



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION THREE

ANDREA J. CLARE,

Respondent,

v.

KEVIN P. CLARE,

Appellant.))))))) No. 38102-1-III

UNPUBLISHED OPINION

STAAB, J. Andrea Clare sought to renew the

protection order. Kevin Clare opposed the renewal. The trial court improperly used the

domestic violence protection order standard to grant the renewal. Under the correct

t renewal. We do not address attorney

procedural issues because we reverse and remand.

BACKGROUND

trial the trial court

imposed an Order of Protection Stalking pursuant to RCW 7.92.020. Despite certain

concerning behaviors by Mr. Clare during the separation and divorce, such as monitoring

the divorce trial court did not find domestic violence. The court FILED MARCH 8, 2022 In the Office of the Clerk of Court WA State Court of Appeals, Division III No. 38102-1-III In re Marriage of Clare



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

2 imposed the stalking protection order on the basis of civil stalking factors, and not on the criminal stalking factors necessary to find domestic violence. The order was imposed for two years. The original order was not provided as part of this record for comparison.

On January 28, 2021, prior to the expiration of the stalking protection order, Andrea petitioned for renewal with an RCW 10.14.080(5) form requesting a ten year extension. Andrea concedes that Kevin complied with the physical distance requirements for two years. Much of her petition discusses factual issues resolved by the divorce. Post dissolution behaviors cited in her petition include:

(a)

harass me and cause me stress/anxiety associated with kid transfers and/or

Papers (CP)

particular message or attach any Family Wizard message.

(b)

(c) Kevin complained when she used the attorneys instead of Family Wizard to communicate about the kids. CP at 3.

(d) The kids reported that Kevin got married and her youngest child called his new No. 38102-1-III In re Marriage of Clare

3 (e) At a child soccer game, date unstated, Andrea noticed Kevin by chance walking a child to the restroom behind where she was sitting and he glared at her. CP at 3.

(f) Kevin filed a legal malpractice action against Andrea. CP at 4. In that action, he filed a witness disclosure naming a witness who would explain how her



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

relationship with George Telquist violated her ethical duties. CP at 4. He also
judicial conduct answer. CP at 4. The judge in the malpractice case issued an
order denying sanctions that indicated the witness disclosure and declaration were
harassing. CP at 5, 8.

separate occasions,

CP at 5.

(g) Kevin filed a bar complaint against George Telquist, date unstated. CP at 5.

Also at an unknown date, her former law partner, Rob McMillen, received an
bar complaint case asking that Kevin Clare be deemed a vexatious grievant. CP at
CP at 5.

(h) Kevin turns his back to his vehicle window during child exchanges to avoid
looking in her direction. CP at 5. During one exchange, she was standing behind
back-up lights came CP at 5-6. Other times, he parks far away from her No. 38102-1-III In re
Marriage of Clare

4 during exchanges making the kids walk. CP at 6. He also maneuvers his vehicle
to avoid her while driving. CP at 6.

(i) When she fully pays child medical bills in excess of her portion, he requests the
provider make refund to her so he can use his health savings account for his
ordered portion. CP at 6.

(j) He contacted her about claiming child care on taxes and asked the name of her
child care provider. CP at 6.



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

order entered that denied CR 11 sanctions for two legal documents that were filed by Mr.

ter. The March 27, 2020, order denying CR 11

sanctions (Sanction order) quotes a declaration of George Telquist referencing divorce findings and the divorce court stalking protection order. That quote cites divorce court in numerous harassing behaviors since before the parties

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the larger case history [the divorce], the inclusion of the sex allegation [in the witness disclosure] is harass 13-14

In this case, Andrea Clare filed a memorandum of authorities on February 17,

2021 arguing renewal of the protection order under the Domestic Violence Prevention No. 38102-1-III In re Marriage of Clare

5 Act, ch. 26.50 RCW. The memorandum attaches Judge L s January 8, 2020

hearing transcript where the court denied modification of decision making but granted expanded visitation because Kevin Clare completed DV educational programs.

After a hearing on the matter, the superior court granted renewal of the order, with the modification that Mr. Clare could no longer contact Ms. Clare directly or through the children through a third person designated by Ms. Clare. In support of its renewal order, The Respondent has been found to have

committed two separate acts of harassment by the Spokane County Superior Court. This Court finds such harassing behavior constitutes ongoing acts of Stalking and is Domestic Violence as defined in RCW 26.50.010(3) which thereby warrants the extension



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

Mr. Clare appeals.

ANALYSIS

by renewing the stalking no-contact order. We agree for two reasons. First, the trial court based its renewal on a finding of domestic violence under ch. 26.50 RCW, when the prior order was a stalking no-contact order under ch. 7.92 RCW, in which no domestic stalking no-contact order. The definition of harassment for purposes of CR 11 sanctions No. 38102-1-III In re Marriage of Clare

6 is different from the definition of harassment for purposes of a stalking no-contact order under RCW 7.92.020.

ction order is a matter of

judicial discretion. In re Marriage of Freeman, 169 Wn.2d 664, 671, 239 P.3d 557

(2010). A trial court abuses its discretion when its decision is manifestly unreasonable or

based on untenable grounds. In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940

P.2d 1362 (1997).

incorrect legal standard or the facts do not meet the requirements of the correct standard.

