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OPINIONS AND ORDERS AT ISSUE

UNDERLYING OPINIONS AND ORDERS

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ORDER OF THE SUPREME COURT OF COLORADO (MARCH 18, 2021)

COLORADO SUPREME COURT

REGINA T. DREXLER,

Plaintiff-Appellant,

v.

HONORABLE THERESA SPAHN, HONORABLE CHELSEA MALONE, DENVER COUNTY COURT, AND CITY AND COUNTY OF DENVER,

Defendants-Appellees.

Supreme Court Case No: 2020SA393

Appeal from the District Court
City & County of Denver, 2020CV30610

Upon consideration of the Notice of Appeal, together with the briefs, the appellant's request for oral argument, and the record filed herein, and now being sufficiently advised in the premises,

IT IS ORDERED that the decision of the Denver District Court is AFFIRMED.

Because the Court has resolved the appeal on the briefs, appellant's request for oral argument is now MOOT.

BY THE COURT, EN BANC, MARCH 18, 2020.

ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO (AUGUST 16, 2020)

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

REGINA T. DREXLER,

Plaintiff,

v.

HON. THERESA SPAHN,
in her official capacity, ET AL.,

Defendants.

Case Number: 2020CV30610

Division: CV
Courtroom: 203

Before: Brian R. WHITNEY, District Court Judge.

THIS MATTER comes now before the Court on Defendants' Hon. Theresa Spahn, Hon. Chelsea Malone, Denver County Court and City and County of Denver ("Defendants") Motion to Dismiss Regina T. Drexler's ("Ms. Drexler") claims, filed on June 18, 2020. Ms. Drexler filed her Response on July 23, 2020. Defendants filed their Reply on July 30, 2020. The Court has reviewed the Motion, the Response, the Reply, and the applicable law. For the following reasons, Defendants' Motion is GRANTED.

PROCEDURAL HISTORY

In 2015, Denver County Court Judge Spahn issued a Permanent Protection Order ("PPO") against Ms. Drexler in favor of Ms. Brown. The PPO was continued in 2018 by Denver County Court Judge Malone with a related award of attorneys' fees. As of February 14, 2020, Ms. Drexler is statutorily permitted to apply to the County Court for modification or dismissal of the PPO. Instead, Ms. Drexler seeks habeas relief in this Court, seemingly attempting to prolong litigation and continue to access Ms. Brown.

STANDARD OF REVIEW

"Motions to dismiss for failure to state a claim are disfavored and should not be granted if relief is available under any theory of law." *Colorado Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248, 1253 (Colo. 2012) (en banc). Indeed, a motion to dismiss under Rule 12(b)(5) serves merely to "test the formal sufficiency of the complaint." *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo. 1996). Dismissal is appropriate only where the factual allegations in the complaint, taken as true and viewed in the light most favorable to the plaintiff, do not present a right to relief above the speculative level or provide plausible grounds for relief. *See Warne v. Hall*, 373 P.3d 588 (Colo. 2016) (adopting the Twombly/Iqbal plausibility standard).

ANALYSIS

I. Habeas Relief Is Inappropriate

A. Habeas Relief Is Inappropriate Because Another Form of Relief Is Available

Ms. Drexler alleges claims under C.R.C.P. 106(a)(1) and C.R.S. § 13-45-102. Rule 106(a)(1) provides:

> Relief may be obtained in the district court by appropriate action where any person not being committed or detained for any criminal or supposed criminal matter is illegally confined or restrained of his liberty.

§ 13-45-102 provides, in relevant part:

> When any person not being committed or detained for any criminal or supposed criminal matter is confined or restrained of his liberty under any color or pretense whatever, he may proceed by appropriate action . . . in the nature of habeas corpus.

Given the orders' purported restraints on individual liberty, Ms. Drexler urges that the "plain and unambiguous" statutory meaning allows the Court to grant habeas relief where a person is restrained of liberty in any civil matter, as is allegedly the present case. The Court disagrees. Ms. Drexler neglects to consider relevant Colorado case law. "Habeas corpus is an appropriate remedy to redress an unlawful restraint of one's liberty when no other form of relief is available." *Kailey v. Colorado State Dep't of Corr.*, 807 P.2d 563, 566 (Colo. 1991). "However, relief by way of habeas corpus is not available when other legal

remedies exist . . . " *Murray v. Henderson*, 964 P.2d 531, 533 (Colo. 1998).

