Appendix A – Supreme Court Of Washington Order Denying Petition for Review on November 28, 2018 (96152-2)

THE SUPREME COURT OF WASHINGTON

JENNIFER WILEY,	)	No. 96152-2
Respondent,	)	**ORDER**
v.	)	Court of Appeals No. 76623-6-I
DAVID WILEY,	)	
Petitioner.	)	

Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins and Gordon McCloud, considered at its November 27, 2018, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 28th day of November, 2018.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

Appendix B – Washington State Court of Appeals Unpublished Opinion Affirming Trial Superior Court decision June 4, 2018

(No. 76623-6-1)

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

IN RE MARRIAGE OF	)	
	)	
JENNIFER ARLENE WILEY,	)	
	)	No. 76623-6-1
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
DAVID FRANK WILEY,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 4, 2018

SPEARMAN, J. — Pro se litigant David Wiley appeals the trial court's disposition in a marriage dissolution action instituted by Jennifer Wiley. He challenges the parenting plan and child support order, asserting numerous constitutional violations and flawed evidentiary rulings. Finding no error, we affirm.

FACTS

David and Jennifer Wiley married in 2004. They have three children, aged 7, 10, and 11 at the time of trial. Jennifer filed for dissolution in July 2015. She and David initially agreed to cohabitate in the family home with the children pursuant to an agreed temporary order until the dissolution proceedings were final. However, in January 2016, Jennifer petitioned for a domestic violence protection order (DVPO). After a hearing, the court found by a preponderance of the evidence that David had threatened Jennifer.

The court entered an order of protection against David effective until February 1, 2017. David appealed and this court affirmed the order.[1]

In November 2016, the parties proceeded to trial on the dissolution. Parenting evaluator Joan Ward testified at trial and provided a written report. Ward noted that all three children are stressed and have mental health problems, particularly T.W., who had recently been diagnosed with autism. Ward recommended that the children remain in their current primary residence with Jennifer as the "primary residual parent due to her history of primary care-taking and her more active involvement with the children's schools and health/mental health providers." (Petitioner's Exhibit 47 at 28). Another factor in Ward's decision was her belief that the children would benefit from remaining in their current school. Ward did not make any specific recommendation regarding domestic violence, other than that the parents should not have any contact with each other. She did recommend a ban on corporal punishment, and expressed concern about David's practice of having the children decide how to punish each other. Ward recommended that the mother have full decision making authority regarding health care, including the use of medication. She recommended that each child have one-to-one time with each parent on a rotational basis.

David moved to exclude Ward's written report on the ground that it was untimely filed pursuant to RCW 26.12.175(b). The trial court denied the motion, stating that a continuance would have been the appropriate remedy, but neither party sought that relief.

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[1] Wiley v. Wiley, 196 Wn. App. 1059, 2016 WL 6680511 (unpublished opinion filed November 14, 2016).

David also sought to have two of the children testify at trial regarding their residential schedule preferences. Jennifer moved to exclude their testimony on the ground that it would not be in the children's best interests to testify at their parents' highly contentious dissolution proceeding. She also argued that their testimony would be cumulative with that of the parenting evaluator, who had already spoken with the children. The court granted her motion, finding that the children were not sufficiently mature to express reasoned and independent preferences as to the residential schedule.

Following an eight-day trial, the court entered a parenting plan and order for child support. The parenting plan designated Jennifer as the primary residential parent. The plan gave David residential time with the children every other weekend, plus a midweek visit and an additional weekend visit with each child separately on a rotational basis. The plan gave Jennifer sole decision making authority for major decisions including school and non-emergency health care, as both parents were against shared decision making. The court did not place any limitations on either parent's residential time pursuant to RCW 26.09.191, and did not renew the expired DVPO.[2] The court also entered an order requiring David to pay child support to Jennifer.

The trial court denied David's motion for reconsideration, and entered a final divorce order and decree. David appeals.

[2] RCW 26.09.191(2)(iii) provides that parenting plans may place restrictions on residential time and mutual decision-making based on a finding that the parent has engaged in certain types of conduct, including "a history of acts of domestic violence."

