

2016

**Aria Rebekah Marshall (f.k.a. Card) v. Devin John Card, Appellant/
Respondent**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ARIA REBEKAH MARSHALL,
(f.k.a. **CARD**)

Appellee/Petitioner,

v.

DEVIN JOHN CARD,

Appellant/Respondent.

Appellate Case No.: 20151001

Brief of Appellant Devin Card

Appeal from Order Denying Objection to Commissioner Recommendation
Re: Motion to Vacate Protective Order

Third District Court, Salt Lake Department
The Honorable Judge Paul G. Maughan presiding

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ORAL ARGUMENT REQUESTED

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UTAH APPELLATE COURTS

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ORAL ARGUMENT REQUESTED

List of Parties to this Appeal

The parties are Appellant/Respondent Devin Card and Appellee/Petitioner Aria Marshall (fka Card). They were formerly married and divorced in 2014.

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Jurisdictional Statement

The Utah Court of Appeals has jurisdiction over appeals in domestic relations proceedings per Utah Code 78A-4-103(2)(h).

Statement of the Issues

Issue: To extend a domestic relations Protective Order after two years have passed the court must find the petitioner harbors a “reasonable fear of future abuse.” The statute defines “abuse” as intentionally attempting to cause a cohabitant physical harm or placing her in reasonable fear of imminent physical harm. The court below extended the Protective Order because it felt the respondent, Mr. Card, engaged in emotionally distressing conduct by sending his court-ordered child support directly to Ms. Marshall, his former wife, or her bank and because of a parent-time dispute in November 2012. The Court reasoned this gave her a “reasonable fear of future abuse” even though he never threatened her physical safety while the Order was in effect.

Did the court err in its legal conclusion that those grievances would cause a reasonable person to fear future “abuse” – meaning “*physical harm*” – absent an extension of the Protective Order?

Standard of Review: Whether a particular course of conduct would give someone an objectively “reasonable” fear of “future abuse” is a mixed question of law and fact. That is, a determination whether “a given set of facts comes within the reach of a given rule of law.” Cf. In re Baby B., 2012 UT 35, ¶ 46, 308

P.3d 382 (Defining mixed question of fact and law). To answer that question, this Court must first determine whether the court below relied upon the correct statutory definition of “abuse” in its analysis. Bott v. Osburn, 2011 UT App 139, ¶ 5, 257 P.3d 1022 (the proper interpretation of a statute is a question of law). Second, whether its findings of fact satisfy the *legal standard* for concluding a “reasonable fear of future abuse” exists. Cf. Murray v. Labor Comm’n, 2013 UT 38, ¶¶ 33 and 40, 308 P.3d 461 (the question of “reasonableness” and “whether a set of facts falls within a legal standard” is an objective question of law).

While an appellate court generally defers to a district court’s findings regarding *empirical* factual matters (assuming there is any evidence to support them), it gives no deference to the *legal* conclusions drawn from those facts. Baby B. 2012 UT 35 at ¶¶ 40-47. That is because the public is entitled to rely on consistent rules established by set appellate precedent. Id. ¶ 44. “Because appellate courts have traditionally been seen as having the power and duty to say what the law is and to ensure that it is uniform throughout the jurisdiction, we must be vigilant in our review of both purely factual and mixed findings to ensure that they are based on correct legal principles.” Id. ¶ 47.

For example, “if a hypothetical statute were to impose penalties for the

wearing of a red shirt, a trial court could be called upon to make a factual finding on the empirical question of the color of an individual party's shirt. But such a finding could also entail an embedded legal conclusion, such as whether fuchsia shirts are prohibited. Our review of a court's decision under this statute would defer to the factual finding on the empirical question of the color of a particular shirt. But we would give no deference on the legal question of the meaning of the statutory term 'red,' deciding for ourselves whether fuchsia shirts are covered. Thus, if a trial court finds that a particular fuchsia shirt is effectively a red one covered by the statute, the applicable standard of review would require us to distinguish the factual finding on the empirical question of the shirt's color from the legal conclusion on what is meant by the term 'red.'" Id. ¶ 47.

Preservation: This issue is preserved. R:281-294, 307-313, 532-538, 540-544.

Issue No. 2: When hearing an appeal of a commissioner's recommendation in a protective order case, the district court must make "independent" findings of fact and conclusions of law "based on the evidence ... presented to the judge." See Utah R. of Civ. P. 108(d)(2) and (f). Instead, the court below relied upon several "findings" made by the commissioner to support its ruling even though

no evidence was presented at trial to support of those findings.

Did the district court err by incorporating those unsupported findings into its analysis?

Standard of Review: The proper interpretation of a court rule is a question of law this court reviews *de novo*. Brown v. Glover, 2000 UT 89, ¶ 15, 16 P.3d 540. While findings of fact are normally entitled to deference if there is any admissible evidence to support them, a finding not supported by admissible evidence will be disregarded. Larson v. Larson, 888 P.2d 719, 723-25 (Utah App. 1994).

Preservation: This issue is preserved. R:282, 294, 308, 338, 368-369.

Issue No. 3: Although the court below made a “finding” that Mr. Card violated the Protective Order while it was in effect, it did not describe *how* he violated it nor find that he *knowingly* did so.

Overall, are the trial court’s conclusory findings of fact inadequate to justify the conclusion that Mr. Card knowingly violated the Protective Order thereby giving Ms. Marshall an objectively reasonable fear of “abuse”?

Standard of Review: While findings of fact are generally entitled to deference, those findings must be sufficiently detailed to permit meaningful

appellate review. Sukin v. Sukin, 842 P.2d 922, 923-924 (Utah App. 1992); Towner v. Ridgway, 2008 UT 23, ¶¶ 13-16, 182 P.3d 347 (Explaining a conclusory finding of “stalking” is insufficient to justify a restraining order without subsidiary findings satisfying each element of the legal definition of stalking). Inadequately detailed findings are grounds for a remand and reconsideration unless the facts in the record are “clear, uncontroverted, and capable of supporting only a finding in favor of the judgment.” Kinkella v. Baugh, 660 P.2d 233, 236 (Utah 1983).

Preservation: This issue is preserved. R:337-347, 367-370.

Issue No. 4: Did the trial court abuse its discretion by ordering Mr. Card to pay Ms. Marshall’s attorney fees?

Standard of Review: A court’s decision to award attorney fees in a domestic relations proceeding is reviewed for an abuse of discretion. Dahl v. Dahl, 2015 UT 79, ¶ 168. A discretionary decision premised on an error of law constitutes an abuse of discretion. Granger v. Granger, 2016 UT App 67, ¶ 10.

Preservation: This issue is preserved. R:281-294, 307-313, 532-538, 540-544.

Determinative Provisions

Utah Code 78B-7-115 (Dismissal of protective order) states in relevant part:

(1) A protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future abuse. In determining whether the petitioner no longer has a reasonable fear of future abuse, the court shall consider the following factors:

- (a) whether the respondent has complied with treatment recommendations related to domestic violence, entered at the time the protective order was entered;
- (b) whether the protective order was violated during the time it was in force;
- (c) claims of harassment, abuse, or violence by either party during the time the protective order was in force;
- (d) counseling or therapy undertaken by either party;
- (e) impact on the well-being of any minor children of the parties, if relevant; and
- (f) any other factors the court considers relevant to the case before it.

...

(3) The court shall enter sanctions against either party if the court determines that either party acted:

- (a) in bad faith; or
- (b) with intent to harass or intimidate either party.

...

Utah Code 78B-7-102 (Definitions) states in relevant part:

As used in this chapter:

(1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.

...

(5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

...

(10) "Protective order" means an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter.

Utah Code 77-36-1 (Definitions) states in relevant part:

(4) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

- (a) aggravated assault, as described in Section 76-5-103;
- (b) assault, as described in Section 76-5-102;
- (c) criminal homicide, as described in Section 76-5-201;
- (d) harassment, as described in Section 76-5-106;
- (e) electronic communication harassment, as described in Section 76-9-201;
- (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
- (g) mayhem, as described in Section 76-5-105;
- (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual Exploitation of a Minor;
- (i) stalking, as described in Section 76-5-106.5;
- (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
- (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
- (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
- (m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;

(o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4).

Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Section 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Section 921 et seq.; or

(p) child abuse as described in Section 76-5-109.1.

Utah Code 76-5-106 (Harassment) states:

- (1) A person is guilty of harassment if, with intent to frighten or harass another, he communicates a written or recorded threat to commit any violent felony.

Utah Code 76-5-106.5 (Stalking) states:

- (1) As used in this section:

...

- (b) "Course of conduct" means two or more acts directed at or toward a specific person, including:

- (i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

- (A) directly, indirectly, or through any third party; and

- (B) by any action, method, device, or means; or

- (ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

- (A) approaches or confronts a person;

- (B) appears at the person's workplace or contacts the person's employer or coworkers;

- (C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;
- (D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;
- (E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or
- (F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

...

(d) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

...

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

- (a) to fear for the person's own safety or the safety of a third person;
- or
- (b) to suffer other emotional distress.

...

Utah Code 78B-7-106 (Protective orders) states:

...

(6) The protective order shall include:

- (a) a designation of a specific date, determined by the court, when the civil

portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days.

...

Statement of the Case

This appeal stems from a district court's order declining to vacate a domestic relations Protective Order in effect for over four years now under Utah Code 78B-7-115(1)(Explaining a domestic relations protective order is subject to dismissal after two years if the petitioner no longer has a reasonable fear of future abuse). The final judgment from which this appeal is taken was entered on November 13, 2015, an objection as to form challenging the sufficiency of the trial court's findings was filed on September 15, 2015, and the Notice of Appeal was filed on December 1, 2015.

Statement of Facts and Procedural History

On April 2, 2012, Petitioner Aria Marshall requested a Protective Order against her then-husband, Respondent Devin Card, based on accusations of shoving and nonconsensual sexual intercourse during their marriage. [R:1-10,

545]. Mr. Card denied those accusations in a written response. [R:17-33].