Nowhere in the Response does Ms. Drexler attempt to persuade the Court that no other form of relief is available. Rather, Ms. Drexler misplaces her focus on the District Court's ability to grant habeas relief, which is only true when no other form of relief is available, as was so clearly stated above by the Colorado Supreme Court in *Kailey* and *Murray*.

The language of C.R.S. § 13-14-108 is determinative. § 13-14-108(4) states that the issuing court retains jurisdiction "to enforce, modify, or dismiss a temporary or permanent protection order." Further, § 13-14-108 (2)(b) provides Ms. Drexler the opportunity to apply to the court for modification or dismissal of the PPO as of February 2020. Therefore, the availability of a legal remedy under C.R.S. § 13-14-108 precludes habeas relief.

B. Habeas Relief Is Inappropriate Because Ms. Drexler Fails to Allege Plausible Allegations That the Orders or PPO Violate Her First Amendment Rights

Ms. Drexler then argues that habeas is proper redress to the issuing court's purported First Amendment violations. Resp. at 19. She argues that the County Court Order in 2015 unconstitutionally punished Ms. Drexler's protected speech by characterizing it as "intimidation," "efforts to access," "efforts to make/maintain contact," and "retaliation," amounting to a "pattern of domestic abuse" supporting the issuance of the protective order. The State "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of*

Gilbert, Ariz., 576 U.S. 155, 163 (2015). Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *Id.* "[S]tandards of permissible statutory vagueness are strict in the area of free expression." *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 604 (1967). To survive a motion to dismiss under C.R.C.P. 12(b)(5), "the factual allegations of the complaint must be enough to raise a right to relief 'above the speculative level,' and provide 'plausible grounds'" for relief. *Warne v. Hall*, 373 P.3d. 588, 591 (Colo. 2016).

Ms. Drexler's claims fail to reach any level of plausibility. The record demonstrates that neither the PPO, the February 2018 Order, nor the March 2018 Fee Award were impermissibly based on Ms. Drexler's exercise of her First Amendment rights. Nothing in the PPO or Orders prohibits Ms. Drexler from publishing written materials. Moreover, the Orders do nothing to preclude Ms. Drexler from bringing credible claims to the courts. The PPO merely forbids Ms. Drexler from contact with Ms. Brown; it does not otherwise intrude on her protected First Amendment Activities. Furthermore, both the 2016 and 2018 PPOs have been reviewed by the District Court, which found in both instances that the PPOs do not intrude on Ms. Drexler's First Amendment Rights. Exs. D and E to Defs. Mot. to Dismiss. Ms. Drexler's habeas claims decline to surpass the speculative level and fail under *Warne v. Hall*.

II. Request for Mandamus Relief Is Properly Dismissed

Ms. Drexler vaguely requests the District Court to compel the County Court to discontinue enforcement of the PPO and March 2018 Fee Award. "Rule 106 (a)(2) contemplates that the court may compel a judicial or administrative body to perform an act which the law specifically requires or enjoins." *Widder v. Durango Sch. Dist. No. 9-R*, 85 P.3d 518, 526 (Colo. 2004). "Mandamus lies to compel the performance of a purely ministerial duty involving no discretionary right and not requiring the exercise of judgment. It does not lie where performance of a trust is sought which is discretionary or involves the exercise of judgment." *Bd. of Cty. Commis of Cty. of Archuleta v. Cty. Rd. Users Ass'n*, 11 P.3d 432, 437 (Colo. 2000).

There is a three part test which must be satisfied by a plaintiff before mandamus will be issued by the court: (1) the plaintiff must have a clear right to the relief sought, (2) the defendant must have a clear duty to perform the act requested, and (3) there must be no other available remedy. *Gramiger v. Crowley*, 660 P.2d 1279, 1281 (Colo. 1983). As stated above, Ms. Drexler has the option under C.R.S. § 13-14-108(2)(b) to apply to the County Court for modification or dismissal of the PPO as of February 2020. The availability of this remedy renders mandamus relief improper.