DISCUSSION

Scope of Appeal

As a preliminary matter, Jennifer asks this court to decline to review issues raised in David's brief that were not identified in his Statement of Arrangements. RAP 9.2(c) provides that "[I]f a party seeking review arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues the party intends to review." David's Statement of Arrangements mentioned two issues: (1) whether the children should have been allowed to testify in court, and (2) whether the trial court erred in admitting the parenting evaluator's written report. David's appellate briefing included these issues, plus three more: (1) whether Jennifer made false statements to the court; (2) whether the court properly applied the "best interest of the children" standard in making the parenting plan determination, and (3) whether the child support statute is constitutional.

The party seeking review has the burden of providing this court with an adequate record to review the issues raised on appeal. Fahndrich v. Williams, 147 Wn. App. 302, 307, 194 P.3d 1005 (2008). "In general, '[a]n insufficient record on appeal precludes review of the alleged errors.'" Cuesta v. State, Dep't. of Emp't Sec., 200 Wn. App. 560, 568, 402 P.3d 898 (2017) (quoting Bulzomi v. Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994). David chose not to order a full transcript of the verbatim report of proceedings, and the record before us is not complete. However, it is adequate to consider the merits of David's arguments, where it is appropriate to do so.

False Statements

David asserts that the trial court found that Jennifer made false statements to the court. On this basis, he argues that the trial court erred in failing to establish the validity of the statements Jennifer made to the parenting evaluator. He contends that the error deprived him of due process and his fundamental liberty interest in retaining custody of his children.

There is no indication in the record before us that David raised this issue to the trial court below. We decline to consider an issue raised for the first time on appeal unless it is a manifest error affecting a constitutional right. RAP 2.5(a)(3); Mellish v. Frog Mountain Pet Care, 172 Wn.2d 208, 221-22, 257 P.3d 641 (2011). "'Manifest' in RAP 2.5(a)(3) requires a showing of actual prejudice." State v. Kirkman, 159 Wn.2d 918, 935, 155 P.3d 125 (2007). "[T]he focus of the actual prejudice must be on whether the error is so obvious on the record that the error warrants appellate review." State v. O'Hara, 167 Wn.2d 91, 99-100, 217 P.3d 756 (2009).

David has not made the required showing to permit appellate review. First, he has not demonstrated that the alleged error is of constitutional dimension. Unlike termination proceedings, the fundamental parental liberty interest is not at stake in a dissolution proceeding. King v. King, 162 Wn.2d 378, 386-87, 174 P.3d 659 (2007). The entry of a parenting plan "does not terminate the parental rights of either parent, but rather allocates or divides parental rights and responsibilities in such a way that they can be exercised by parents no longer joined in marriage." Id. at 385-86. Here, the court entered a parenting time schedule that designated Jennifer as the primary residential parent and included a regular schedule of residential time for David, with no restrictions

based on RCW 26.09.191. The court did not terminate David's parental rights. His fundamental parental liberty interest was not infringed.

Moreover, the record contains no support for David's claim of error. Contrary to David's assertion, the trial court did not rule that Jennifer made statements at trial that contradicted earlier sworn statements at the DVPO hearing. Nor did the trial court find that false testimony formed the basis for the temporary orders. Rather, the court compared the evidence that was before the commissioner at the DVPO hearing with the evidence that was presented during trial and concluded "there is insufficient evidence to support a finding of abuse or domestic violence." Verbatim Report of Proceedings (VRP) (12/23/2016) at 175-76. The court expressly noted that the DVPO was issued based largely on affidavits at an "abbreviated hearing," whereas the eight-day trial provided "considerably more evidence upon which to draw" a different conclusion. Verbatim Report of Proceedings (VRP) (12/23/2016) at 176. Accordingly, the court did not impose restrictions on David pursuant to RCW 26.09.191—a favorable outcome for him. There is simply no factual basis for David's claim that Jennifer made false statements or that she perpetuated fraud on the court. Even if we were to grant review, we would conclude that his claim is devoid of merit.

Parenting Evaluator's Report

After several continuances, parenting evaluator Joan Ward submitted her final report 37 days before trial began. David argues that the trial court erred by denying his motion to exclude the report on the ground that it was filed less than 60 days before trial pursuant to RCW 26.12.175(b). "We review a trial court's decision to admit or exclude evidence for an abuse of discretion." Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 668,

230 P.3d 583 (2010) (citing State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). "A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds." In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993) (citing Hizey v. Carpenter, 119 Wn.2d 251, 268, 830 P.3d 646 (1992)).

