result is
18 today, if the protective order remains in place we would
19 ask that her home continue as a protected place and that
20 the children's school and their church not be protected
21 places.

22 THE COMMISSIONER: Thank you.

23 Mr. LeBaron, I don't know that it's relevant to
24 today's hearing. But when we were here before I indicated
25 that I questioned about whether or not even if I dismissed

1 this if federal law would allow your client to possess a
2 firearm. It's really not relevant for what we are doing but
3 I was wondering if you found out the answer to that
4 question.

5 MR. LEBARON: Yes, I did, Your Honor. And I gave
6 a copy of this to counsel and I have copies for you.
7 Unfortunately I did not just include the pertinent parts, but
8 our government likes to use paper.

9 But the controlling statute, Your Honor, is title
10 18 USC 921 for definitions of a firearm. I have tagged that
11 as 1. 2 are the amendments for that which is 2006. Then
12 refers to 18 USC 922(g), in parentheses (1) through (8).
13 The pertinent part is (8) which is on the following page
14 after Tab-3. And then the amendments are tabbed as 4.

15 So if I can approach and give this to the court.
16 The bottom line is there has to be a, a court order in
17 place.

18 THE COMMISSIONER: So it's, they're only
19 restricted from possessing a firearm as long as the court
20 order is in place?

21 MR. LEBARON: Yes, or they have been convicted of
22 a crime.

23 THE COMMISSIONER: Okay. So that is a change in
24 the law since I took the bench I believe.

25 MR. LEBARON: Yes. I believe so.

1 THE COMMISSIONER: It's important to know.

2 Mr. LeBaron, we are here on your client's motion
3 to set aside or dismiss the protective order action at this
4 time pursuant to statute. Go ahead.

5 ARGUMENT BY MR. LEBARON

6 MR. LEBARON: Thank you. As the court mentioned
7 we come to court pursuant to the Utah Code Section 78B-7-115
8 Dismissal of a Protective Order.

9 A protective order was granted in this matter on
10 June 27th, 2012. My client Mr. Mota was not present on that
11 day. He had miscalendared the day, thought it was the
12 following day. Realized that late that night. Went to the
13 court the following morning, filed a written request of some
14 sort. I then got involved. But ultimately the district
15 court ruled that what Mr. Mota had filed was not sufficient
16 under the code or under the law to set aside the matter.

17 So for the past two years or since June 2012 the
18 protective order has been in place.

19 The legislature in their wisdom, of course in 2009
20 was the last amendment, indicates that after two years that,
21 if the court determines that the petitioner no longer has a
22 reasonable fear of future abuse, it may be dismissed or
23 amended.

24 In determining whether the petitioner
25 no longer has a reasonable fear of future

1 abuse the court shall consider the
2 following factors.

3 And I'm sure the court is already aware of those
4 factors.

5 So a person who presently has a protective order
6 can't simply just say I'm still afraid, I still have fear.
7 There has to be a reasonable basis for that, and the court
8 and the legislature sets out some of those criteria.

9 And so we're not here to retry the case that was
10 rendered on, or the decision on June 27th, 2012, but since
11 that date.

12 (a) whether the respondent...

13 Mr. Mota.

14 ... has complied with treatment
15 recommendations related to domestic
16 violence entered at the time the
17 protective order was entered.

18 There was none that was entered. There was no
19 treatment recommendations that were offered.

20 (b) whether the protective order was
21 violated during the time it was in
22 force.

23 And it was not. There were no violations, there
24 were no alleged violations, there were no charges.

25 (c) claims of harassment, abuse, or

1 violence by either party during the time
2 the protective order was in force.

3 There was none. There were no 911 calls. I have
4 not received any documents, you know, from, from counsel.
5 I anticipate that they are going to argue the 2012 reasons
6 for the protective order.

7 (d) counseling or therapy undertaken
8 by either party.

9 There has been none. And I would submit to the
10 court that if Mrs. Mota continues to assert that she has
11 reasonable fear or had fear even at that time, she has not
12 undergone therapy or counseling. And we have no reports of
13 that so I think that is telling, Your Honor. And I think
14 that is why the legislature indicates that the court shall
15 consider that as one of the factors.

16 (e) impact on the well-being of any
17 minor children of the parties, if
18 relevant.