III. Requests for Void Relief Are Properly Dismissed

C.R.C.P. 60(b)(3) requires a court to set aside a judgment if it is void. *First Nat'l Bank v. Fleisher*, 2 P.3d 706, 714 (Colo. 2000). "Generally speaking, a judgment is void if the court lacked personal jurisdiction over the parties or subject matter jurisdiction over

the cause of action, or if it was entered in violation of a party's procedural due process rights to notice or to be heard." *L & R Expl. Venture v. Grynberg*, 271 P.3d 530, 533 (Colo. App. 2011). "The judgment must be 'one which, from its inception, was a complete nullity and without legal effect.'" *Nickerson v. Network Sols., LLC*, 339 P.3d 526, 529 (Colo. 2014). "In the interest of finality, the concept of void judgments is narrowly construed μand does not include irregular or erroneous applications of law.'" *Arvada 1st Indus. Bank v. Hutchison*, 15 P.3d 292, 294 (Colo. App. 2000).

A. Purported First Amendment Violations

Ms. Drexler claims that the orders violate her First Amendment rights because the orders are purportedly overbroad in their restriction of protected activities. Ms. Drexler relies on *Crosby v. Bradstreet Co.*, 312 F.2d 483, 485 (2d Cir. 1963) to support her claims. The Second Circuit in *Crosby* dealt with an extremely broad order that "restrained the defendant from publishing any report, past, present or future, about certain named persons." *Id.* The order enjoined a credit rating service from ever publishing any report or statement concerning the business activities of a businessman or his brother. *See generally*, *Id.* The Second Circuit found that because the order was not directed solely to defamatory reports, comments, or statements, and was instead directed towards any statements, it was overly broad and violated the First Amendment. *Id.* at 485.

Judge Spahn's October 2015 Order clearly demonstrates the Court's unwillingness to direct restraints towards all of Ms. Drexler's statements. Ex. F to T.A.C. at 28; 1-3. Instead, the scope of the orders are tailored

towards precluding patterns of abuse, such as manipulation and intimidation. *Id.* at 28; 25. Therefore, the orders are not overbroad and this request is properly dismissed.

B. Void for "New Findings"

Ms. Drexler argues that Judge Malone made improper "new findings" of stalking in the February 2018 order. The February 2018 order states, in relevant part,

> [Judge Spahn] made clear findings that Drexler did in fact stalk or attempt to stalk Brown as defined by the criminal code. Judge Spahn's findings are clear in light of the totality of the court's findings and the issuance of the permanent protection order which was sought for stalking.

Ex. K to T.A.C. at p.5 ¶ 14. The Order itself clearly indicates that Judge Malone merely used Judge Spahn's 2015 findings to resolve the issue before her in 2018—whether dismissal of the PPO was appropriate. Because Judge Malone made no new findings, Ms. Drexler's argument that the County Court lacked jurisdiction to do so is moot. For these reasons, Ms. Drexler's claim that this order is void for "new findings" is properly dismissed.

C. Void for Lack of Imminent Danger

Ms. Drexler asserts that the finding of imminent danger in the 2015 temporary order was baseless and consequently, the PPO is void. On the contrary; it appears Ms. Drexler's claim is baseless. "A finding of imminent danger to the protected person is not a

necessary prerequisite to the issuance of a permanent civil protection order." C.R.S. § 13-14-106(1)(a). Because the finding or absence of imminent danger is not a controlling prerequisite to a PPO, the validity of the current PPO is not bound to a finding of imminent danger. Regarding the validity of the 2015 temporary order, the Colorado Court of Appeals in *Martin v. Arapahoe County Court* noted that a lack of imminent danger does not deprive a court of jurisdiction to hear the case:

> We do not read as jurisdictional the statutory provision stating that "[a] temporary civil protection order may be issued if the . . . magistrate finds that . . . an imminent danger exists to the life or health of one or more persons." § 132142 104.5(7)(a). Insufficient evidence of a fact necessary to enter an order or judgment does not generally deprive a court of jurisdiction to hear the case.

405 P.3d 356, 360 (Colo. App. 2016).

Following *Martin*, the Court finds that even if Judge Spahn's finding of imminent danger was baseless, it did not deprive the County Court of jurisdiction to issue the temporary order. For these reasons, this claim is properly dismissed.