We disagree with David. RCW 26.12.175(b) provides that "[t]he guardian ad litem shall file his or her report at least sixty days prior to trial." This statute does not govern parenting plan reports. The trial court nevertheless addressed David's motion as if the statute did apply. The court noted that RCW 26.12.175(b) does not provide for a specific remedy in the event the report is not timely filed. It asked whether David's reason for not requesting a continuance was because he preferred to get the trial underway. David agreed, and added that he believed Ward's testimony would be sufficient without the report. The court ruled that the appropriate remedy would be a continuance to provide additional time to review the report, rather than excluding the report altogether. It explained that "there's no substitute for a written report" because it is "the expert's last word on the opinion that they wish to give" and is "helpful for me to have that item in chambers so that I can read it carefully. . . ." VRP (11/29/16) at 45-46. The court denied David's motion to exclude, stating that "I understand the need to have sufficient time with a report, but the best remedy when you don't have enough time is to get more time. And nobody apparently wants more time." VRP (11/29/16) at 46. This was not an abuse of discretion.[3]

[3] Furthermore. Ward's written report was consistent with her testimony, to which David did not object or claim as error on appeal. We fail to see any prejudice stemming from admission of the report and David identifies none.

Children's Testimony

David argues that the trial court erred in granting Jennifer's motion to exclude the testimony of the children. He contends that the children have a due process right to testify under the United States Constitution, the United Nations Convention on the Rights of the Child, and Washington state law, and asserts that no statutory exclusion exists on the basis of age or dependency. He further contends that because Jennifer's testimony was fraudulent, the court's refusal to allow the children to testify prejudiced him.

This argument is entirely lacking in merit. "In matters affecting the welfare of children ... the trial court has broad discretion, and its decision are reviewed only for abuse of discretion." Caven v. Caven, 136 Wn.2d 800, 806, 966 P.2d 1247 (1998). We also review a trial court's evidentiary rulings for abuse of discretion. Hollins v. Zbaraschuk, 200 Wn. App. 578, 580, 402 P.3d 907 (2017), rev. denied, 189 Wn.2d 1042, 409 P.3d 1061 (2018).

RCW 26.09.187(3)(a)(vi) provides that the court shall consider "[t]he wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule,..." The trial court noted that David's request to have the children express their preferences by testifying in court was extremely unusual, stating that "[t]his is the first time I've ever had a parent who actually wanted to bring a child into court to testify in the midst of a custody dispute between the child's own parents." VRP (11/29/16) at 21. The court called David's request "a pretty rough deal" and refused to subject the children to it, "especially since I have no reason to believe and I don't believe that they're old enough and objective

enough and mature enough to make reasoned decisions on the question of where they should be the majority of the time." VRP (11/29/16) at 23. The children are young, and there is evidence in the record that they all suffer to some degree from mental health problems and that they do not get along with each other. The court's decision to exclude their testimony was manifestly reasonable and well within its discretion.

Moreover, although David asserts that the children have a right to testify, the record does not demonstrate that the children actually wanted to do so. David simply asked them if they "wish to have a say." VRP (11/29/16) at 19. The children did in fact have an appropriate, safe forum in which to express their views: interviews with the parenting evaluator. There is no authority for the proposition that children have a statutory, constitutional, or international treaty right[4] to express their preferences by testifying in court. And given that there is no evidence that Jennifer's testimony was fraudulent, there is no basis for David's claim of prejudice.

Best Interests of the Child

RCW 26.09.002 provides that "[i]n any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities." The court considers seven factors in determining residential provisions for each child, with the greatest weight placed on "the relative strength, nature, and stability of the child's relationship with each parent." RCW 26.09.187(3)(a)(i). "A trial court's rulings dealing with the

[4] In addition, as Jennifer correctly notes, the United States has not ratified the United Nations Convention on the Rights of the Child.

provisions of a parenting plan are generally reviewed for abuse of discretion." Lawrence v. Lawrence, 105 Wn. App. 683, 686, 20 P.3d 972 (2001).