Following a contested hearing before a Commissioner based solely on proffers, the Commissioner issued a protective order against Mr. Card believing that he had shoved Ms. Marshall during an argument. [R:414-435].

Among other things, that Protective Order awarded Ms. Marshall full custody of the parties' child and prohibited Mr. Card from abusing, engaging in domestic violence, stalking, harassing, or using any kind of physical force against Ms. Marshall. [R:38-44]. While ordered to stay away from her home in Lehi, [R:40], the "Civil Portion" of the Order permitted him to go there for the limited purpose of conducting custody exchanges arranged through Ms. Marshall's father, Steve Bunker. [R:42]. The Order stated this "Civil Portion" would "expire" or "be reviewed by the court" after an unspecified number of days, [R:41], which Utah Code 78B-7-106(6)(a) states is "150 days" by default. The Order concluded by stating that after two years had passed Mr. Card could request a hearing to dismiss it. [R:44].

Acting *pro se*, Mr. Card filed an objection to the Commissioner's decision and requested an evidentiary hearing to challenge the factual basis for that protective order. [R: 49-63, 66-78]. Initially the trial court granted his request and

vacated the Protective Order. [R: 94-96, 436-444]. However, Ms. Marshall then moved to reinstate the Protective Order because Mr. Card had not filed his objection within 10 days of the hearing before the Commissioner. [R: 97-105, 462-479]. The trial court reinstated the Protective Order based on that technicality. [R:120, 476-478]. Mr. Card filed various *pro se* motions seeking reconsideration of that decision but the judge denied all of them on procedural grounds. [R:137-181, 194-216, 222-229]. At one point Mr. Card filed an appeal from those rulings but later voluntarily dismissed it. [R:182-193].

On April 10, 2015, Mr. Card retained counsel and filed a verified motion to vacate the Protective Order which by then had been in effect for almost three years. [R:230-237]. He attested that he had not engaged in any acts of abuse against Ms. Marshall since the order had been entered, had completed domestic violence counseling, and there was no need to keep it in place. [R: 233-237]. Ms. Marshall opposed his request, arguing she harbored a reasonable fear of future abuse and wanted to continue the Protective Order. [R:245-248]. Mr. Card disputed her claim. [R:263-268].

An initial hearing was held before a Commissioner on May 20, 2015. [R:271-272]. After hearing competing proffers of testimony, the Commissioner

took the case under advisement and later issued a minute entry recommending the Protective Order remain in effect. [R: 273-279]. Mr. Card timely objected to that recommendation and requested an evidentiary hearing before the assigned Judge under Utah R. of Civ. P. 108. [R:281-294]. The Judge granted his request. [R:305].

On August 17, 2015, Mr. Card filed a motion *in limine* to prohibit Ms. Marshall from introducing, among other things, any evidence she had not previously presented to the Commissioner and exclude any allegation about Mr. Card filing a separate tort action against her, a dispute over a parent-time exchange in 2012, an alleged bar complaint against Ms. Marshall's counsel, and about disparaging remarks he had allegedly made to Ms. Marshall's counsel about another commissioner. [R:307-313]. Ms. Marshall did not file any opposition brief. [R:320].

On September 1, 2015, the trial court convened an evidentiary hearing on Mr. Card's request to dismiss the protective order. [R:480]. The Court began by summarily denying Mr. Card's motion *in limine* and promptly took a recess without allowing Mr. Card to be heard concerning it. [R:482-483].

Ms. Marshall testified that for the past three years Mr. Card had *not* had

any direct contact with her and had not threatened her with any kind of physical harm. [R:487-501]. They only communicated through her parents about issues involving their child. [R:488].

She acknowledged accusing Mr. Card of violating the Protective Order back in April 2012 by authoring a message accusing her of infidelity. However, she conceded that message was addressed to her parents; *not her*. [R:488-489]. She likewise admitted Mr. Card did not ask her parents to relay that message to her and did not say anything threatening. [R:489]. The criminal charge against Mr. Card stemming from that incident was subsequently dismissed. [R:492-493].

Ms. Marshall also accused Mr. Card of telephone harassment in 2013 but acknowledged that dispute was between him *and a third-party*. [R:498, 500-501]. He never tried to contact her. In fact, he had not spoken with her since the Protective Order was issued in April 2012. [Id.]. She likewise acknowledged he did not say anything threatening during that call. [Id.].

There was a parent-time dispute on November 25, 2012, due to Mr. Card's reluctance to meet Ms. Marshall at her residence in Lehi to exchange their child. [R:489-491, 504, 545]. The "Civil Portion" of the Protective Order permitting Mr. Card to go to Ms. Marshall's residence for exchanges had expired. [R:514-516,

525, 40-42]; Utah Code 78B-7-106(6)(a)(Explaining the civil portion of a protective order automatically expires after 150 days unless the court specifically orders otherwise).¹ Based on Ms. Marshall's past behavior, he was concerned she would accuse him of violating the Order if he showed up there anyways. [Id.] Mr. Card reached out to Ms. Marshall's father, Steve Bunker, to negotiate an alternate location for the exchange that did not violate the Order and proposed a McDonalds restaurant in Lehi. [R:515-518]. During this conversation Mr. Card made the statement that he was uncomfortable relinquishing his child to anyone unless Ms. Marshall was in the car. [R:525]. However, he expressly stated he did not want to have any contact with Ms. Marshall; he just wanted to know their child was going back to her. [R:526].

Regrettably, the parties were unable to come to a resolution on their own and the local police were summoned to resolve the matter. Everyone eventually agreed to meet at the McDonalds in Lehi for the exchange. [R:517]. Again, it was undisputed there was no direct or even attempted contact between the parties during this exchange. [R:493]. Ms. Marshall further conceded that because the

¹ Because the Protective Order was issued on April 16, 2012, the Civil Portion of that order would have expired 150 days later on September 13, 2012.

police were present she had no reason to fear being harmed by Mr. Card. [R:494]. Although Ms. Marshall sought custodial interference charges against Mr. Card, that charge was ultimately dismissed. [R:518, 492-493, 529].

On March 18, 2014, the parties finalized their divorce in a separate proceeding. [R:486]. Ms. Marshall was awarded custody of their child and Mr. Card was awarded parent-time and ordered to pay her child support. [R:499]. In light of the parties' prior disputes over the logistics of parent-time exchanges, the Court directed that all parent-time exchanges take place at ACAFS.² [R:498-499]. Once ACAFS began facilitating parent-time exchanges there were no further problems between the parties in that regard. [R:247, 499].

Notwithstanding all this, Ms. Marshall reported she still felt threatened because Mr. Card had been mailing his monthly court-ordered child support checks to her which meant he knew where she lived. [R:499, 501-507].³ After she began refusing to cash his court-ordered child support checks, he became

² ACAFS (the Academy for Child Advocacy and Family Support) is a facility commonly used for overseeing parent-time exchanges in Utah County. See www.utahfamilyacademy.org (Last accessed April 27, 2016).

³ There was no testimony that there was any order entered in the divorce or protective order cases that prohibited Mr. Card from knowing where his child and Ms. Marshall lived.

concerned she planned to falsely accuse him of contempt and arranged to have a process server deliver his support checks to her. [R:523-525]. Neither Ms. Marshall nor her counsel refuted Mr. Card's testimony that he reached out to her attorney asking how she wanted him to deliver his court-ordered child support to her but received no answer. [R:530-531].

In closing argument, Mr. Card argued Ms. Marshall had not demonstrated an objectively reasonable fear of "abuse" which the statute defined narrowly as intentionally attempting to cause physical harm or place a cohabitant in reasonable fear of imminent physical harm. [R: 532-538]. While acknowledging Ms. Marshall may have felt his actions were unpleasant or even irritating, none of her grievances rose to the level of a protective order violation. [Id.]. Ms. Marshall conceded the order that they use ACAFS to oversee parent-time exchanges had resolved their November 2012 custody dispute. [Id.] And to the extent there was a problem with the manner in which he paid his court-ordered child support, he would gladly stipulate to an order that going forward he would pay it through the Utah Office of Recovery Services. [Id.] There had been no communication between the parties themselves in years and he had not done anything to threaten Ms. Marshall's physical safety. [Id.]

While implicitly conceding she had not demonstrated a reasonable fear of future physical harm, Ms. Marshall nevertheless urged the court in closing to adopt a broad definition of “abuse” as anything constituting domestic violence under Utah Code 77-36-1 rather than how Section 78B-7-102 defined it. [R:538]. She contended the Court was not “tied to the definition [of “abuse”] in 78B-7-102” and Mr. Card’s act of depositing his court-ordered support checks into her account and having a process server deliver them constituted stalking because it annoyed, distressed, and intimidated her. [R:539].

In rebuttal, Mr. Card pointed out the Legislature had plainly defined “abuse” as “physical harm” in the statute. [R:540-542]. He had not done anything to harass Ms. Marshall via electronic communication, nor had he done anything to threaten her physical safety or cause her significant emotional distress. [R:542-544]. The parties already had orders in their divorce action resolving their prior custody dispute and there was no compelling reason to continue the Protective Order as a punitive measure against Mr. Card. [R:544].

After taking a brief recess, the court stated it felt Ms. Marshall had demonstrated a reasonable fear of future abuse warranting a continuation of the Protective Order despite her testimony that “she ... doesn’t have a fear of future

abuse.” [R:545]. The court made various conclusory findings that Mr. Card had violated the protective order and continued to engage in violations and other unspecified provocative actions designed to harass and intimidate Ms. Marshall. [R:395]. Even though there was nothing in the Protective Order prohibiting him from doing so, [R:38-44], the judge concluded it was “alarming and disconcerting” Mr. Card would deposit his court-ordered child support payments into Ms. Marshall’s bank account or have a process server deliver them which surely must have been “a deliberate act to harass, intimidate, and emotionally upset her.” [R:395-396]. However, it did *not* say that constituted a violation of the Protective Order. [Id.]