19 We in fact have proffered in our motion that in
20 fact unfettered access to the children, who Mr. Mota loves,
21 and they love him as the father, would best be served, would
22 serve their well-being to be able to attend their events,
23 even if their mother is present. Certainly they would need
24 to conduct themselves appropriately even without a
25 protective order. And so that is important.

1 And then,

2 (f) any other factors the court
3 considers relevant to the case before
4 it.

5 I don't know of any other factors. The court
6 certainly may have some but certainly a--

7 THE COMMISSIONER: Counsel, I've read that on
8 numerous occasions. I haven't got a clue what they meant.
9 So I just sort of let counsel wander around and argue
10 whatever they want on that issue. So I'm doing it under
11 this paragraph.

12 MR. LEBARON: Yes.

13 THE COMMISSIONER: So if you've got something else
14 you want to argue, counsel, you go right ahead.

15 MR. LEBARON: I don't.

16 THE COMMISSIONER: Because I, I don't know what
17 they meant so--

18 MR. LEBARON: I don't other than (a) through (e)
19 has been complied with. Therefore deductive reasoning from,
20 you know, philosophy 101 as a freshman at BYU, (a) through
21 (e), therefore (f).

22 So that would be our argument, Your Honor. We
23 still have a modification pending. There is still some
24 acrimony we're trying to deal with. But we believe that
25 the protective order should be dismissed.

1 For those reasons I'll submit it to the court and
2 ultimately for the well-being of the children.

3 We further assert and anticipate that she no longer
4 has a reasonable fear based upon the criteria that the
5 legislature has propounded in this statute.

6 THE COMMISSIONER: Thank you.

7 ARGUMENT BY MR. DICKINSON

8 MR. DICKINSON: One thing that's interesting about
9 this statute is that it's (short inaudible) with the recent
10 Patoli (phonetic) decision in requiring the reasonable fear
11 standard in regards to ongoing protective orders.

12 THE COMMISSIONER: Counsel, as far as, and I want
13 to say this to both of you, I don't think that was dealt
14 with in the Patoli (phonetic) decision at all. I mean, all
15 they dealt with was the original statute.

16 In my mind it may create, notice I'm saying may,
17 I'm not ruling, I'm opining, not on this case, on some case
18 that may come in the future that if someone were to show up
19 and argue to me, you know, they have created a laches, a back
20 door laches provision here by stating that it could be
21 dismissed after two years if there's no reasonable, showing
22 there's no reasonable fear that they have a statute, a
23 defacto laches provision that if the abuse is more than two
24 years ago that in fact reasonable fear can then be
25 considered because they put it at the back end and not front

1 end.

2 Now, whether or not I go with that I'd want to
3 hear an exceptional argument from the attorney on the other
4 side as to whether or not that applies.

5 But I think it is interesting, you know,
6 Mr. Dickinson, I think it's extremely interesting. And the
7 Utah Court of Appeals didn't bother to advise me what they,
8 what that means at all. They just threw it at the beginning
9 and said no, here it is.

10 MR. DICKINSON: And it goes a little deeper than
11 that in my opinion is because we've got the case law that
12 says you cannot deny a protective order simply based on the
13 passage of time.

14 THE COMMISSIONER: Not just case law, it's
15 statutory.

16 MR. DICKINSON: It's statutory. So, I mean, we--

17 MR. LEBARON: Your Honor, if I might just
18 respond. I'm sorry to interrupt. I was going to bring this
19 out. But the statute twice in subsection (1) talks about
20 the reasonable fear of future abuse twice, not past abuse.
21 It's specifically in that case did not deal with this statute
22 specifically. And I looked for cases of recent that
23 addressed this statute. There are none.

24 MR. DICKINSON: Yes. And that's--

25 THE COMMISSIONER: We've got all kinds of

1 problems. And in fairness to both counsel you ought to be
2 aware of the fact that the commissioners in this state are
3 meeting on Friday for commissioner training. One of the
4 subjects that is going to be discussed is whether or not
5 the commissioners will recommend to the legislature that
6 they amend this statute to fix this problem. Okay.
7 Because we think that it creates a situation for good
8 attorneys who actually read statutes and try to follow
9 statutes like yourself, okay, a problem.

10 In other words, why draft into a statute an
11 ambiguity for good attorneys who actually read the
12 statutes. So that may be cured. We don't know.

13 MR. DICKINSON: Who knows.

14 THE COMMISSIONER: But we can, I suspect the
15 commissioners are going to recommend that the legislators at
16 least look at it.