D. Void for Lack of Jurisdiction to Make Fee Award

Ms. Drexler claims that the County Court lacked jurisdiction to make a fee award because it failed to make "requisite findings under C.R.S. 13-17-102, 13-17-103 or controlling case law." T.A.C. at ¶ 129; *see also Id.* at ¶ 145-47. However, as previously pointed

out by the District Court, this assertion is belied by the 2018 Orders themselves. Ex. E to Mot. to Dismiss at 12-17. "[A] court's error in interpreting or exercising a statutory grant of jurisdiction is not equivalent to acting with total want of jurisdiction." *King v. Everett*, 775 P.2d 65, 66 (Colo. App. 1989). The court in *King* found that even an erroneous award of damages did not render it void under C.R.C.P. 60(b)(3). Following *King*, the Court finds Ms. Drexler's claims that the County Court lacked authority or jurisdiction to award the fees irrelevant to the issue of whether the orders are void.

Ms. Drexler further claims that Ms. Brown's awarded fees of $25,000 issued in the February 2018 Order by Judge Malone violated due process because it was ordered without hearing. Ms. Drexler cites *Pedlow v. Stamp*, 776 P.2d 382, 384 (Colo. 1989) in support of her conclusion that "when requested, a hearing on a fee request is required." Resp. at 28. Ms. Drexler appears to have miscited *Pedlow*, because the Court does not find support for this proposition in the opinion where Ms. Drexler claims it lies. Nonetheless, even if this proposition stands true, Ms. Drexler does not attempt to allege in her Response that she did in fact request a hearing. Moreover, the February 2018 Order indicates that Ms. Drexler received notice and seven days to answer, giving her the opportunity to be heard. Ex. K to T.A.C. The Court therefore finds that the February 2018 Order does not violate due process.

E. Void for Fraud on the Court

Ms. Drexler's assertion of fraud on the court is properly filed under C.R.C.P. 60(b)(2). Under C.R.C.P.

60(b)(2), Ms. Drexler's claim fails under the terms of the rule, which requires that such a motion must be brought "not more than 182 days after the judgment, order, or proceeding was entered or taken." Ms. Drexler initiated this action on February 13, 2020, which was two years after the issuance of the February 2018 Order and over 23 months after issuance of the March 2018 Fee Award. It is therefore an untimely challenge to the Orders under C.R.C.P. 60(b)(2) and is properly dismissed.

F. Void for Judicial Bias

Ms. Drexler asserts that the orders are void for judicial bias. To disqualify a judge based on judicial bias there must be sufficient facts "from which it may reasonably be inferred that the respondent judge has a bias or prejudice that will in all probability prevent him or her from dealing fairly with the petitioner." *Smith v. Dist. Court for Fourth Judicial Dist., State of Colo., Div. 6*, 629 P.2d 1055, 1056 (Colo. 1981). Ms. Drexler bases her claims on Judge Spahn's statements that Ms. Brown's counsel was credible and that she found sufficient basis to grant the temporary protection order based on statements by counsel. This statement alone does not support a reasonable inference that Judge Spahn had a bias or prejudice that prevented her from dealing fairly with the petitioner. Instead, Judge Spahn's statements most likely reflect her personal opinion, which is not bias.

Neither do Judge Spahn's and Judge Malone's determinations evidence bias. "Judicial rulings alone rarely constitute a basis for bias or prejudice." *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1252 (Colo.

App. 2010). For these reasons, Ms. Drexler's claims relating to judicial bias are properly dismissed.

G. Request for Injunctive Relief Is Properly Dismissed

Ms. Drexler requests injunctive relief to prevent further restraint of her First Amendment rights. As discussed above, the orders do not unconstitutionally restrain Ms. Drexler's First Amendment rights. Therefore, her request for injunctive relief is properly dismissed.

H. Request for Declaratory Relief Is Properly Dismissed

Ms. Drexler attempts to frame this claim as seeking declaratory relief finding that, under their applicable statutes, the orders and fee awards generally cannot be violative of First Amendment rights. T.A.C. at ¶¶ 197-99. However, Ms. Drexler's declaratory relief claim seeks a determination that the specific orders issued in her case are unlawful as allegedly violative of her First Amendment rights. The Court agrees with Defendants that Ms. Drexler cannot use C.R.C.P. 57 to circumvent the District Court's determinations finding these constitutional challenges to be without merit. The Court also agrees that it is not the purpose of declaratory relief to end run around prior judicial determinations with which one disagrees or to provide new determinations to guide future judicial decisions. Therefore, Ms. Drexler's request for declaratory relief is also properly dismissed.