Even though the “Civil Portion” of the Protective Order authorizing Mr. Card to go to Ms. Marshall’s home to exchange their child had expired in November 2012, [R:514-516, 525, 40-42 and Utah Code 78B-7-106(6)(a)], the court chided him for insisting that Ms. Marshall exchange their child at a McDonalds in Lehi instead when there was no order specifically requiring that. [R:395]. The court described Mr. Card’s conduct as a “violation of the order” but did *not* identify what part of the Order he violated. [Id.]. It also found Mr. Card was not aware his behavior constituted a violation. [Id.]

The Court described Mr. Card as “rigid, if not obsessive, about following his narrow and self-serving interpretation of various rules.” [R:394]. As a specific example of such “rigidness,” the Court stated there was “no requirement for electronic communications between the parties, but he is fixated in his belief that he was illegally denied the right to such communications.” [R:394-395]. Yet, there had been no testimony about that issue. [R:480-551].

While finding Mr. Card had completed domestic violence counseling and paid a fine, the Court stated he had not internalized the principles of that course. [R:395-396]. The Court accordingly ordered that the Protective Order remain in effect and sanctioned Mr. Card for asking to lift it by ordering him to pay all of Ms. Marshall’s attorney fees. [R:396-397]. The Court further ordered that Mr. Card was not allowed to deposit his child support into Ms. Marshall’s bank account and was prohibited from knowing where she lived with their daughter. [Id.]

In response, Mr. Card asked the Court for guidance as to what conditions he could fulfill to eventually have the Protective Order dismissed? [R:550]. The Court vaguely responded “time” and “some behavior that would alleviate Ms. Marshall’s fear.” [Id.]. In response to Mr. Card’s inquiry as to how much time the

Court had in mind, the Judge responded "I don't know." [Id.].

The Judge directed Ms. Marshall's counsel to prepare findings of fact and an order incorporating his ruling and "as much of the *relevant information* in the commissioner's order and recommendation as well" stating "Mr. Card violated the protective order while it was in force initially." [R: 549]. Mr. Card asked the Court what specific "violations" of the Protective Order it was finding he committed. [R:549-550]. The Court vaguely answered:

"[A]ll the ones supported here today. And anything that, you know, I, I don't take any – I think those are sufficient in and of themselves today, But, um, you can also reference the commissioner's recommendation that brought it here. And what I'd like [Ms. Marshall's counsel] to do is submit it to [Mr. Card's counsel] for approval as to form. And, and I'll have the final say on it anyways, so. Okay." [R:550].

The Judge did not cite any specific provision of the Protective Order that Mr. Card violated. Nor did it explain *how* Mr. Card violated the Order.

Following trial, Mr. Card submitted an objection as to form arguing that Ms. Marshall and the Judge's findings of fact were insufficiently detailed to explain what he had done that constituted a Protective Order violation. [R:337-347, 367-370.] Mr. Card also objected to Ms. Marshall inserting certain findings made by the Commissioner that were not consistent with the Judge's oral

findings or the evidence presented at trial. [Id.] In response, the Judge modified Ms. Marshall's proposed findings somewhat but did not make any additional subsidiary findings concerning the who, what, when, where, and how of Mr. Card's alleged Protective Order violations. [R:392-400]. The Judge also kept the Commissioner's findings in his order. [R:392-400, 480-552]. Mr. Card now appeals that decision. [R:404].

Summary of the Argument

The Protective Order against Mr. Card should be dismissed because during the three years it had been in effect he did nothing that would give his former wife, Ms. Marshall, an *objectively* reasonable fear of future "abuse." The plain language of the Protective Order statute defines "abuse" as intentionally "placing a cohabitant in reasonable fear of imminent *physical harm*." Because they have a child together, ongoing contact between them was inevitable in spite of their divorce and would inherently involve interactions that were annoying, intimidating, and disconcerting at times. However, an ongoing Protective Order is warranted only if that interaction would cause a reasonable person to fear future "physical harm." The court made no finding that Ms. Marshall reasonably

feared future *physical harm*.

The court below based its erroneous decision to keep the Protective Order on the flawed legal conclusion it was not tied to the statutory definition of “abuse” and could interpret it as encompassing anything that might annoy, intimidate, or emotionally distress one’s former spouse even if it was not of a physically threatening nature. With that mistaken legal premise in mind, it “found” Mr. Card’s act of sending his court-ordered child support payments to Ms. Marshall by mail, direct deposit, or process server and their dispute over the logistics of a custody exchange in November 2012 warranted an ongoing Protective Order because it was emotionally distressing to her. Because the district court “findings” are premised on an erroneous underlying conclusion of law, they are not entitled to any deference.

Likewise, although the trial court stated it thought some of Mr. Card’s behavior violated the Protective Order, it failed to explain what part of the Order he violated. Nor did it provide a logical nexus between those supposed violations and its ultimate legal conclusion that Ms. Marshall harbored a reasonable fear of future “abuse” *as the term is defined by statute*.

Consequently, this Court should reverse the district court and vacate the

Protective Order against Mr. Card. Alternatively, this Court should remand this matter to the district court with instructions to provide more detailed findings and reconsider its decision based upon the correct legal definition of “abuse.”

Legal Analysis

This appeal concerns the trial court’s failure to apply the proper statutory definition of “abuse” to the facts of the case. The trial court’s findings do not logically support its legal conclusion that Ms. Marshall harbored a reasonable fear of future “abuse” – which the statute defines as “*physical harm*” – thereby justifying a continuation of what is now a four year old Protective Order. The trial court’s decision to keep the Order in place was premised on the erroneous notion the statutory definition of “abuse” encompassed any behavior between divorced parents that might be considered emotionally distressing. The Court was unable to point to any occasion where Mr. Card threatened Ms. Marshall’s physical safety while the Order was in effect.

Furthermore, the trial court’s conclusory finding that Mr. Card violated the Protective Order is so lacking in subsidiary detail that it precludes meaningful appellate review. Nowhere did the trial court find that Mr. Card’s conduct

satisfied the legal definition of stalking or any other domestic violence offense.

Consequently, this Court should vacate the Protective Order or remand this case to the trial court with instructions to provide more detailed findings and reconsider whether to vacate that Order based the correction definition of "abuse."

In addition, it is worth noting that the marshaling requirement does not apply under these circumstances. Where a trial court's finding "[a]re legally inadequate, the exercise of marshaling the evidence in support of the findings becomes futile and the appellant is under no obligation to marshal." Barnes v. Barnes, 857 P.2d 257, 259 (Utah App. 1993). In such a case, the "appellant can simply argue the legal insufficiency of the court's findings as framed." Woodward v. Fazzio, 823 P.2d 474, 478 (Utah App. 1991); See also State v. Nielsen, 2014 UT 10, ¶¶ 33-44, 326 P.3d 645 (eliminating the "every scrap" requirement and urging courts to focus on the merits).

This brief proceeds as follows. First, Mr. Card will address the trial court's faulty interpretation of the statutory definition of "abuse." Second, how that mistaken interpretation led it to "find" Ms. Marshall harbored a reasonable fear of future "abuse" when what it had in mind was not what the statute

contemplated. Third, how the trial court's findings are inadequately detailed to sustain its conclusion that Mr. Card violated the Protective Order while it was in effect. Based on those errors of law, this Court should reverse the decision of the court below or, at a minimum, remand this case with instructions to reconsider its decision based on correct legal principles.

I. As a matter of law, Mr. Card's complained-of conduct did not justify continuing the Protective Order in effect for almost four years.

A. To continue a Protective Order after two years have passed the District Court must find the petitioner harbors an objectively reasonable fear of future *physical violence*.

The remedy of a Protective Order between divorcing spouses is deliberately narrow. To obtain such an Order in the first place a petitioner must prove she has been subjected to abuse or domestic violence or that there is a substantial likelihood of abuse or domestic violence. See Utah Code 78B-7-103. Once such an Order is issued, however, it is subject to dismissal after two years if "the court determines that the petitioner no longer has a *reasonable* fear of *future abuse*." Utah Code 78B-7-115(1)(emphasis added).

Utah Code 78B-7-102(1) defines "abuse" as "intentionally or knowingly causing or attempting to cause a cohabitant physical harm or ... placing a

cohabitant in reasonable fear of imminent physical harm.” Thus, under the plain language of the statute⁴ to conclude that a cohabitant harbors a reasonable fear of *future* “abuse” the court must make a subsidiary finding that the respondent’s conduct would cause a reasonable person in the petitioner’s circumstances to fear they would suffer “imminent physical harm” if the Protective Order went away. Cf. Meyer v. Aposhian, 2016 UT App 47, ¶ 22 (explaining the Protective Order statute calls for an objective inquiry).

As part of the process of determining whether a petitioner harbors an objectively reasonable fear of future “abuse,” the court considers factors like:

- (a) whether the respondent has complied with treatment recommendations related to domestic violence, entered at the time the protective order was entered;
- (b) whether the protective order was violated during the time it was in force;
- (c) claims of harassment, abuse, or violence by either party during the time the protective order was in force;
- (d) counseling or therapy undertaken by either party;
- (e) impact on the well-being of any minor children of the parties, if relevant; and
- (f) any other factors the court considers relevant to the case before it.

4 The primary goal in interpreting statutes is to give effect to the legislative intent *as evidenced by the plain language of the statute*. Lilly v. Lilly, 2011 UT App 53, ¶ 11, 250 P.3d 994. Only when there is ambiguity in the plain language of a statute will a court seek guidance from the legislative history or other policy considerations. Id.

Utah Code 78B-7-115(1)

In a given case, as here, not all of these factors will apply.⁵ However, under the plain language of the statutory definition of “abuse,” the ultimate inquiry is determining whether the petitioner harbors an objectively reasonable fear of “imminent physical harm.” In the absence of such, the court cannot keep the Order in place as a punitive measure.