David argues that the trial court violated his constitutional rights and misapplied the "best interests of the child" standard in finding that Jennifer should be the primary residential parent absent a finding that he was an unfit parent. However, as discussed above, the parenting plan did not deprive David of his rights as a parent. Rather, it designated Jennifer as the primary residential parent, with regular residential time for David. Cases cited by David regarding termination of parental rights are inapplicable here.

David also contends that the residential decision improperly rested on the parenting evaluator's presumption that the placement of a child with the parent who has been the primary caregiver is in the child's best interest.[5] We disagree. There is no evidence in the record before us that the parenting evaluator based her decision on a presumption in favor of the primary caregiver. The trial court acknowledged that the parenting evaluator was required to make her recommendation based on the seven factors in RCW 26.09.187. It found that she did so, and that her analysis was "reasonably sound given the information that she had." VRP (12/23/16) at 183. We defer to the trier of fact for the purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence and credibility of the witnesses. Thompson v. Hanson, 142 Wn. App. 53, 60, 174 P.3d 120 (2007).

[5] The Parenting Act of 1987, Laws of 1987, ch. 460, requires the court to consider seven statutory factors when making residential decisions. It includes no presumption in favor of the primary caregiver. RCW 26.09.187(3)(a); In re Kovacs, 121 Wn.2d at 809.

David further argues that the residential decision was not in the best interests of the children because the trial court found Jennifer had no credibility. However, as discussed above, the trial court made no such finding. David also claims that the parenting plan must be vacated because the trial court admitted it lacked the appearance of justice. But the trial court made no such admission. Rather, in explaining its rulings to the parties, the trial court stated that the "best interest of the children" standard for parenting plans differs from the "fair and equitable" standard for distribution of marital property and debt. Accordingly, the court stated that "[w]ithout telling you that this parenting plan is unjust, I'm going to tell you that justice in regard to a parenting plan is regularly, often and, perhaps in this case, beside the point." VRP (12/23/16) at 184. David has not shown that the trial court erred in applying the "best interests of the child" standard.

Constitutionality of Child Support Statute

David argues for the first time on appeal that Washington's child support statutes are unconstitutional. See chapter 26.19 RCW. Citing a federal statute that grants money to states for maximizing child support, David asserts that the State has entered into contract with the federal government to involuntarily enter parents into bills of attainder which help fund the State itself, thereby overriding the liberty rights of parents and children.

"Statutes are presumed to be constitutional, and the burden to show unconstitutionality is on the challenger." Amunrud v. Board of Appeals, 158 Wn.2d 208, 215, 143 P.3d 571 (2006) (citing In re Marriage of Johnson, 96 Wn.2d 255, 258, 634 P.2d 877 (1981). "This standard is met if argument and research show that there is no

reasonable doubt that the statute violates the constitution." Amunrud, 158 Wn.2d at 215 (citing Larson v. Seattle Popular Monorail Auth., 156 Wn.2d 752, 757, 131 P.3d 892 (2006).

The State has a well-established compelling interest in the welfare of children and the protection of their fundamental right to support. Johnson, 96 Wn.2d at 263. "Public enforcement of child support is a recognized governmental function" that "has a historical and continuing basis in our law." Id. at 262. "Where minor children are involved, the state's interest is that, in so far as possible, provision shall be made for their support, education, and training, to the end that they may grow up to be worthy and useful citizens." Id. at 263 (quoting Corson v. Corson, 46 Wn.2d 611, 615, 283 P.2d 673 (1955). David's brief, insubstantial arguments and inapposite citations fail to overcome the presumption of constitutionality. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." Palmer v. Jensen, 81 Wn. App. 148, 153, 913 P.2d 413 (1996) (citing State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)).