IV. Request for Relief for § 1983 Constitutional Violations Is Properly Dismissed

Ms. Drexler asserts a claim under 28 U.S.C. § 1983 against Judge Spahn and Judge Malone in their official capacities and against Denver. "A suit against a municipality and a suit against a municipal official acting in his or her official capacity are the same." *Watson v. City of Kansas City, Kan.*, 857 F.2d 690, 695 (10th Cir. 1988). To survive summary judgment on her § 1983 claim, Ms. Drexler must first identify a municipal policy or custom that caused her injuries, and she then must show that the policy or custom was enacted or maintained with deliberate indifference to an almost inevitable constitutional injury. *Harte v. Bd. of Commis of Cty. of Johnson, Kansas*, 864 F.3d 1154, 1195 (10th Cir. 2017). As stated above in §§ IB and IIIA, however, Ms. Drexler fails to state a plausible claim that either Judge Spahn or Judge Malone violated her First Amendment rights. Because no constitutional injury has occurred, Ms. Drexler cannot show that any Denver policy or custom was enacted or maintained with deliberate indifference to a nonexistent constitutional injury. Thus, this claim is properly dismissed.

CONCLUSION

For the aforementioned reasons, Ms. Drexler's claims are DISMISSED in their entirety, and Defendants' Motion to Dismiss is GRANTED.

SO ORDERED this 16th day of August, 2020.

BY THE COURT:

/s/Brian R. Whitney
District Court Judge

ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO DENYING MOTION TO RECONSIDERATION (OCTOBER 2, 2020)

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

REGINA T. DREXLER,

Plaintiff,

v.

HON. THERESA SPAHN, ET AL.,

Defendants.

Case Number: 2020CV30610

Division: 203

Before: Brian R. WHITNEY, District Court Judge.

The motion/proposed order attached hereto: DENIED IN PART.

The Plaintiff moves under Rule 59 for reconsideration of this Court's prior order. The Plaintiff asserts that the Court made legal errors in reaching its conclusion. While the Plaintiff has demonstrated that she disagrees with the Court's legal analysis, she has not demonstrated clear legal error.

Specifically, the Court's opinion in passing that the habeas proceeding could be an attempt to prolong litigation was. at best an observation, and in no way relied on for findings. Thus it could not be error.

Further, the Court is now even more convinced that an alternate remedy to habeas relief not only exists, but has not been fully pursued. That is, the argument provided now focuses the existence of an alternative remedy and merely argues about its timing and availability. While the timing and availability may have some issue to the viability of habeas proceedings, in this case it did not. This Court's prior ruling is not in error and the Plaintiff has failed to demonstrate how it was.

The Court also stands by its determination that no plausible demonstration of infringement of 1st amendment rights was shown and, in fact, on re-argument, still has not been shown. What does exist is conclusory legal statements, unfounded. These are and were insufficient to support the pleading pursuant to *Warne*.

Finally, the Court correctly applied *King v. Everett*, 775 P.2d 65, 66 (Colo. App. 1989) in its analysis of the County Court attorney fee issue. The Court can find no error in its ruling.

While the motion to reconsider is denied, the Plaintiff has requested amendment of the pleadings. The Court is not making any ruling on that motion as it is not ripe. The viability of the potential amendment remains an open question and denial of the reconsideration does not affect that determination. The parties are to fully brief the request to amend the pleadings.

/s/Brian R. Whitney
District Court Judge

Issue Date: 10/2/2020

ORDER: REPLY IN SUPPORT OF MOTION FOR LEAVE TO AMEND AND SUPPLEMENT W/ATTACH (NOVEMBER 17, 2020)

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

REGINA T. DREXLER,

Plaintiff,

v.

HON. THERESA SPAHN, ET AL.,

Defendants.

Case Number: 2020CV30610

Division: 203

Before: Brian R. WHITNEY, District Court Judge.

The motion/proposed order attached hereto: DENIED.