17 MR. DICKINSON: Well it is, yes, it's an
18 interesting conundrum that they put us in because in Patoli
19 (phonetic) it says simply if there's, basically they lay it
20 out there, if there's any kind of history of domestic
21 violence you can get a protective order. Now this statute
22 seems to put in a laches argument there. But then they
23 also have the case law, and the statute says can't deny it
24 simply because of the passage of time.

25 Now going down the factors, I don't take a lot of

1 issue with what Mr. LeBaron has said. Except for in (d),
2 and obviously in (f).

3 In (d) there was one concern. He said that there
4 was none ordered. I guess, sorry, going back to the therapy
5 he said in regards to (a), there was none ordered so he
6 didn't do any. Now, that doesn't mean there wasn't any
7 needed, he just said he didn't do any.

8 Now, if we remember back from the time of the
9 protective order there was a hearing, he was given an
10 opportunity to be there at that hearing, he wasn't there
11 for a miscommunication or miscalculation of dates, for
12 whatever reason wasn't there. He did file a motion to
13 set aside. And at the hearing on the motion to set aside
14 he jumped into the fact that he wanted time with his kids.

15 Now, there was some talk about how some of these
16 things were true and others were exaggerated, and he didn't
17 go into specifics, but he didn't make any specific denials
18 as to what was in the protective order.

19 Now, if anything in the protective order is true
20 or if he had committed domestic violence I would suggest that
21 he would have to do at least some counseling in regards to
22 that, if it's anger management or some other kind of
23 counseling in order to get treatment to control any kind
24 domestic violence.

25 Now, this is also pertinent because DCFS wrote a

1 report in regards to that first hearing in which the
2 children reported to DCFS that father had shot them with an
3 airsoft gun as recently as two weeks prior to the hearing,
4 two weeks prior to the investigation, I should say. And
5 that when father is mad he picks them up by their necks and
6 slams them into the wall. And that he will hang them by
7 their legs over the stair railing for fun. And they can
8 only play video games if father is allowed to shoot them
9 with the airsoft gun. And sometimes when he's playing
10 around with them he sits on them until they can't breathe.

11 So I would posit with that report he probably
12 should have done some counseling, maybe a parenting class,
13 but he hasn't done it.

14 Now, I think as we go to (f), one of the factors
15 that should be another relevant factor is the severity of
16 the past abuse, or at least the severity of the past threats
17 of abuse.

18 In my client's original request there was, one of
19 the threats was that the children were going to have a new
20 mommy at that time. Mr. Mota was already seeing his now
21 wife. And but my wife, I'm sorry, my client took that as a
22 threat. And in fact, she listed it in there that she was
23 worried that he was going to kill her. They had had talks
24 and evidence was presented at the time of the first hearing
25 that he had told her how he could kill her and get away with

1 it, how he would take her into the desert, spread plastic
2 around--

3 MR. LEBARON: Your Honor, I'm going to object.
4 This is, is not heard on the merits, that it's hearsay and
5 wasn't even part of the original application for a protective
6 order.

7 MR. DICKINSON: It was in making mom disappear.

8 MR. LEBARON: And in anything else that--

9 THE COMMISSIONER: I will allow him to argue
10 anything that is in the original petition for a protective
11 order.

12 MR. DICKINSON: Thank you, Your Honor.

13 He made very specific allegations in regards to
14 what he was going to do with her so that the kids could have
15 a new mom.

16 Now, since the protective order was entered,
17 you're right, we don't have any direct allegations against
18 Mr. Mota for conduct. We have a lot of suspicions of
19 damage, of damage that has been done to cars that's
20 consistent with court hearings. We have a lot of suspicions
21 of damage that has been done to other people's cars--

22 MR. LEBARON: Objection, Your Honor.

23 MR. DICKINSON: -- consistent with court
24 hearings.

25 MR. LEBARON: I don't think it's proper for a

1 proffer to state suspicions and that type of thing.

2 THE COMMISSIONER: Actually I find that very
3 helpful to you, Mr. LeBaron, because I figured if they had
4 evidence they would be telling me their evidence.
5 Whenever people tell me their suspicions that's like telling
6 me I don't have any evidence because if I had that I would be
7 submitting that, so instead I'll tell you my suspicions.

8 MR. DICKINSON: And that's the concern,
9 Your Honor, is that he's been able to toe the line, but he
10 hasn't necessarily left us enough evidence to show that he
11 crossed it.