For example, in the recent case of Meyer v. Aposhian this Court affirmed the dismissal of a Protective Order even though the respondent engaged in conduct that was “upsetting, intimidating, and annoying” towards his ex-wife because she failed to show his behavior was likely to “escalate to violence.” 2016 UT App 47 at ¶ 16. “Contentious divorces” by their very nature “cause emotional distress” and involve behavior that is “annoying, painful, or intimidating.” Id. ¶¶ 16 and 24. But, emotionally distressing interactions between divorced parents must be more significant than that to warrant an ongoing Protective Order. Id. While such interactions do not have to involve “outrageous” conduct to be

5 For example, the court did not enter any treatment recommendations or require counseling/therapy when it entered the original Protective Order. However, it did find that Mr. Card nevertheless underwent counseling.

actionable, the statute does not contemplate transforming every unpleasant interaction between divorced parents into the basis for a Protective Order. Id. ¶¶ 24 and 29 n.3.

- i. **There is no reasonable basis to conclude Mr. Card's act of sending his court-ordered child support checks to Ms. Marshall via mail, direct deposit, or a process server would give her reasonable cause to fear imminent physical violence.**

The trial court concluded Ms. Marshall demonstrated a reasonable fear of "abuse" because for a period of time Mr. Card sent his court-ordered child support payments to her by mail, process server, or direct deposit into her bank. However, Mr. Card never had any direct or attempted contact with Ms. Marshall during these transfers of money. There were no letters in the envelopes besides the support check itself. There was also no order requiring Mr. Card to go through the Office of Recovery Services to pay child support.

Consequently, as in Meyer there was no reasonable basis to conclude that Ms. Marshall harbored an objectively reasonable fear she would suffer *imminent physical harm* if the Protective Order were dismissed. While Mr. Card's method of sending his court-ordered child support payments to Ms. Marshall may have been disconcerting to her, as a matter of law it was not *physically threatening* nor

likely to provoke a violent encounter. Thus, the trial court's decision cannot stand based on how Section 78B-7-102(1) defines "abuse."

To be sure, it was certainly within the Judge's discretion to clarify the child support provisions in their Divorce Decree going forward and specify that Mr. Card was not required to send his support payments directly to Ms. Marshall. If Mr. Card did not obey that clarified order then the Judge would be justified in exercising his contempt powers to compel his obedience. But, however disconcerting Mr. Card's prior method of paying child support may have been, it was not physically threatening and thus, by definition, not "abuse."

- ii. **There is no reasonable basis to conclude the fact Mr. Card knew where Ms. Marshall lived would give her reasonable cause to fear for her physical safety when they had a child together and the Protective Order itself told him where she lived.**

Ms. Marshall contended she harbored a reasonable fear of future "abuse" because Mr. Card knew where she lived. However, that is neither surprising nor inappropriate because they have a minor child together whom Mr. Card has statutory parental rights to. As a parent, Mr. Card has a right to know where his child lives if for no reason other than emergency contact purposes. See Utah Code 30-3-33(13) ("Each parent shall provide the other with the parent's current

address ..."); 30-3-36(2)(explaining divorced parents should inform each other where their child can be reached in the event of an emergency while travelling). Even the parties' original Protective Order identified where Ms. Marshall lived and allowed him to go there for custody exchanges for a period of time. [R:38, 40, 42]. Nothing in the Order stated Mr. Card was prohibited from knowing where she lived.

While there is no denying that the parties' divorce proceeding was contentious (as many are), Mr. Card never had any direct contact with Ms. Marshall since their original Protective Order was entered in 2012. The Court made no finding that he ever expressed threats of violence. There is no finding that he ever went by her home for any reason other than custody exchanges as permitted by their Protective Order for a period of time. [R:41-42].

Consequently, there was no reasonable basis to conclude the fact Mr. Card knew where his child lived with Ms. Marshall and sent his child support checks there would reasonably cause to her to fear bodily harm.

- iii. **There is no reasonable basis to conclude a disagreement over the logistics of a custody exchange in November 2012 would give Ms. Marshall reasonable cause to fear for her physical safety.**

The court below opined that Ms. Marshall had reasonable cause to fear “abuse” because Mr. Card proposed exchanging their child at a McDonalds in Lehi at the conclusion of a custody exchange when there was no order requiring that. However, at the time the “Civil Portion”⁶ of their Protective Order had expired and it was unclear where Mr. Card was now supposed to meet her for that exchange. [R:41-42].⁷ Prior to that time, the parties met at Ms. Marshall’s

6 A domestic relations Protective Order contains two parts: a “Criminal” and “Civil” portion. See Utah Code 78B-7-106(5). The “Criminal” portion generally contains provisions restricting the respondent from contacting or abusing the petitioner, the violation of which constitutes a crime. Conversely, the “Civil” portion contains provisions specifying who will have temporary custody of the parties’ child(ren) and how they will conduct parent-time exchanges while the Order is in effect, the violation of which is punishable as contempt but not considered a crime. Courts often insert exceptions to the “no contact” provisions in the “Criminal” portion of a Protective Order within this “Civil” section to allow the respondent to meet the petitioner for the limited purpose of exchanging their child(ren). However, unless the court orders otherwise this “Civil” portion automatically expires after 150 days. See Utah Code 78B-7-106(6)(a). This can cause problems and confusion when, as here, the “Criminal” and “Civil” portions of a Protective Order were intended to work in tandem.

7 Per Utah Code 78B-7-106(6)(a), the “Civil” Portion of the Protective Order would have expired on or about September 13, 2012 – 150 days after it was issued in April 2012.

Lehi home for custody exchanges because the Civil Portion authorized it. [Id.]

However, once the Civil part expired Mr. Card was concerned she would falsely accuse him of violating the Order if he went by Ms. Marshall's residence to relinquish their child.⁸ He tried to negotiate an alternate location to exchange the child with Ms. Marshall's father via text messaging that did not violate the Protective Order. But, they were unable to resolve the issue on their own until the local police intervened. During that conversation he made the statement he was uncomfortable relinquishing the child to anyone unless Ms. Marshall was in the car. However, he clarified he did not want any contact with her and merely wanted to know their child was going back to her.

While the court below was technically correct there was no order requiring Ms. Marshall herself to receive the child at the end of a parent-time exchange, the problem was the Protective Order did not say where Mr. Card was supposed to meet her for exchanges *once the Civil Portion of the Order expired*. [R:38-44]. This ambiguity and other disputes led the divorce court to subsequently enter an

⁸ This fear was prompted by Ms. Marshall's propensity to repeatedly accuse Mr. Card of violating the Protective Order, all of which were eventually dismissed.

order directing the parties to utilize ACAFS⁹ to coordinate the logistics of parent-time exchanges. That resolved the problem going forward.

It is noteworthy Ms. Marshall conceded she had no reason to fear being physically harmed at this exchange because the police were there. [R:494]. Ms. Marshall likewise conceded their divorce court's subsequent order that the parties use ACAFS to coordinate exchanges resolved that problem going forward. [R:247, 499].

In Salt Lake City v. Lopez, this court upheld Utah's stalking statute against a First Amendment challenge because the statute's prohibition against causing a cohabitant "emotional distress" was *not* so overbroad as to encompass "limited conduct during legitimate innocent encounters" such as divorced parents meeting each other for a custody exchange "without conduct directed at causing physical harm." 935 P.2d 1259 (Utah App. 1997). Yet, under the trial court's logic any disagreement about the logistics of a custody exchange could become the catalyst for a Protective Order even without any threat of violence if a parent found that dispute to be annoying, intimidating, or harassing. That would run

9 ACAFS is a facility in Utah County that supervises custody exchanges.

directly contrary to this Court's analysis in Lopez and Meyer.¹⁰

Given these circumstances, there was no reasonable basis for concluding a Protective Order was necessary to prevent future physical violence.

B. Mere "claims" of harassment or a protective order violation do not justify extending a Protective Order.

The court below apparently relied on the fact Mr. Card had been "charged" with violating the protective order to support its conclusory finding that he had violated it. [R:392]. However, the parties stipulated those charges were all subsequently dropped or dismissed on appeal. [Id.]. Consequently, those charges carried no collateral preclusive effect.¹¹ To the extent the court's

10 Recall that in Meyer this Court held that annoying, intimidating, and harassing behavior between a divorced couple was not enough to justify a Protective Order unless accompanied by a threat of physical violence or something that would cause *significant* emotional distress beyond what is inherent in contentious divorces.

11 See Restatement (Second) of Judgments § 13 cmt. f (1982)(a "judgment ceases to be final if it is in fact set aside by the trial court[.]"). The majority of jurisdictions follow the Restatement position. See e.g., Harris Trust & Sav. Bank v. John Hancock Mut. Life Ins. Co., 970 F.2d 1138, 1146 (2d Cir.1992), *aff'd*, 510 U.S. 86, 114 S.Ct. 517, 126 L.Ed.2d 524 (1993) (vacated judgment has no preclusive effect); Pontarelli Limousine, Inc. v. City of Chicago, 929 F.2d 339, 340-41 (7th Cir.1991) (vacated judgments have no future effect); Dodrill v. Ludt, 764 F.2d 442, 444 (6th Cir.1985) ("judgment which is vacated, for whatever reason, is deprived of its conclusive effect as collateral estoppel"); Pride v. Harris, 882 P.2d 381, 383 (Alaska 1994)(vacated judgment cannot have res judicata effect because

findings relied upon those charges for that purpose, it engaged in plain error. Furthermore, any charge that resulted in a dismissal following a “no contest” plea could not be considered evidence of a violation because such pleas are inadmissible in collateral civil proceedings. See Utah R. of Evid. § 410(a)(2); See also State ex. rel. W.A., 2002 UT 127, ¶¶ 33-36, 63 P.3d 607 (Explaining a “no contest” plea is not admissible as evidence of any wrongdoing).

Nevertheless, the court analogized proceedings to dismiss a protective order to a probation violation hearing in that it did not have to find Mr. Card was *criminally convicted* of a violation to conclude a violation occurred. Cf. Layton City v. Stevenson, 2014 UT 37, 337 P.3d 242 (to prove a criminal defendant violated his probation the state does not have to provide proof of a criminal conviction and need only show under a preponderance standard that a violation occurred). However, that misses the point because the court must still find by a preponderance of the evidence that Mr. Card’s conduct constitutes a Protective

it is not a final judgment); Mercantile & Gen. Reinsurance Co. v. Colonial Assurance Co., 147 Misc.2d 804, 556 N.Y.S.2d 183, 187 (App.Div.1989) (vacatur of a judgment, as a general rule, “is not a meaningless act for the purposes of issue preclusion”); Woodrick v. Jack J. Burke Real Estate, Inc., 306 N.J.Super. 61, 703 A.2d 306, 316 (App.Div.1997)(vacated judgment is not a final judgment for purposes of collateral estoppel).