Attorney Fees

Jennifer requests attorney fees on the ground that David's appeal is frivolous. RAP 18.9(a) permits us to award attorney fees as sanctions, terms, or compensatory damages when a party files a frivolous appeal. Advocates for Responsible Development v. Western Washington Growth Management Hearings Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010). "[A]ll doubts as to whether an appeal is frivolous are resolved in favor of the appellant." Kinney v. Cook, 150 Wn. App. 187, 195, 208 P.3d 1 (2009). "An appeal is frivolous when there are no debatable issues over which reasonable minds

Appendix C – Washington State Court Of Appeals Opinion dismissing Appeal On November 14, 2016

(74818-1-1)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JENNIFER WILEY, Respondent, v. DAVID WILEY, Appellant.	)	No. 74818-1-I DIVISION ONE UNPUBLISHED OPINION FILED: November 14, 2016

APPELWICK, J. — David Wiley appeals a domestic violence protection order issued to protect his former spouse, Jennifer Wiley. He argues that the court's findings are not supported by substantial evidence, the court erred in allowing hearsay testimony, the court violated his due process rights, the doctrines of judicial and equitable estoppel bar Jennifer from making contradictory statements, and the court erroneously questioned him about his religious beliefs. Jennifer requests attorney fees on appeal. We affirm.

FACTS

Jennifer Wiley and David Wiley were married in 2004. They have three children together.

The parties separated on July 31, 2015, when Jennifer[1] filed for dissolution. Under an agreed temporary order filed on August 31, 2015, David and Jennifer agreed to continue cohabitating in the family home. They agreed not to monitor the other concerning e-mails, text messages, and telephone calls. The order also stated that neither parent shall use corporal punishment on any of the children.

On January 6, 2016, Jennifer filed a petition for an order of protection. She requested emergency temporary protection on the grounds that if David had notice of a hearing, he may try to hurt her before it happened. Jennifer alleged that David had committed specific acts of domestic violence. She stated that on December 29, 2015, David began harassing her about the locks that she had installed on the bedroom door she shared with their son. Jennifer alleged that in November, David placed two bullet-riddled shooting targets in front of her closet. She also stated that David had slapped their son in the face.

Jennifer presented the petition to an ex parte commissioner. The commissioner expressed concern over the fact that Jennifer sought to change the orders previously entered in the dissolution case. The commissioner directed Jennifer to file a motion in the family law matter and set a hearing.

A hearing on the protection order was held on February 1, 2016. The court found by a preponderance of the evidence that there was a threat of domestic violence. The court entered an order of protection, effective until February 1, 2017.

David appeals the issuance of the protection order.

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[1] We refer to the parties by their first names for clarity. No disrespect is intended.

DISCUSSION

I. Abuse of Discretion

David essentially argues that the court's findings are not supported by substantial evidence. He argues that there was no evidence to support the finding that he injured any of the children—instead, the evidence showed that dangerous conditions occurred while the children were in Jennifer's custody. And, he argues that Jennifer's photographs of the paper targets are not credible.

This court reviews a trial court's decision to grant a protection order for an abuse of discretion. In re Parentage of T.W.J., 193 Wn. App. 1, 6, 367 P.3d 607 (2016). We will not disturb such a decision on appeal, unless the court's discretion was manifestly unreasonable, exercised on untenable grounds, or for untenable reasons. Id. Where the trial court has weighed the evidence, this court's role is to determine whether substantial evidence supports the findings of fact and whether the findings in turn support the conclusions of law. In re Marriage of Greene, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the stated premise. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992). We will not substitute our judgment for that of the trial court, weigh the evidence, or determine witness credibility. Greene, 97 Wn. App. at 714.

Under chapter 26.50 RCW, a victim of domestic violence may petition the court for an order of protection. RCW 26.50.030. The petition must allege the existence of domestic violence. RCW 26.50.030(1). And, it must be supported by an affidavit made under oath which states the specific facts and circumstances

could differ and there is so little merit that the chance of reversal is slim." Kearney v. Kearney, 95 Wn. App. 405, 417, 974 P.2d 872 (1999). We conclude that David's appeal is frivolous, and we grant Jennifer's request for attorney fees.

Affirmed.

WE CONCUR:

supporting relief. Id. "Domestic violence" is defined in part as, "[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members." RCW 36.50.010(3)(a).

The trial court found that based on the facts presented, there was a threat of domestic violence. It ruled,

> In terms of domestic violence, I think the preponderance of the evidence is there; and I think that one thing that really kind of tips the balance, besides the [in]jury to the child, to [T.], but I think these targets are really concerning. Maybe I'm missing the boat or something like that, but when somebody puts targets in a closet with bullet holes in it rather than put it in some notebook or something or hang it up in the garage—

David asked if he could explain the targets, but the court stated that it had already ruled.