Id. at 47 (quoting State v. Rundquist, 79 Wn. App. 786, 793, 905 P.3d 922 (1995); Juarez

v. Juarez, 195 Wn. App. 880, 890, 382 P.3d 13 (2016).

Where the court held a hearing and weighed evidence, we assess whether

In re Marriage of Rideout, 150 Wn.2d

persuade a fair- In re

Welfare of T.B., 150 Wn. App. 599, 607, 209 P.3d 497 (2009). On sufficiency challenge,



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

evidence is viewed in the light most favorable to the responding party on appeal.

Structurals Nw., Ltd. v. Fifth & Park Place, Inc., 33 Wn. App. 710, 716, 658 P.2d 679

the weight of the

evidence, witness credibility and conflicting testimony. State v. Camarillo, 115 Wn.2d

60, 71, 794 P.2d 850 (1990). No. 38102-1-III In re Marriage of Clare

7 protection orders and their applicable

standards. As we noted in Marriage of Clare, No. 36814-9-III (Wash. Ct. App. Dec. 28,

2021) (unpublished), www.courts.wa.gov/opinions/pdf/368149_unp.pdf, Andrea Clare

petitioned for, and was granted a stalking no-contact order under ch. 7.92 RCW. The

trial court explicitly did not find domestic violence when rendering its decision on the

dissolution and no-contact order. Despite these explicit findings, Andrea Clare and her

attorney continue to argue that the no-contact order and subsequent renewal are governed

by the laws concerning domestic violence protection order under ch. 26.50 RCW. While

the two chapters have similar procedures and presumptions for renewal, the findings

necessary to support the two orders are different. See RCW 7.92.130(2) (upon petition

for renewal, respondent has burden to show that acts of stalking will not continue); RCW

26.50.060(3) (court shall grant petition for renewal unless respondent proves by a

preponderance of the evidence that the respondent will not resume acts of domestic

violence).

Whereas domestic violence behavior may generally encompass various acts of

stalking, the terms are not interchangeable. For the purposes of a domestic violence



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

protection order under RCW 26.50.010(3), domestic violence stalking is defined by the criminal statute, RCW 9A.46.110. It does not include civil stalking. The definition of civil stalking is broader than the definition of criminal stalking. For purposes of a No. 38102-1-III In re Marriage of Clare

8 stalking no-contact order, stalking includes both the criminal definition of stalking under RCW 9A.46.110, and repeated or continuing contacts, attempts to contact, monitoring, tracking, keeping under observation, or following of that causes reasonable fear. RCW 7.92.020(4)(c).

In this case, the initial no-contact order was based on acts of stalking that were not found to be domestic violence. Marriage of Clare, No. 36814-9-III, slip op. at 8. When order, it erroneously found that domestic violence a domestic violence finding in the underlying order.

Thus, it erroneously applied a domestic violence standard in the first instance on renewal.

The application of an incorrect legal standard is an abuse of discretion. Littlefield, 133 Wn.2d at 46-47.

The superior court also abused its discretion because its findings do not support the renewal of the no-contact order. The trial court based its renewal of the stalking no-contact order on a finding that:

The Respondent has been found to have committed two separate acts of harassment by the Spokane County Superior Court. This Court finds such harassing behavior constitutes ongoing acts of Stalking and is Domestic Violence as defined in RCW 26.50.010(3) which thereby warrants the extension requested by the Petitioner. [1]

CP at 114.



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

1 Andrea Clare argues that this was not the only finding and points to other allegations made in the petition, but the trial court did not find those allegations to be true or sufficient to support renewal of the order. No. 38102-1-III In re Marriage of Clare

9 The collateral findings in a Spokane County matter were made in the context of a motion for CR 11 sanctions. To the extent that the Spokane County Court found certain filed documents to be harassing, the legal standard under CR 11 is different from the definition of harassment under RCW 7.92.020. As we noted above, harassment under the stalking no-contact statute includes a course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, keeping under observation, or that causes reasonable fear. RCW 7.92.020(4)(c). Under CR 11,

an attorney who signs a pleading, motion, or legal memorandum thereby certifies that the

3). As such,

the collateral CR 11 findings denying sanction did not constitute findings of harassment for the purposes of a no contact order renewal in this instance.

The trial court abused its discretion by applying the wrong legal standard, and entering findings that do not support renewal of a stalking no-contact order. We the parties are free to present evidence and argument to support the renewal or termination of the stalking no-contact order originally entered in April 2019. Because we -contact order, we do not

address the remaining issues presented by Mr. Clare.

Reverse and Remanded. No. 38102-1-III In re Marriage of Clare

10 A majority of the panel has determined this opinion will not be printed in the



Andrea J. Clare v. Kevin P. Clare

2022 | Cited 0 times | Court of Appeals of Washington | March 8, 2022

Washington Appellate Reports, but it will be filed for public record pursuant to RCW

2.06.040.

_____ Staab, J.

WE CONCUR:

_____ Lawrence-Berrey, J.

_____ Siddoway, A.C.J.