Order violation and explain how.

To be sure, there is language in Section 78B-7-115(1)(c) suggesting the court should consider “claims” of harassment, abuse, or violence while a Protective Order is in force in deciding whether to keep it. But, a “claim” is nothing more than an *allegation* (and may be unfounded at that). Thus, consistent with the district court’s analogy to a probation violation hearing, unless it actually finds by a *preponderance of the evidence* that Mr. Card engaged in abusive behavior towards the petitioner while the Protective Order was in effect it cannot rely upon mere “claims” of such conduct to justify keeping that Order.

C. Mr. Card did not violate the Protective Order while it was in effect and the trial court’s legal conclusion to the contrary is not supported by adequately detailed subsidiary findings.

To find that Mr. Card violated the Protective Order, the evidence must show that he “knew what was required” of him, “had the ability to comply,” and “intentionally failed or refused” to do so. State v. L.A., 2010 UT App 356, ¶ 11, 245 P.3d 213 (explaining test for proving violation of a court order); Utah Code 76-5-108(1)(to prove a Protective Order violation it must be shown that the defendant acted “intentionally and knowingly”). A court cannot find a party intentionally violated an order unless it is so “specific,” “clear,” “unambiguous,”

and “definite *as to leave no reasonable basis for doubt regarding its meaning.*”

L.A., 2010 UT App 356 at ¶ 13 (emphasis added). To the extent there is room for debate about what an order requires or prohibits, a court cannot fault a party for misunderstanding an unclear order. Id.

For example, in L.A. a juvenile court held a parent in contempt for violating an order to deliver her son to a mandatory probation meeting. Id. ¶ 9. This Court reversed that finding of contempt because the underlying order she was charged with violating “was not so specific and definite as to give [her] notice that she had been ordered by the juvenile court to comply with any and all of [a probation officer’s] directives.” Id. ¶ 11-19. The Order required her to “attend meetings ... as directed” but did not specify *what meetings* she was supposed to attend or *who would make that decision.* Id. ¶ 13-14. Because the juvenile court could have more precise, this Court concluded it was reversible error to find that the mother “knew what was required” of her and thereby violated the Order. Id. ¶ 16-18.

Furthermore, a trial court’s findings of fact must be sufficiently detailed to allow a reviewing court to ensure that the trial court’s decision was rationally based upon the relevant facts and controlling legal principles. Roberts v. Roberts,

2014 UT App 211, ¶ 10, 335 P.3d 378. While trial courts are not expected to analyze every issue in the same depth as an appellate decision, Id., the touchstone of adequate findings is that they are sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached. Adequate findings of fact are essential to enable meaningful appellate review because without them an appellate court cannot understand the trial court's reasoning and thereby assess its compliance with governing law. Keyes v. Keyes, 2015 UT App 114, ¶ 29, 351 P.3d 90. Failure to do so is grounds for reversal and remand for entry of additional findings of fact.

For example, in Towner v. Ridgway our Supreme Court reversed and remanded a civil stalking injunction because the trial court failed to make specific findings with respect to each element of the stalking statute. 2008 UT 23, ¶¶ 13-16, 182 P.3d 347. Although the trial court found Mr. Ridgway's actions constituted a "course of conduct" giving the Towners a "reasonable basis for fearing Mr. Ridgway," it did not find they feared *bodily injury* or *significant emotional distress* as required by the stalking statute. Id.

Here, as in Towner and L.A., the trial court's findings are inadequately detailed to justify its legal conclusion that Mr. Card violated the Protective Order

while it was in effect. Although the Court said it “found” Mr. Card violated it, it did not enter subsidiary findings explaining (1) what part of the order put Mr. Card on notice that his complained-of conduct was prohibited, (2) that he understood the Order and had the ability to comply, and (3) how his behavior constituted *intentional* and *knowing* disobedience – as distinguished from a mistaken interpretation – of the Order.¹²

While there was some argument from Ms. Marshall’s counsel that Mr. Card’s conduct constituted “stalking,” the trial court never found that it did. Nor did it enter any subsidiary findings stating that Mr. Card did anything to cause Ms. Marshall to fear *bodily injury* or suffer *significant* emotional distress as required by the statute. Towner, 2008 UT 23 at ¶ 16; Meyer, 2016 UT App 47 at ¶¶ 11, 16, and 29 n. 3 (Explaining emotional distress must be “significant;” mere anxiety or annoyance incident to a contentious divorce is not enough).

In the absence of adequately detailed findings explaining the trial court’s

12 It is noteworthy that the trial court appeared to make a specific finding that Mr. Card sincerely believed he had *not* engaged in any conduct that would constitute a Protective Order violation. [R:395]. Suffice it to say, that is irreconcilable with a finding that any violation on his part was done *intentionally* or *knowingly*.

reasoning for concluding Mr. Card violated the Protective Order, this court should reverse its decision as contrary to law or, at a minimum, remand with instructions to provide more detailed findings and reconsider its decision.

- i. **Nothing in the Protective Order prohibited Mr. Card from sending his court-ordered child support directly to Ms. Marshall.**

It is unclear whether the trial court considered Mr. Card's act of sending his court-ordered child support payments directly to Ms. Marshall a violation of the Protective Order because it never actually said it was. Nor did it reference the part of the Order he allegedly violated. Nevertheless, assuming such a finding was implicit it was erroneous.

The Protective Order broadly prohibits Mr. Card from doing anything constituting abuse, domestic violence, stalking, harassment, or threatening physical violence. [R:39]. It likewise prohibits him from directly or indirectly contacting or communicating with the Petitioner. [R:40]. Ms. Marshall conceded their Divorce Decree ordered Mr. Card to pay her child support. [R:499].

Although Ms. Marshall professed that Mr. Card should be sending his support payments through the Office of Recovery Services, she was unable to cite any provision in their Decree or the Protective Order that regulated the manner in

which he delivered his support. [R:501-503, 507].¹³ She admitted Mr. Card did *not* include anything with his child support checks besides the check itself and the envelope it was in. [Id.]. Mr. Card did *not* attempt to communicate with Ms. Marshall in any way while sending his child support to her. [R:500-501].

Consequently, as a matter of law Mr. Card's act of complying with the Divorce Decree's requirement that he pay child support to Ms. Marshall each month cannot be described as a "violation" of the Protective Order because nothing in that Order or their Decree prohibited him from paying his *court-ordered* support by mail, direct deposit, or process server. While the Court was certainly free to clarify its orders going forward, under L.A. it was not at liberty to amend the Order *ex post facto* and then say Mr. Card violated it.

ii. The dispute over the logistics of a custody exchange in November 2012 did not constitute a violation of the Protective Order.

It is unfortunate the parties had a disagreement over the logistics of a

13 Paragraph 3 of the Divorce Decree drafted by Ms. Marshall's counsel stated: "*Mr. Card shall pay Aria \$429 per month as child support, effective as of November 1, 2013 and continuing until the child has attained the age of eighteen years or graduated from high school with her class, whichever comes later, plus one-half of any work related child care costs, medical expenses, and medical insurance premiums that are paid on [their child's] behalf.*" The Decree says nothing about Mr. Card paying through the Office of Recovery Services.

custody exchange on November 25, 2012. However, to find that Mr. Card's request that the parties exchange their child at a McDonalds in Lehi – a public place – “violated” the Protective Order was erroneous because the Court did not show where its Order provided Mr. Card with a clear, definite answer to the question of how they were supposed to conduct that exchange and where they were to meet after the “Civil Portion” expired in 2012. [R:38-44].

Because the relevant provisions of the Protective Order were unclear at best, Mr. Card did not have “specific and definite” notice of what was required of him. He reasonably believed the “Civil Portion” of the Order authorizing him to go to Ms. Marshall's residence for parent-time exchanges had expired by operation of law and he would be violating the protective order if he showed up there.¹⁴ It was undisputed the parties had no direct contact with each other at this

14 The very first page of the Protective Order expressly warned Mr. Card “YOU CAN BE ARRESTED FOR VIOLATING THIS ORDER *EVEN IF THE PERSON PROTECTED BY THE ORDER INVITES OR ALLOWS YOU TO VIOLATE THE ORDER'S PROHIBITIONS*. ONLY THE COURT CAN CHANGE THE ORDER. YOU MAY BE HELD IN CONTEMPT FOR IGNORING OR ALTERING THE TERMS OF THE ORDER.” [R:38]. In other words, if Mr. Card showed up at Ms. Marshall's house to relinquish their child she could have had him arrested and held in contempt for violating the Protective Order *even if she told him to come there*.

exchange, nor did Mr. Card ask to have any direct contact with Ms. Marshall. Indeed, even the trial court's ruling suggests it found that Mr. Card believed he was obeying the Order, albeit in a manner that walked "close to the line" as he understood it without "technically cross[ing] it." [R:395].

While the court below evidently disagreed with Mr. Card's interpretation, his actions did not and could not constitute an "intentional" and "knowing" violation of that Order. Thus, to the extent the court below based its conclusion that Ms. Marshall harbored a reasonable fear of future abuse because Mr. Card violated the order while it was in effect, that conclusion was erroneous.

iii. The district court did not articulate any other Protective Order violations.

Aside from the dispute over a custody exchange on November 25, 2012, the trial court did *not* specifically identify any other incidents as constituting a violation of the Protective Order. Nor did it make subsidiary findings of fact explaining how that unspecified conduct constituted a protective order violation. Mr. Card invited the trial court to provide more detailed findings to support its conclusions both at oral argument, [R:549-550], and again in his post-trial objection to form. [R:337-347]. However, the trial court declined to provide

additional subsidiary findings. [R:393-397].