We conclude that the trial court's finding that there was a threat of domestic violence is supported by substantial evidence. Jennifer supported the petition for a protection order with her own statement, certified under penalty of perjury under the laws of Washington to be true and correct. In this statement, Jennifer alleged that David slapped their son in the face when he was not brushing his teeth correctly. She attached a report from the school nurse, which provided that Jennifer brought the son in to see the nurse and reported that his father slapped him on the cheek with an open hand. She also attached a declaration from her son's pediatrician, who discouraged corporal punishment and spanking as means of disciplining the child. And, she attached a declaration from her son's counselor, who recommended that the child not be spanked.

Jennifer also stated that she had recently put a lock on the door of the bedroom she now shares with their son. She explained that she put the lock on the door, because David broke down their bedroom door when she hid in the room after becoming afraid of him during an argument. She claimed that David had begun "harassing" her about the newly installed lock on the bedroom door, and his behavior had become increasingly more threatening as the dissolution proceedings went on. She expressed her belief that David would physically hurt her if he could figure out a way to do so without leaving a mark, and that he would have done so on prior occasions if the children had not been present. She stated, "I have essentially been using my kids as shields because I don't think he will seriously harm them or me in their presence. However, I am terrified to be alone with David."

Jennifer also described and attached pictures of the paper targets she found. She stated that David placed bullet-riddled shooting targets in front of her closet, which terrified her when she went to get clothes from the closet. She interpreted the placement of the targets as an intentional threat.

David argues that the photographs of the paper targets do not support Jennifer's contention that the targets were hung up on a closet. He contends that the photographs show the paper targets displayed on a bed and in the air, with sharp fold marks on one of the targets. As a result, David argues that the trial court's finding that these targets were in a closet is not supported by the evidence. David also argues that the trial court's consideration of evidence that was found in

David's private space violated his right to privacy. And, he alleges that Jennifer stalked him when she discovered these targets.

But, this court does not make credibility determinations on appeal. Greene, 97 Wn. App. at 714. Nor does it reweigh the evidence submitted to the trial court. Id. David essentially asks us to do just that by reexamining the photographs and balancing David's and Jennifer's statements concerning the paper targets. We will not do so. The evidence submitted to the trial court was such that a reasonable person could conclude that the paper targets were in front of Jennifer's closet, a place where she would be expected to see them.

Nor can David establish a privacy violation due to the court's consideration of the paper targets. The Fourth Amendment applies only to actions of government officials. Kalmas v. Wagner, 133 Wn.2d 210, 216, 943 P.2d 1369 (1997). It extends to private persons only if government officials affirmatively facilitate or encourage an unreasonable search performed by a private person. Id. at 218. Here, Jennifer discovered the paper targets in the bedroom where her clothes were stored. Though David slept there and she did not, he did not establish that she had no right to be there. He recognized that Jennifer's belongings were still stored in a closet in their previously shared bedroom. Nor did David establish that the paper targets were not in the open to be seen.[2] Jennifer took photographs of the targets. She described the targets in her statement in support of the petition for a

[2] David argued below that the paper targets were rolled up and placed in the corner of his room. He asserted that Jennifer would have had to search through his belongings to find the targets. But, the trial court weighed this evidence. We will not make credibility determinations or reweigh the evidence on appeal. Greene, 97 Wn. App. at 714.

protection order, and she attached the photographs to the petition. No government actor was involved in the discovery of these targets. David's claim of a privacy violation must fail.

And, the trial court's findings that a threat of domestic violence was proven by a preponderance of the evidence support the conclusion that a protection order is proper. We have previously held that a history of ongoing abuse and the trial court's belief that the petitioner feared future abuse were sufficient to persuade a rational person that the petitioner had been put in fear of imminent physical harm. Spence v. Kaminski, 103 Wn. App. 325, 333, 12 P.3d 1030 (2000); see also Hecker v. Cortinas, 110 Wn. App. 865, 870, 43 P.3d 50 (2002). The same is true here. The evidence of the injury to the child, the escalating threatening behavior, and the paper targets together presented a threat of an infliction of imminent physical harm that was sufficient to support the issuance of the protection order. We hold that the trial court did not abuse its discretion in granting Jennifer a protection order against David.