This matter comes before the Court on Plaintiff Ms. Drexler's Motion, filed on September 29, 2020, for Leave to Amend and Supplement the Third Amended Complaint. Defendants responded on October 18, 2020 and Plaintiff replied on October 25, 2020. Having reviewed the Record and the applicable law, the Court finds that this action cannot be saved by amending the Third Amended Complaint. In these

circumstances, allowing an amendment to the pleadings would be improper "unless the original judgment is set aside or vacated" under Rule 59 or 60(b). *See Wilcox v. Reconditioned Office Sys. of Colorado, Inc.*, 881 P.2d 398, 400 (Colo. App. 1994). And, as noted, the Court denied Ms. Drexler's motion for reconsideration under Rule 59. Accordingly, Ms. Drexler's Motion is DENIED.

/s/Brian R. Whitney
District Court Judge

Issue Date: 11/17/2020

ORDERS RE DREXLER'S MOTION TO DISMISS PROTECTION ORDER AND MOTION FOR ATTORNEY FEES (FEBRUARY 14, 2018)

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO

RACHEL BROWN,

Petitioner,

v.

REGINA DREXLER,

Respondent

Cases 15W1242/15W1193
Courtroom 159

Before: Chelsea MALONE,
Denver County Court Judge.

THIS MATTER is before the Court on Ms. Drexler's Motion to Dismiss the Permanent Protection Order and Ms. Brown's Motion for Attorney Fees. This Court, having reviewed the case files, including testimony presented on December 20, 2017, hereby finds and Orders the following:

I. Procedural History

1. Ms. Drexler applied for a protection order on September 16, 2015 (15W1193). The Hon. Judge There-

sa Spahn issued a temporary protection order on allegations that Ms. Brown stalked, harassed, and retaliated against Drexler for terminating their relationship.

2. On September 28, 2015, this Court issued a temporary protection order protecting Brown from Drexler (15W1242). Brown described stalking, including Drexler filing a protection order to gain access to Brown.

3. Judge Spahn presided over a joined hearing on October 15, 21, 23, and 27, 2015. On October 27, 2015, Judge Spahn denied Drexler's permanent protection order, closing case 15W1193. In 15W1242, however, a permanent order entered that requires Drexler to remain at least ten feet from Brown at all times.

4. Drexler appealed. On September 19, 2016, the Hon. Judge Karen Brody affirmed the issuance of the protection order: "the findings of fact and conclusions of law are clearly articulated, and the basis for the County Court's judgment is apparent." Order on Appeal, 9/19/16: 4.[1]

5. The Colorado Supreme Court denied Drexler's Petition for a Writ of Certiorari on September 5, 2017. On December 1, 2017, Drexler filed a cert petition in the United States Supreme Court, which has not yet been granted or denied.

---

[1] The district court reversed the firearm restriction imposed against Drexler, because no facts existed supporting a finding that Drexler and Brown had been "intimate partners" as defined by the Brady Handgun Violence Prevention Act, 18 U.S.C. 921-922. Order on Appeal, 9/19/16: 6-7.

6. On October 28, 2016, over a year after the permanent order entered, Brown requested attorney fees and costs in both 15W1193 and 15W1242. Brown asserts Drexler's claims were substantially groundless, frivolous, and vexatious.

7. On November 14, 2017, Drexler filed a Motion to Dismiss Protection Order claiming that the protection order was never necessary: "[t]he protection order against Drexler was based on a finding of a single prohibited act of 'Domestic Abuse,' which claim was not alleged by Respondent or tried against Drexler. It related to a single argument between the parties over their 10-year friendship . . . " Brown objects and requests Drexler now be ordered to remain 100 yards from her at all times.

8. On December 20, 2017, this Court held an evidentiary hearing on both parties' motions. The Court limited each party to one hour of evidence and argument. The hearing lasted three hours and 38 minutes.

9. Since the inception of these cases, Drexler has filed numerous lengthy motions including on December 18, 2017: "Motion for Witness Telephone Testimony and to Extend Hearing" totaling 26 pages and on January 8, 2018: "Notice of (1) Good Faith Withdrawal of Request for Fees Regarding Respondent's Supplement and Bill of Costs (2) Correction and Clarification of Hearing Testimony and Offers of Proof, and (3) Request for Hearing Related to Respondent's New Request for Fees as Respondent (As May Be Necessary)" totaling 27 pages.