Ordinarily, the absence of adequately detailed findings of fact justifies a remand for entry of more detailed findings by the court and reconsideration of its decision. Woodward, 823 P.2d at 478 (“when multiple conflicting versions of the facts create a matrix of possible factual findings, we are unable on appeal to assume that any given finding was in fact made.”). The only exception is when the evidence in the record is undisputed and only capable of supporting the trial court’s decision. Id. But, a canvassing of the record in this case reveals the evidence either does not support the trial court’s decision or, at best, is disputed thereby making affirmance as a matter of law impossible.

Given these deficiencies, this Court should either outright reject the trial court’s legal conclusion that Mr. Card violated the Protective Order or, alternatively, should remand for entry of more detailed findings of fact and reconsideration of the trial court’s prior legal conclusion. Id. at 479 (explaining when an appellate court remands for additional findings it does not expect the trial court to engage in an “exercise in bolstering and supporting the conclusion already reached” but to reconsider that conclusion as well).

D. The district court erred by incorporating several of the Commissioner's findings into its ruling even though no evidence was presented to support them at trial.

Under Utah R. of Civ. P. 108(d)(2), any party has the right, upon request, to an evidentiary hearing before a judge when objecting to a commissioner's recommendation in a protective order matter. At this hearing the judge "will make independent findings of fact and conclusions of law based on the evidence, whether by proffer, testimony, or exhibit, *presented to the judge.*" Utah R. of Civ. P. 108(f). It is not improper for a district court to adopt a commissioner's findings and ruling as its own when its reasoning does not differ from that of the commissioner. Pingree v. Pingree, 2015 UT App 302, ¶ 10 *citing* Veysey v. Veysey, 2014 UT App 264, ¶ 17, 339 P.3d 131. But, it is erroneous for a judge to adopt a commissioner's findings when no evidence is "presented to the judge" to support them. A finding of fact not supported by admissible evidence is considered clearly erroneous and will be disregarded on appeal. Larson v. Larson, 888 P.2d 719, 725 (Utah App. 1994).

Here, the trial court incorporated *all* of the Commissioner's findings into its ruling even though no evidence was presented to support many of them. [R:393-394]. By doing so, the trial court violated Civil Rule 108(d)(2).

For example, the Judge stated the Commissioner in the divorce case reported Mr. Card to the Salt Lake County Attorney to consider filing criminal charges against him for an alleged extortion attempt against Ms. Marshal. [R:394]. However, no evidence was presented to support that claim at trial. [R:480-552]. Nor did the judge make any subsidiary findings explaining what he did that constituted “extortion” under Utah Code 76-6-406, much less how it would give Ms. Marshall reasonable grounds to think she would suffer “abuse” – *imminent physical harm* – if the Protective Order were dismissed. This Court should reject that finding as clearly erroneous.

The Judge found Mr. Card threatened Ms. Marshall’s counsel with a Bar complaint unless counsel made a public statement disparaging the Commissioner who initially granted the Protective Order. [R:394]. However, no evidence was presented to the judge in support of that claim. [R:480-552]. Neither Ms. Marshall nor her counsel choose to testify about any such complaint or request to disparage a commissioner. [Id.] That finding should be rejected.

Nevertheless, even assuming for argument’s sake the Court had been presented with admissible evidence about Mr. Card threatening to file a Bar complaint – and it was not – it did not explain how it would give Ms. Marshall a

reasonable basis to fear she would suffer imminent physical harm. Litigants sometimes feel an adverse ruling is attributable to bias rather than the merits of their case and may encourage others to take action through lawful channels to remove the offending judicial officer from the bench. While any public statement disparaging a judicial officer is ill-advised, it does not logically follow a person making such a statement is going to resort to physical violence. Rather, the “threat” found by the court below was that Mr. Card would ask the State Bar to investigate Ms. Marshall’s counsel. There is nothing physically threatening about that. The Bar is the entity charged with investigating claims of attorney misconduct. Assuming Mr. Card’s complaint was unmeritorious, the Bar would screen it out and that would be the end of it. And if the Bar thought there was merit to Mr. Card’s grievance then it would investigate the matter and respond appropriately.

Either way, the fact the court found Mr. Card would rely upon the legal system to resolve his grievances rather than taking matters into his own hands undermines its conclusion that Ms. Marshall harbors a reasonable fear of future “abuse.”

The court stated Mr. Card harbored a “rigid, if not obsessive ... narrow

and self-serving interpretation of various rules” as a reason for keeping the Protective Order in place and cited as an example Mr. Card being fixated on the belief that he was entitled to “electronic communications between the parties” and was “illegally denied the right to such communications.” [R:394-395]. However, no evidence was presented to support that contention. [R:480-552]. Indeed, it is unclear from the record what “electronic communications” the Judge was even referring to that Mr. Card supposedly felt he had been “illegally denied.” Thus, that finding should be rejected.

Regardless, the court below offered no analysis explaining how any belief by Mr. Card that he had been unjustly denied the right to “electronic communications” would lead to him engaging in physical violence against Ms. Marshall if the Protective Order was dismissed.

E. The lower court’s other reasons for keeping the Protective Order in place are irrelevant to the question of whether Ms. Marshall harbors a reasonable fear of future “abuse.”

The trial court referenced Mr. Card’s litigiousness as a *pro se* litigant in the early stages of his divorce case as a basis for concluding that Ms. Marshall harbored a reasonable fear of future abuse. [R:393]. However, that conclusion makes no sense. We want people to turn to the legal system to resolve disputes

rather than resorting to self-help. Thus, the trial court's finding that Mr. Card repeatedly turned to the courts to resolve his grievances with Ms. Marshall undermines its conclusion that he is likely to resort to violence to settle disputes.

Court rules already provide remedies to deal with *pro se* litigants who engage in vexatious litigation such as attorney fee awards, pre-filing restrictions, and requiring litigants to obtain counsel before proceeding further. See generally Utah R. of Civ. P. 83. An ongoing Protective Order is only warranted to shield a petitioner against a future *physical harm*; not allegedly vexatious litigation.

Finally, the Judge chastised Mr. Card for contacting the police over thirty times to resolve parent-time disputes which eventually required "the need to use ACAFS for parent-time exchanges" at his expense. [R:394]. However, Ms. Marshall conceded the subsequent order that they use ACAFS for exchanges resolved those problems. [R:499]. She conceded she had no reason to fear physical violence when the police oversaw an exchange, and the current order that they go through ACAFS resolved their ongoing parent-time disputes. [R:494, 499]. Thus, there was no logical basis for the trial court to conclude a Protective Order was needed in addition to the ACAFS order.

F. There is no compelling reason for keeping the Protective Order in place.

A domestic relations Protective Order is not a mere civil injunction prohibiting former cohabitants from contacting each other. Rather, under federal and state law a Protective Order carries an assortment of collateral civil and criminal legal consequences that effectively render a person subject to such an order a second-class citizen. Thus, it stands as a significant barrier to Mr. Card's ability to "get on with his life" at the trial court put it. [R:550].

For example, a person subject to a Protective Order cannot possess firearms for lawful purposes such as protecting their home against burglars, recreation, or hunting purposes *even if they've never been accused of threatening to use a weapon against someone*. See 18 U.S.C. 922(d)(8). An otherwise innocent respondent accused of violating a Protective Order is subject to a mandatory arrest based on a mere "probable cause" standard. See Utah Code 77-36-2.4. In child custody proceedings a Protective Order is considered evidence the respondent poses a threat to his child's safety. See Utah Code 30-3-32(2)(c). In many states a civil Protective Order will show up on a respondent's background report thereby limiting his employment opportunities. See Jessica Miles, *We Are*

Never Ever Getting Back Together: Domestic Violence Victims, Defendants, and Due Process, 142 Cardozo L. Rev. 141, 151-153 (2013). Similarly, applicants for higher education, including medical and law school, may be required to disclose the entry of a Protective Order against them which may negatively impact their chance of admission. Id. Respondents subject to a protective order may also be disqualified from serving as foster parents or kinship caretakers. Id. Last but not least, there is an inherent social stigma associated with being subject to a Protective Order. Id.

Many innocent acts that are not otherwise criminal offenses suddenly become a crime in the shadow of a Protective Order. Id. For example, a respondent who contacts his co-parent to innocently discuss their child's progress in school or inquire about a prescription drug their child is taking could be arrested and jailed even if that conversation did not involve anything remotely threatening or harassing.

To be sure, the collateral legal consequences of a Protective Order are arguably a good thing if the person protected by that Order has a legitimate, reasonable basis to fear they will be physically assaulted without it. But, when, as here, those collateral consequences are used as a sword by one divorced parent

against the other to settle a score over grievances from long ago rather than a shield against future violence, that Order is not only unnecessary but a means of perpetrating further conflict.

II. The trial court erred in assessing attorney fees against Mr. Card.

The trial court's decision to assess attorney fees against Mr. Card under Utah Code 78B-7-115(3) because it believed his request to vacate the protective order was brought in bad faith or with intent to harass or intimidate Ms. Marshall is not supported by the evidence presented. It is likewise premised on the district court's flawed legal conclusion that the statutory definition of "abuse" encompasses any kind of unpleasant interaction between divorced parents. Cf. Granger v. Granger, 2016 UT App 67, ¶ 10 (a discretionary decision premised on an error of law constitutes an abuse of discretion).

At least two years had elapsed by the time Mr. Card brought this action to vacate the protective order. He had had no direct contact with Ms. Marshall in years outside of court proceedings. [R:487]. Ms. Marshall was unable to point to any incident where Mr. Card had threatened her physical safety in the years since their original protective order was issued. Thus, Mr. Card had a good faith basis for seeking to dismiss their protective order on the grounds there had been

no “abuse” between them as Utah Code 78B-7-102(1) defines that term.

For much the same reasons, there is no evidence to support the trial court’s conclusion that Mr. Card moved to dismiss the protective order with the intent of harassing or intimidating Ms. Marshall. As stated *supra*, the trial court failed to provide sufficient subsidiary findings of fact explaining what Mr. Card did that constituted a violation of the order. There had been no threatening or abusive interaction between the two of them since the Protective Order was issued. And to the extent Ms. Marshall indicated she wanted Mr. Card’s child support payments to go through the Office of Recovery Services, he indicated he would gladly stipulate to an order to that effect thereby mooting that grievance.