II. Hearsay Evidence

David argues that the trial court erred in permitting hearsay evidence. He argues that the rules of evidence should have applied. During the hearing on the protection order, Jennifer referred to an instance where David called the police on Jennifer. She stated that when the police investigated the incident, they told Jennifer that they would not continue to assist David in harassing her. David objected to these statements as hearsay.

ER 1101(c)(4) provides that the rules of evidence need not be applied in protection order proceedings under chapter 26.50 RCW. Accord, Gourley v. Gourley, 158 Wn.2d 460, 467, 145 P.3d 1185 (2006); Hecker, 110 Wn. App. at 870. Therefore, the court did not err in considering hearsay evidence.

III. Due Process

David alleges multiple due process violations. He argues that the trial court violated his due process rights by issuing the temporary order of protection after an ex parte hearing. He contends that the trial court's extension of time for oral argument violated his due process rights, because time was not divided equally amongst the parties. And, he alleges that his due process rights were violated when the trial court based the protection order on an injury to the child, when no such injury had occurred or even been alleged.

Due process fundamentally requires the opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The concept of due process is flexible, requiring procedural protections tailored to the particular situation. Id. at 334.

Our Supreme Court has held that the procedures provided in chapter 26.50 RCW protect the due process requirements of being heard at a meaningful time and in a meaningful manner. Gourley, 158 Wn.2d at 468. The court described those procedures as:

> (1) a petition to the court, accompanied by an affidavit setting forth facts under oath, (2) notice to the respondent within five days of the hearing, (3) a hearing before a judicial officer where the petitioner and respondent may testify, (4) a written order, (5) the opportunity to move for revision in superior court, (6) the opportunity to appeal, and

> (7) a one-year limitation on the protection order if it restrains the respondent from contacting minor children.

Id. at 468-69.

These procedures were met here, and David does not contend otherwise. Therefore, we conclude that David's due process rights were not violated by the issuance of the ex parte temporary protection order.

Nor did the trial court violate David's due process rights by extending the amount of time for oral argument. The local rules allow the court to extend the time for oral argument. Snohomish County Local Court Rules (SCLCR) 7(b)(2)(D)(10)(c). And, the record does not show, as David claims, that the court granted additional time to Jennifer but not David. Instead, the court stated that each party would receive ten minutes: five to address the protection order and five to address the issues raised in the dissolution case. David was given an opportunity to present his arguments and address questions from the court. We conclude that any uneven distribution of time did not violate his right to due process.

David also argues that the court violated his due process rights by issuing the protection order based on an injury to the child, where no injury was alleged. The record does not support this claim. As discussed above, Jennifer alleged this injury in the petition for the protection order, and substantial evidence supports this finding. See supra section I.

We conclude that the trial court did not violate David's due process rights in issuing the protection order.

IV. Estoppel Doctrines

David contends that Jennifer has asserted contradictory positions in the dissolution proceedings and the protection order proceedings. He argues that the doctrines of judicial estoppel and equitable estoppel prohibit her from doing so.

Judicial estoppel is an equitable doctrine. Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 538, 160 P.3d 13 (2007). It prevents a party from taking one position in a court proceeding and then later seeking an advantage by asserting a clearly inconsistent position. Id. The purpose of the judicial estoppel doctrine is to promote respect for judicial proceedings, and to avoid inconsistency. Id. This court reviews a trial court's application of the doctrine for an abuse of discretion. Bartley-Williams v. Kendall, 134 Wn. App. 95, 98, 138 P.3d 1103 (2006).

In determining whether to apply this doctrine, courts examine: (1) whether a party's later position is clearly inconsistent with an earlier position, (2) whether judicial acceptance in a later proceeding would create the appearance that the party had misled the court, and (3) whether the party seeking to assert an inconsistent position would gain an unfair advantage or impose an unfair disadvantage on the opposing party. Arkison, 160 Wn.2d at 538-39.

Here, David alleges that Jennifer's statements in the dissolution proceedings cannot be aligned with her later statements in the protection order proceedings. He alleges that in the dissolution proceedings, Jennifer stated that David is physically and sexually abusive toward the children. Such a position, he contends, is inconsistent with her position in the protection order proceedings, that she has been abused and feels safe only when the children are present.