12 He did make specific allegations at the time of the
13 original protective order that he was going to cut her brakes
14 on the vehicle and it would be seen as an accident. And
15 then he does things like cut the... Well, okay. Then the
16 spark plug wires end up cut after a hearing.

17 He made a specific allegation that he would tie
18 her up and drive her into a remote place in the mountains,
19 cover himself in some sort of plastic from head to toe.

20 Place me in a large piece of plastic.

21 Either stab me with an ice cycle so a
22 weapon would not exist and slowly slice
23 my throat open and let me bleed out. He
24 would dismember my body with a chainsaw,
25 wrap it in pieces, lay it in a vehicle

1 covered in plastic. Then he would
2 destroy any plastic or any articles to
3 kill or, used to kill or dismember me
4 either by fire or moving them to a
5 different place. Sinking me with weights
6 to the bottom of a lake or ocean. My
7 body parties would then be disbursed
8 throughout the mountains away from the
9 original scene so a crime scene could not
10 be located.
11 I mean, he's followed through on past threats where
12 he said says I'll get you back--
13 MR. LEBARON: Excuse me, Your Honor. Who was that
14 said to?
15 MR. DICKINSON: That was said to my client.
16 MR. LEBARON: In person?
17 MR. DICKINSON: In person.
18 MR. LEBARON: No witnesses? When was that said?
19 MR. DICKINSON: It was prior to the, the initial
20 protective order being sought.
21 Now, my client has gone through therapy. I mean,
22 she's gone to several sessions at Wasatch Mental Health and
23 continues to do--
24 THE COMMISSIONER: Where in her request for
25 protective order did she write that kind of stuff?

1 MR. DICKINSON: What she wrote in her original
2 request for a protective order was that dad was going to find
3 a new mommy for the children. Let me find the exact spot,
4 Your Honor.

5 THE COMMISSIONER: I'm looking for this, he's
6 going to dress in plastic and she's--

7 MR. DICKINSON: And we, the specific items
8 weren't included at that time. They would have been
9 included at a hearing, but the hearing was relatively
10 short. There was a small amount of evidence presented
11 because he wasn't present, but there was evidence
12 presented. And the court made findings in regards to a
13 current threat with, coupled with the past trigger and
14 referred to (short inaudible) and the court's ruling. But
15 there was some evidence presented. Had any of that evidence
16 been challenged additional evidence would have been
17 presented to support the protective order.

18 MR. LEBARON: Your Honor, that is what my
19 objection is is that any argument be limited to the
20 temporary request for temporary protective order,
21 particularly page two that sets those out.

22 THE COMMISSIONER: I'm going to sustain it
23 because I don't know how he prepares, Mr. Dickinson, to
24 respond to allegations that aren't in any pleading. So I
25 mean, I just, I don't know how you would be prepared to

1 respond, Mr. LeBaron. And they haven't filed a responsive
2 pleading on their own. So I'm perfectly happy to have them
3 argue from the pleadings that are here.

4 MR. DICKINSON: One moment, Your Honor.

5 Your Honor, it is that,

6 Daddy's new wife would be our new
7 mommy.

8 And that's on page two.

9 In addition to the, to the original--

10 THE COMMISSIONER: Weren't you arguing what's in
11 your petition?

12 MR. DICKINSON: Right, Your Honor. And--

13 THE COMMISSIONER: Is she abandoning those
14 claims?

15 MR. DICKINSON: Pardon me, Your Honor?

16 THE COMMISSIONER: Is she abandoning the claims
17 she made in her petition for protective order?

18 MR. DICKINSON: No, Your Honor. Those claims are
19 the, the same. We have more details.

20 Additionally, Your Honor, she did submit at the
21 time prior to the hearing it was mailed to Mr. Mota, she
22 admitted her, her journal entries. And in those journal
23 entries I believe it includes those specific events.
24 That's--

25 MR. LEBARON: We object to that.

1 THE COMMISSIONER: Sustained.

2 MR. LEBARON: We never received those,
3 Your Honor.

4 MR. DICKINSON: Your Honor, I've got a mailing
5 certificate on that for the 12th day of September 2012.

6 THE COMMISSIONER: They are not in my file.
7 Sustained, Mr. LeBaron.

8 MR. DICKINSON: I've got a file stamp on it,
9 Your Honor. It says it was file stamped by the court.

10 THE COMMISSIONER: Show it to Mr. LeBaron and
11 bring Mr. LeBaron with you.

12 MR. LEBARON: Your Honor, this is dated
13 September 12, 2012. The protective order was granted July,
14 or June 27th, 2012.