II. Findings

Permanent Orders Hearing

10. Judge Spahn's pointed findings from the permanent orders hearing suffice to put the present issues into context.

11. After considering days of testimony and other evidence, Judge Spahn rejected as meritless Drexler's accusations that Brown had been stalking or harassing Drexler. After Drexler terminated their relationship, "[a]ll of the evidence supports that she's [Brown's] the one that terminated the relationship and wanted no contact with you [Drexler]." PRO Tr. 10/27/15, 15:5-7. The Court made numerous, clear, and unequivocal findings:

> So as far as that, that was set forth in your temporary—I mean your verified complaint. The Court is going to find that there was no evidence to support that. PRO Tr. 10/27/15, 13:3-4, *emphasis added.*
>
> There was no evidence to support that Ms. Brown is following Ms. Drexler. PRO Tr. 10/27/15, 13:11-12, *emphasis added.*
>
> It is clear to me that she [Brown] does not want any contact with Ms. Drexler. Ms. Drexler's own evidence and her own actions, and the emails, and everything that I read confirm over and over and over again that Ms. Brown does not want any contact with Ms. Drexler. PRO Tr. 10/27/15, 13:14-19.
>
> I also found—I think it's even reasonable to think after Ms. Brown has made it abundantly

clear that Ms. Brown in any way would want any contact, go by her house, would try to follow her, I mean after listening to days of testimony, I do not understand how Ms. Drexler reaches that conclusion. PRO Tr. 10/27/15, 13: 21-25-14:1, *emphasis added.*

. . . I just didn't find there was any evidence to support that Ms. Brown was repeatedly following the Petitioner [Drexler] in this first case that I'm dealing with. PRO Tr. 10/27/15, 14:13-16, *emphasis added.*

And there was no evidence to support that that (sic) is going on at CU where you [Drexler] decided to go. PRO Tr. 10/27/15, 21:7-9, *emphasis added.*

The Court is going to find that there really was no evidence to support your [Drexler's] positions. There was no reason for this Court to issue a temporary protection Order And certainly there is no reason to make a protection order permanent. Ms. Brown is not trying to intimidate you, follow you. There is absolutely no reason for this Court to have a protection order against Ms. Brown. So the Court is going to deny your request at this point that a protection order enter on a permanent basis. PRO Tr. 10/27/15, 24:9-17, *emphasis added.*

After I went through all of your [Drexler's] evidence, I went through everybody's testimony, I looked at all the documents, everything is contrary to the position that you take. PRO Tr. 10/27/15, 20:6-9, *emphasis added.*

> At one point when Petitioner Drexler was putting on her case I had some concerns because I had not yet seen evidence to support the issuing of the temporary protection order. . . . I really wanted to listen to all of the evidence before the Court made up its mind, but it just never changed. PRO Tr. 10/27/15, 34:6-9, 18-20.

12. Further, Drexler filed a meritless protection order not for her own safety, but for the purpose of gaining access to and victimizing Brown. This supported the issuance of the permanent order against Drexler.

> I have to say the way that the Petitioner cleverly crafted the temporary protection order really caused the Court some concern when we were proceeding forward. The Petitioner neglected to advise me that they both had pending cases, and the Petitioner neglected to advise me that they both had no contact orders. It was very carefully crafted, as Drexler does many things, she carefully crafts many things. PRO Tr. 10/27/15, 9:9-16.
>
> I wonder about the filing of this case. After I heard days and days of evidence I really feel like you used this court and this process to once again have some sort of dysfunctional access to Brown and stir up that flurry of activity so you could be around her in a very dysfunctional way. PRO Tr. 10/27/15, 19:25-20:1-5.
>
> All the things that you [Drexler] do to maintain contact with her and to keep

> intimidating her I found quite surprising. And again, I feel like the filing of this temporary protection order was yet another way for you to intimidate and to retaliate against her. PRO Tr. 10/27/15, 30:22-25, 31:1.

13. Judge Spahn found no credible evidence to support Drexler's claims. By contrast, Judge Spahn found Brown to be "very credible" and granted a permanent protection order in her favor. PRO Tr. 10/27/15, 25:5-6.