To be sure, in an abstract sense it could be said that the filing of *any* motion with the court could be perceived as “harassing” or “intimidating” by the ex-spouse who has to go to the trouble of responding to it. However, in Meyer this Court rejected the argument that an ongoing protective order was warranted because one spouse engaged in “upsetting, intimidating, and annoying” conduct towards the other, reasoning that contentious divorces by their very nature involved such behavior. 2016 UT App 47 at ¶¶ 16 and 24. If the Legislature intended for the standard of awarding fees under Section 78B-7-115(3)(b) to be

that low, it would have simply said that the non-prevailing party in protective order litigation is subject to sanctions. But, that is not the standard they imposed. Thus, the most sensible interpretation of the statute is that sanctions are only permitted against a party for engaging in harassing or intimidating behavior above and beyond what is inherent in a contentious divorce. Yet, the trial court made no findings describing any behavior that could be fairly described as reaching that standard.

Thus, irrespective of this court's ultimate decision on the merits of Mr. Card's appeal of the trial court's decision not to dismiss the protective order, this court should at least conclude Mr. Card brought his motion in good faith and *not* with the intent of harassing or intimidating Ms. Marshall in excess of the inherent unpleasantness of litigation and co-parenting in the aftermath of a contentious divorce. On that basis it should reverse the trial court's award of attorney fees to Ms. Marshall.

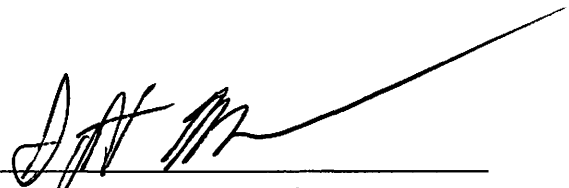
Conclusion and Requested Relief

For the foregoing reasons, this Court should reverse the trial court's decision to extend a domestic relations Protective Order against Mr. Card.

Alternatively, this Court should remand this matter to the trial court with instructions to enter more detailed subsidiary findings of fact and reconsider its ruling based on correct legal principles.

Respectfully submitted:

DATED THIS 2nd day of May, 2016.



Scott Wiser, Counsel for Appellant


Certificate of Compliance with Utah R. of App. P. 24(f)(1)(A)

Counsel certifies that this brief complies with the word limitations in Utah R. of App. P. 24(f)(1) and contains 10,292 words, excluding those provisions exempted by f(1)(B), according to the Microsoft Word 2010 program used by counsel.

Certificate of Service

I hereby certify that on this 2nd day of May, 2016, I sent a true and correct copy of the foregoing document to the following individuals via U.S. Mail, postage prepaid:

James Woodall, Esq.
Counsel for Appellee
10808 So. River Front Pkwy.
Suite 175
South Jordan, UT 84095



Scott Wiser

Addendum

FILED DISTRICT COURT
Third Judicial District

NOV 13 2015

Salt Lake County

By: _____ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ARIA REBEKAH CARD,	:	ORDER
nka Aria Marshall,	:	
	:	CASE NO. 124901827
Petitioner,	:	
	:	
vs.	:	
	:	Judge Paul G. Maughan
DEVIN JOHN CARD,	:	
	:	
Respondent.	:	

The respondent's Objection to Commissioner's Recommendation, filed June 11, 2015, and respondent's Motion in Limine, filed August 17, 2015, came before the Court for hearing on September 1, 2015. The petitioner ("Ms. Marshall") was present and represented by James H. Woodall. Respondent ("Mr. Card") was present and represented by Scott B. Wiser.

The Court, having reviewed the file, the Commissioner's Recommendation, the pleadings herein, the testimony of the parties, and the relevant case law, now enters the following Order.

Mr. Card's Motion in Limine is denied. The Court is not precluded from considering the conduct that led to Mr. Card being charged with criminal violations, even though those charges were ultimately dismissed under plea agreements in a separate case.

The Court entered a Protective Order against Mr. Card on April 16, 2002 based on allegations of physical violence and sexual assault

00392

committed by Mr. Card against Ms. Marshall. Mr. Card is seeking the dismissal of that Protective Order under Section 78B-7-115, Utah Code Ann., claiming that Ms. Marshall no longer has a reasonable fear of abuse.

The parties appeared before Commissioner Luhn on May 20, 2015. Following oral arguments, the Commissioner took the matter under advisement and issued a Minute Entry on June 11, 2015. The Commissioner recommended the denial of Mr. Card's Motion to Dismiss, noting the following:¹

1 Mr. Card was charged with violating the Protective Order three times, albeit in 2012;

2 Mr. Card was charged with custodial inference once, and custodial interference with telephone harassment another time;

3 Mr. Card filed three requests for Protective Orders against Ms. Marshall, the last one in Utah County after the Commissioner warned him that he would be subject to sanctions if he filed another request that was without merit.

4 Mr. Card filed three civil tort actions against Ms. Marshall, her acquaintances, and her counsel.

¹See, Commissioner's Recommendation dated June 11, 2015.

5 The Commissioner in the divorce case reported Mr. Card to the Salt Lake County Attorney to consider filing criminal charges against Mr. Card based on an extortion attempt against Ms. Marshall.

6 Mr. Card threatened Ms. Marshall's counsel with a Bar complaint unless counsel made a public statement disparaging the Commissioner who initially granted the Protective Order.

7 Mr. Card called the police over thirty times for parent time disputes, requiring the need to use ACAFS for parent time exchanges, at Mr. Card's expense.

Mr. Card insists that the Court apply a narrow definition of the term "abuse," as that term is defined in Section 78B-7-102(1), Utah Code Ann. The Court notes that Section 78B-7-115, which discusses the dismissal of protective orders, directs the Court to consider a number of factors, including whether the protective order has been violated (b), claims of harassment(c), and any other factors the Court considers relevant (f). The Court does find that Mr. Card violated the Protective Order. The Court also finds that Mr. Card continues to engage in violations, and provocative actions designed to harass and intimidate Ms. Marshall.

The Court's observation of Mr. Card at numerous hearings has not changed. He remains rigid, if not obsessive, about following his narrow and self-serving interpretation of various rules. For example, there is no requirement for electronic communications between the parties, but he

is fixated in his belief that he was illegally denied the right to such communications. He ferreted out Ms. Marshall's banking information, without Ms. Marshall's knowledge or consent, and deposited child support checks into her account. He reasoned that it was reasonable to do so because it was consuming fewer public resources by not requiring a mail handler or someone else to do the same job. That such conduct by Mr. Card, would be alarming and disconcerting to Ms. Marshall, or any other reasonable person, did not dissuade Mr. Card. The Court finds that this was a deliberate act to harass, intimidate and emotionally upset her while Mr. Card justified it as innocent and practicable.

He demanded that Ms. Marshall be physically present at a parent time exchange in Lehi, at a location he selected on short notice, when there was no order requiring Ms. Marshall to personally receive the child. His conduct following the entry of the Protective Order constituted a violation of the order.

Mr. Card's pattern of self-justified behavior is designed to harass and adversely affect the emotional stability of the petitioner. He has done so in a manner to walk as close to the line, as he sees it, between compliance with, and committing a violation of, the Protective Order so that he feels he has not technically crossed it. The Court finds, however, that he has. Notwithstanding that Mr. Card has completed his domestic violence counseling and paid a fine, he has not internalized the principles of the course. Mr. Card, in his own myopic world, even hired

a process server to serve Ms. Marshall with child support checks, after being notified that Ms. Marshall had opened a file with the Office of Recovery Services and appointed them as her agent for the collection of child support. The Court finds that this course of conduct was again undertaken with the intent to harass and intimidate Ms. Marshall.

The Court had hoped to see a change in Mr. Card's behavior, but there has been none. He continues to take actions that make sure things are done the way he, and only he, thinks they ought to be done. The reality is that his behavior is calculated to intimidate, harass and ensure the emotional distress of the petitioner. Mr. Card is unable to admit his actions are detrimental to the petitioner or that they are anything but reasonable. A reasonable person in these circumstances would find Mr. Card's actions to be threatening, troubling, and disconcerting, and they would cause fear of future abuse and domestic violence.

The Court finds that Ms. Marshall has been harassed, intimidated and has a reasonable fear of continued abuse, and that the Protective Order should remain in effect. Accordingly, Mr. Card's objection to the Commissioner's recommendation is overruled.

Pursuant to Section 78B-7-115(3), Utah Code Ann., the Court enters the following sanctions against Mr. Card based upon the Court's finding that Mr. Card has acted with intent to harass or intimidate the petitioner. He is prohibited from further direct contact with Ms.

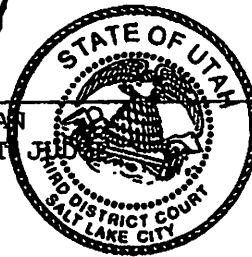
Marshall. He is prohibited from depositing money into her bank account, or from taking any action to determine where she lives. He is prohibited from being within 1,000 feet of her residence. He is to use exclusively the third-party professional agency for parent time exchanges.

Mr. Card is to pay Ms. Marshall's counsel's reasonable attorney's fees and costs in these proceedings.

Dated this 13 day of November, 2015.




PAUL G. MAUGHAN
DISTRICT COURT JUDGE



FILED DISTRICT COURT
Third Judicial District

NOV 13 2015

By: Salt Lake County 
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ARIA REBEKAH CARD,
nka Aria Marshall,

Petitioner,

vs.

DEVIN JOHN CARD,

Respondent.

: **MINUTE ENTRY**
: **CASE NO. 124901827**
:
: **Judge Paul G. Maughan**
:

Before the Court is the petitioner's proposed Order following an evidentiary hearing on September 1, 2015 regarding the respondent's Objection to the Commissioner's Order extending the length of an existing Protective Order. Also before the Court are the respondent's Objections to the form of the Order, and Motion to Strike Premature Request to Submit.