15 MR. DICKINSON: It was presented to Your Honor and
16 it was (short inaudible, away from mic). When was the
17 motion to set aside? I think it was just before that (short
18 inaudible, away from mic).

19 THE COMMISSIONER: That was at the motion to set
20 aside.

21 MR. LEBARON: The court wasn't taking any new
22 evidence, Your Honor. We'd ask this matter be stricken.

23 THE COMMISSIONER: Thank you. My order is what
24 it is. Thank you.

25 MR. DICKINSON: But if we go to notice,

1 Your Honor, there was sufficient notice of that.

2 THE COMMISSIONER: Thank you.

3 MR. DICKINSON: We believe that the, there, and
4 let me go back to the statute. The statute is discretionary
5 to the court. It doesn't say it shall be dismissed if
6 everyone follows the rules, it said it may be dismissed based
7 on those factors.

8 Now, we presented why he should have been in
9 therapy. I mean, if any of these allegations are true he
10 should have been.

11 Now, he failed to prevail on his motion to set
12 aside, he failed to prevail at the time of the protective
13 order. Based on that I think he probably should have done
14 some therapy if he wants this matter dismissed. He hasn't,
15 he hasn't even done an assessment to determine whether or
16 not he should have therapy. I think prior to this
17 protective order being dismissed there should be assessment
18 so we can determine whether or not he needs additional
19 counseling if that is the court's position.

20 If the court's position is that it should be
21 dismissed there should be a restraining order in the divorce
22 following very much the same language that is included in
23 the protective order. And any violation of that restraining
24 order should be an additional grounds for the entry of a
25 protective order.

1 But again, our request is that it not be dismissed
2 at this time. We think the, the threats are specific
3 enough that my client still has a reasonable fear. If
4 someone were to make those types of threats to me that they
5 were going to replace me with somebody else I think that
6 would have a continuing reasonable fear going beyond two
7 years.

8 THE COMMISSIONER: Thank you. Mr. LeBaron?

9 FURTHER ARGUMENT BY MR. LEBARON

10 MR. LEBARON: Yes, Your Honor, just briefly.

11 DCFS did not suggest counseling, the court did
12 not suggest counseling even at, at this hearing on default.

13 He will respond to the first paragraph of page
14 two indicating the police report, which I don't know of,
15 has been filed and speaks for itself.

16 Paragraph two he would testify never happened.

17 Paragraph three with regard to the airsoft gun.
18 Parker asked for an airsoft gun until his mother said no.
19 That would be his statement.

20 And then the other paragraphs starting then on 6-12
21 he's talking about filing for standard visitation would be
22 his response to that.

23 Your Honor, I believe that under the factors
24 indicated that the protective order should be dismissed.
25 There is no indication that any amendments should take

1 place. There has been no, again no calls, no incidences
2 that would indicate that there was counseling that was
3 needed or that there is a basis for a reasonable fear
4 based upon what is in the record on the original protective
5 order. And most importantly what has occurred since June 27,
6 2012 until this day.

7 He wants unfettered access to his children. He
8 wants to be able to, to move forward and build his
9 relationship with them. We believe this is just a matter
10 of control on her part rather than a reasonable fear of
11 future abuse, emphasizing the word future.

12 And submit it on that basis

13 RULING

14 THE COMMISSIONER: Thank you. You know counsel,
15 I'll be honest with you, I rarely get two attorneys as well
16 prepared as I had today in this case who argue as well as
17 you both have argued. I thought you've both done an
18 exceptional job for your clients.

19 I hope both clients understand that the statutes
20 sometimes aren't always that helpful. They are just not.

21 And so I've got two good attorneys argue
22 everything they can argue out of the pleadings that have
23 been filed and the statute that they can find, and we have
24 little case law that is particularly helpful on this exact
25 issue.

1 So having said all that I'm going to do the best I
2 can too.

3 I am reminded from my days in law school, from my
4 tort class, and in the tort class the professor said you
5 know what, sometimes law students would like to argue that
6 if an individual runs a stop sign and hits a truck, what
7 the damages are that should be allowed. He said, and the
8 reality check is if you hit a truck full of eggs you pay for
9 the damage you did to the eggs. And it's not an argument to
10 come in and say well if I had hit a truck full of bowling
11 balls there wouldn't have been any damage. In this
12 particular...