The record does not support this contention. Instead, the record shows that Jennifer raised concerns of David's manipulative and controlling behaviors when she first filed for dissolution. And, she raised similar concerns in December 2015, in response to David's motion to amend the temporary orders in the dissolution case. In the petition for the protection order, Jennifer described how David had become increasingly hostile and that she had become afraid to be alone with him. Judicial estoppel does not bar Jennifer from describing how David's behavior changed over time.

Equitable estoppel is premised on the principle that a party should be held to a representation previously made where inequitable consequences would otherwise result to a party who has justifiably and in good faith relied on it. Kramarevcky v. Dep't of Soc. & Health Servs., 122 Wn.2d 738, 743, 863 P.2d 535 (1993). This doctrine has three elements: (1) a party's admission, statement, or act inconsistent with a later claim, (2) action by another party in reliance on that admission, statement, or act, and (3) injury that would result to the relying party if the first party is permitted to contradict or repudiate the prior admission, statement, or act. Id. A party asserting equitable estoppel must prove each element with clear, cogent, and convincing evidence. Id. at 744.

David alleges that Jennifer's characterization of the living spaces within the family home violates the doctrine of equitable estoppel. He argues that she has misled the court by not clearly distinguishing between the room she shared with her son and the room she previously shared with David.

These allegations do not present clear, cogent, and convincing evidence that David justifiably relied on representations previously made by Jennifer. Jennifer has stated that after moving out of the bedroom she shared with David, she shared a bedroom with her son. She has maintained that she kept a closet in the bedroom she used to share with David. David has not identified an inconsistent statement or articulated his reliance on a prior representation. Thus, the doctrine of equitable estoppel does not apply.

V. Religious Beliefs

David argues that the trial court erred in raising his religious beliefs. He argues that the trial court's questions on this topic violated ER 610 and his constitutional rights. David asserts that the court demonstrated bias toward him by asking these questions, and this bias warrants sanctions.

During the hearing, the court asked several questions to clarify whether David was contending that his religious freedom permitted corporal punishment of the children. Jennifer argued that David was angry after mediation and learning that a judge was not likely to sign an order allowing him to exercise corporal punishment on his children, which he believed violated his constitutional freedom of religion. To that, the court asked, "Freedom of religion to, what, beat your kids?" The court later asked David to clarify whether he was claiming that spanking the children was a freedom of religion issue. David clarified that he was no longer arguing that.

ER 610 provides, "Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of

their nature the witness' credibility is impaired or enhanced." The Washington constitution also protects religious freedom in the context of the courtroom. WASH. CONST. art 1, § 11. It provides, in part, "No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony." Id.

Neither the evidentiary rules nor the constitution prohibit the questions asked below. David had previously maintained that prohibiting corporal punishment violated his religious beliefs. The court's questions were clarifying questions as to whether David had abandoned that position. The court did not ask any questions that suggested that David's credibility was impaired due to his religious beliefs or that David's statements would be given less weight. And, nothing in the record indicates that the court was biased against David as a result of David's religious beliefs. Instead, the court stated that its decision regarding the protection order was based on the evidence, particularly the injury to the son and the targets. We conclude that the trial court did not improperly consider David's religious beliefs or demonstrate bias against him.

VI. Attorney Fees

Jennifer requests attorney fees on appeal under RCW 26.50.060 and RAP 18.1. Attorney fees may be awarded when authorized by a contract, statute, or recognized ground in equity. Mellor v. Chamberlin, 100 Wn.2d 643, 649, 673 P.2d 610 (1983). Where attorney fees are permitted at trial, the prevailing party may

recover them on appeal. RAP 18.1; Landberg v. Carlson, 108 Wn. App. 749, 758, 33 P.3d 406 (2001). RCW 26.50.060(1)(g) permits the petitioner to recover reasonable attorney fees. Jennifer is the prevailing party on appeal. Therefore, she is entitled to appellate attorney fees.

We affirm.

Appelwick, J.

WE CONCUR:

Spearman, J.

Becker, J.

Additional material from this filing is available in the Clerk's Office.