The Court has reviewed both the Order and the Objection and the transcript of the hearing, which includes the Court's oral findings announced at the conclusion of the hearing. The Court has entered as of this date an Order which modifies the Order submitted by the petitioner, and addresses the concerns of the respondent. In doing so, the Court has also clarified and modified some of its oral findings and as set forth in the Order signed this date. The Order entered accompanying this Minute Entry does stand as the Order of the Court, and the oral findings

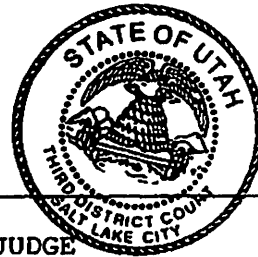
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of the Court announced on September 1, 2015 are modified as indicated in the Order. The respondent's Motion to Strike is now moot and his request for attorney's fees is denied.

Dated this 13 day of November, 2015.



PAUL G. MAUGHAN
DISTRICT COURT JUDGE



The Order of Court is stated below:

Dated: November 13, 2015

01:15:03 PM

/s/ PAUL G. MAUGHAN

District Court Judge



JAMES H. WOODALL (5361)
LAW OFFICES OF JAMES H. WOODALL, PLLC
Attorney for petitioner
10808 River Front Parkway, Suite 175
South Jordan, Utah 84095
Telephone: (801) 254-9450
email: jw@utahtrustee.com

IN THE THIRD JUDICIAL DISTRICT COURT

OF SALT LAKE COUNTY, UTAH

ARIA REBEKAH CARD, now known as Rebecca Marshall, Petitioner, vs. DEVIN JOHN CARD, Respondent.	JUDGMENT Case No. 12-4901827 PO Judge Paul G. Maughan Commissioner Kim M. Luhn
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The Court, having determined that an award of attorney's fees and costs is appropriate, and having considered counsel's Affidavit of Fees, judgment shall enter against respondent and in favor of petitioner for \$2,283.75, with interest accruing thereon at 2.27% from and after the date of entry.

DATED this _____ day of _____ 2015.

BY THE COURT:

PAUL G. MAUGHAN
DISTRICT COURT JUDGE

CERTIFICATE OF TRANSMITTAL

00402

The Court having reviewed Petitioner's Verified Petition for Protective Order and:

___ having received argument and evidence,

___ having accepted the stipulation of the parties,

___ having entered the default of the Respondent for failure to appear, and it appearing that domestic violence or abuse has occurred and/or there is a substantial likelihood of immediate danger of abuse or domestic violence to the Petitioner by the Respondent

PURSUANT TO UTAH CODE SECTION 30-6-4.2 THE PETITIONER IS GRANTED A PROTECTIVE ORDER:

(The Judge or Commissioner shall initial each section that is included in this Order.)

THE COURT MAKES THE FOLLOWING ORDERS IN THIS CRIMINAL PORTION OF THE PROTECTIVE ORDER. Two years after the date of this order, the Respondent may request a hearing to dismiss the criminal portion of this order. The Petitioner is entitled to receive notice from the Court. Therefore, within 30 days prior to the end of the two year period, the Petitioner must provide the Court with a current address, which address will not be made available to the Respondent, if the Petitioner wants to receive notice.

1. Upon the court finding that the Respondent presents a credible threat to the safety of the Petitioner and/or the designated minor children and family and household members, the Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against Petitioner and shall not stalk, harass, or threaten or use or attempt to use physical force that would reasonably be expected to cause physical injury to the Petitioner.

2. The Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against the designated minor children and family and household members and shall not stalk, harass, or threaten or use or attempt to use physical force that would reasonably be expected to cause physical injury to those parties. The designated minor children and members of Petitioner's family or household are:

K. G. (DOB: 3/2010)

* TNA 3. The Respondent is prohibited from directly or indirectly contacting, harassing, telephoning, e-mailing or otherwise communicating with the Petitioner.

* TNA 4. The Respondent shall be removed and excluded, and shall stay away, from Petitioner's residence, and its premises, located at: 1615 Bridle Path Loop, Lehi, UT and any subsequent residence of Petitioner known to the Respondent, and Respondent is prohibited from terminating or interfering with the utility services to the residence.

* TNA 5. The Respondent is ordered to stay away from the school, place of employment, and/or other places, and their premises, frequented by the Petitioner, the minor children and the designated household and family members. This includes any subsequent school, place of employment or other places known to the Respondent, which are frequented by the Petitioner or by the designated family and household members. The current addresses include:

_____ 6. Under state law pursuant to this order, the Court having found that Respondent's use or possession of a weapon may pose a serious threat of harm to Petitioner, the Respondent is prohibited from purchasing, using, or possessing a firearm and/or the following weapon(s):

* TNA 7. The Petitioner is awarded possession of the following residence, automobile and/or other essential personal effects:

All property in the possession of
each party to remain with that
party until further order of the court.

and all personal property belonging to Petitioner and/or the minor child/ren.

This award is subject to orders concerning the listed property in future civil proceedings.

8. An officer from the following law enforcement agency: _____ shall accompany Petitioner to ensure that Petitioner safely regains possession of the awarded property.

9. An officer from the following law enforcement agency: _____ shall facilitate Respondent's removal of Respondent's essential personal belongings from the parties' residence. The law enforcement officer shall contact Petitioner to make these arrangements. Respondent may not contact the Petitioner or enter the residence to obtain any items.

10. The Respondent is placed under the supervision of the Department of Corrections for the purposes of electronic monitoring. Within 24 hours of the execution of this Order, the Department of Corrections shall place an electronic monitoring device on Respondent and shall install monitoring equipment on the premises of Petitioner and in the residence of Respondent. Respondent is ordered to pay to the Department of Corrections the costs of the electronic monitoring required by this Order. The Department of Corrections shall have access to Petitioner's residence to install the appropriate monitoring equipment.

RESPONDENT'S VIOLATION OF PROVISIONS "1" THROUGH "7" OF THIS ORDER IS A CLASS A MISDEMEANOR UNDER UTAH CODE SECTIONS 30-6-4.2(5) and 76-5-108.

IF RESPONDENT'S VIOLATION OF PROVISIONS "1" THROUGH "7" OF THIS ORDER IS A SECOND OR SUBSEQUENT DOMESTIC VIOLENCE OFFENSE, ENHANCED PENALTIES MAY BE IMPOSED UNDER UTAH CODE SECTIONS 77-36-1.1 AND 77-36-2.4.

Petitioner is granted the following temporary relief in the Civil Portion of this Protective Order (provisions "a" through "l") which will (expire/be reviewed by the court) _____ days from the date of this order:

* TNA a. The Petitioner is granted custody of the following minor children:

K. [REDACTED] C. [REDACTED] (DOB 3/2010)

When a minor child is included in a protective order, the Petitioner may provide a copy of the order to the Principal of the school where the child attends.

If the Respondent fails to return custody of a minor child as ordered in this order the Petitioner may obtain a writ of assistance from the Court.

X TNA b. Visitation shall be as follows:

5x/week visitation, Curbside p/u &
drop off at Petitioner's residence according
to 30-3-35.5, to be arranged through
Steve Bunker.

X TNA c. The Respondent is restrained from using drugs and/or alcohol prior to or during visitation.

A TNA d. The Respondent is restrained from removing the parties' minor child/ren from the state of Utah.

 e. The Respondent is ordered to pay child support to the Petitioner in the amount of \$ _____ pursuant to the Utah Uniform Child Support Guidelines.

 f. The Respondent is ordered to participate in mandatory income withholding pursuant to Utah Code Annotated § 62A-11, Parts 4 and 5.

 g. The Respondent is ordered to pay one-half of the minor child/ren's day care expenses.

 h. The Respondent is ordered to pay one-half of the minor child/ren's medical expenses including premiums, deductibles and co-payments.

 i. The Respondent is ordered to pay Petitioner spousal support in the amount of \$ _____.

 j. The Respondent is ordered to pay Petitioner's medical expenses, suffered as a result of the abuse in the amount of \$ _____.

_____ k. The Respondent is ordered to pay the minor child/ren's medical expenses, suffered as a result of the abuse in the amount of \$ _____.

_____ l. Other: _____

Notice to Petitioner: If, at any time, you receive services through the Office of Recovery Services (ORS) and you want to keep your location information confidential, you must provide a copy of your current protective order to ORS.

VIOLATION OF PROVISIONS "a" THROUGH "l" MAY SUBJECT RESPONDENT TO CONTEMPT PROCEEDINGS.

_____ 11. The Division of Child and Family Services is ordered to conduct an investigation into the allegation of child abuse.

_____ 12. A Guardian ad Litem is appointed to represent the best interests of the children.

_____ 13. Other: _____

14. Under federal law, the Respondent may be prohibited from purchasing, owning, transporting, using or possessing a firearm or ammunition. A violation of this prohibition may be a separate federal crime. There is an exemption for police and military personnel while on actual duty and those individuals should contact their immediate supervisors for further instructions.

15. Law enforcement agencies with jurisdiction over the protected locations shall have authority to compel Respondent's compliance with this Order, including the authority to forcibly evict and restrain Respondent from the protected areas. Information to assist with identification of the Respondent is attached to this Order.

16. Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994,

P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.

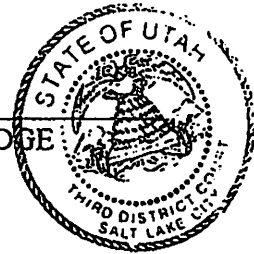
17. Two years after the date of this order, a hearing may be held to dismiss the remaining provisions of the order. Within 30 days prior to the end of the two-year period, the Petitioner should provide the court with a current address, which address will not be made available to Respondent.

DATED: 16 Apr 2012

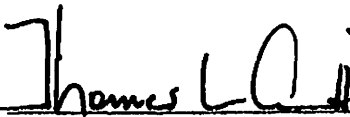
BY THE COURT:



DISTRICT COURT JUDGE



Recommended by:



District Court Commissioner

4/16/12
Date

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

Respondent

Serve Respondent at:

Street: _____
City/Town: _____
State/Zip: _____