13 The reason I bring that up is because I have to
14 conclude, Mr. Dickinson, that your client has a reasonable
15 fear. I think that's where this turns. Now, and in doing
16 so the Utah State legislature I think has adopted a
17 reasonable man standard. So I guess what I'm saying,
18 Mr. Dickinson, is your client doesn't get to come in and
19 say I'm a truck load of eggs, and all of the eggs were
20 damaged and because I'm particularly fragile I still have a
21 reasonable fear. And Mr. LeBaron, you don't get to come
22 in and argue and say hey, bowling balls wouldn't have a
23 reasonable fear. It's somewhere in the middle between
24 bowling balls and eggs. It's the reasonable man standard.

25 And they must have decided that I'm the reasonable

1 man because I'm the person they put the black robe on.

2 And I've looked at it and I fully want to
3 acknowledge it. I wish the statute was written a little
4 differently to give me a little more direction. I really
5 wish I did. I wish I had one or two good cases directly on
6 point where some appellate court has looked at this and say,
7 you know, this is the way we want to approach this, this is
8 what it means.

9 But I am applying a reasonable man's standard to
10 whether or not your client still has a reasonable fear,
11 Mr. Dickinson.

12 His default was entered, his default was entered
13 based on the facts that were alleged. That was never set
14 aside. She said,

15 He pulled out a handgun and started to
16 put the clip in it saying you don't think
17 I will do it. I picked up the phone and
18 started to dial 911. And he pointed the
19 gun at me and my youngest child who I was
20 holding, and said if you dial that last
21 number it will be the last thing you ever
22 do. I threw the phone onto the bed and
23 he pointed the gun back at himself.

24 That's exactly what she alleged, Mr. Dickinson.
25 Now, she alleged it didn't occur immediately prior to her

1 request for the protective order. She said it occurred
2 back in 2011. But I am telling everyone in the courtroom
3 if and when someone pulls out a gun and points it at me I
4 don't know that I can predict that at any time in the future
5 I will not have a reasonable fear of that person if they
6 pulled it out, pointed it at me and made a threat to kill me
7 with it.

8 So therefore, Mr. Dickinson, because I can't
9 conclude that I'm unreasonable, I cannot conclude that your
10 client would still have a, doesn't have a reasonable fear
11 of someone she claims pulled out a gun, pointed it at her
12 when she's dialing 911, and threatened to kill her if she
13 dialed the last number. I just can't get there.

14 I wish I had more instructions from the Utah Court
15 of Appeals as exactly how I'm supposed to approach this.
16 I'm approaching it the way I did.

17 So the protective order remains in place with the
18 amendments that you've stipulated to, Mr. Dickinson.

19 Good luck to the parties. Thank you.

20 Mr. LeBaron, I know you weren't required to do that
21 research on federal law. I appreciate it.

22 MR. LEBARON: It was helpful for me too,
23 Your Honor.

24 THE COMMISSIONER: Thank you. Counsel, there
25 is still a protective order in place. I'm relying on the

1 two of you to make sure the parties aren't riding down in the
2 same elevator, walking out in the parking lot together.

3 WHEREUPON, the hearing was concluded.

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FILED

JUL 10 2015

4TH JUDICIAL DISTRICT
STATE OF UTAH
UTAH COUNTY

REPORTER'S CERTIFICATION

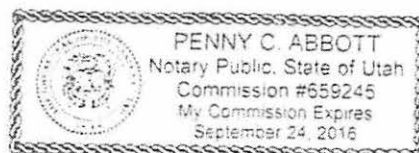
STATE OF UTAH)
) SS.
COUNTY OF UTAH)

I, Penny C. Abbott, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, do hereby certify that I received the electronically recorded proceedings in the matter of Mota vs. Mota, hearing date September 30, 2014, and that I transcribed it into typewriting and that a full, true and correct transcription of said hearing so recorded and transcribed is set forth in the foregoing pages numbered 1 through 26, inclusive, including where it is indicated that the recording was inaudible.

I further certify that I am not of kin nor otherwise associated with any of the parties to this cause of action and am not interested in the event thereof.

WITNESS my hand and official seal this 7th day of May, 2015.


PENNY C. ABBOTT, COURT REPORTER/NOTARY
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