Drexler authored and read a non-fiction piece about Brown to parents at Stanley British Primary, Brown's son's school. The Court found the reading "supports that you [Drexler] have an obsession with her [Brown]." PRO Tr. 10/27/15, 16:20. Brown tried to disengage, even by retaining a lawyer and sending a cease and desist letter to Drexler. Drexler's own evidence "overwhelmingly" supported that Drexler was unable to get past Brown distancing herself. PRO Tr. 10/27/15:17. Even as Brown retreated, Drexler continued to seek out Brown in "very dysfunctional ways." PRO Tr. 10/27/15, 18:6-7. For instance, Drexler sought mediation with Brown, sought to depose Brown on a matter not involving Brown, followed Brown to her house, enrolled as a student at CU where Brown teaches, and travelled to Brown's gym in hopes of crossing paths with her. Drexler's pattern of behavior was designed to "manipulate and to intimidate" Brown and "rises to domestic abuse." PRO Tr. 10/27/15, 28:23-25, 29:1.

> I think she's [Brown] traumatized by the years of you [Drexler] not stopping your calculating behavior. And the evidence

> corroborates her [Brown] testimony. It really does. PRO Tr. 10/27/15, 25:7-9.
>
> I think the evidence supports that you [Drexler] have a very unhealthy obsession and fixation on Ms. Brown. You are very calculating, you are very smart. You are very careful how you go about things. You're smart enough not to make any direct contact, but you do whatever you can to have access to her. PRO Tr. 10/27/15, 28:10-18.
>
> You're [Drexler] doing whatever you can to control her, to make her life uncomfortable, to make her feel stress, to intimidate her. PRO Tr. 10/27/15, 29:1-3.

14. Judge Spahn found "I'm going to find that it is clear to me that she [Brown] has been traumatized and suffering and stressed for years, as has her family. I would find that you repeatedly have tried to make some form of contact, whether — although it's very dysfunctional, very calculating, and that any reasonable person would suffer emotional distress, and she [Brown] has suffered emotional distress. I felt like some of the things that you did I thought I would — I mean any reasonable person would feel emotional distress." PRO Tr. 10/27/15, 29:21-25, 30:1-4. Judge Brody noted that "the [trial] court found a history of continued behaviors between the incident at Brown's house six years prior and the ultimate filing for a protection order that warranted the issuance of a permanent protection Order *See* R. Tr. 10/27/16, p.31." Order on Appeal: 5. Although Judge Spahn did not use the specific language "serious emotional distress" as defined by C.R.S. § 18-3-602, she made clear findings that Drexler did in fact stalk or attempt to

stalk Brown as defined by the criminal code. Judge Spahn's findings are clear in light of the totality of the court's findings and the issuance of the permanent protection order which was sought for stalking.

15. Drexler repeatedly attempted to contact and gain access to Brown for (at the time of the permanent orders) seven years. The Court was troubled by Drexler's ongoing and obsessive pattern of behavior and by Drexler's belief that Drexler is the victim. "I think you [Drexler] really think you're the victim. That's very concerning to the Court. And I'm concerned for her [Brown's] safety and for this never ending. PRO Tr. 10/27/15, 31:17-19.

16. Judge Spahn entered a permanent protection order against Drexler in favor of Brown.

Hearing on Motion to Dismiss

17. At the December 20, 2017 hearing on Drexler's Motion to Dismiss, Drexler maintained that "this incident involves one argument between my friend and I . . . I don't' even think she [Brown] thought it was domestic abuse . . . There was no allegation of an intimate relationship . . . " Hrg. 12/20/17, 44:13-18. The Court specifically advised Drexler or my purposes, though, I need to understand what you believe your actions were that you are willing to be accountable for so that I can factor that in to whether this protection order needs to remain in place . . . " Hrg. 12/20/17, 107:22-25. Drexler insists there has only been one incident of abuse or threat or harm: "It was the only thing and it wasn't physical as between us. It was a door. She pushed the door toward me. I pushed the door back. I was at her house." Hrg. 12/20/17, 49:21-25.

18. Drexler refused to acknowledge stalking or domestic abuse, stating "there were multiple findings of attempts to contact. There was actually no finding of stalking but attempts to contact . . . " Hrg. 12/20/17, 109:2-4. Drexler "strongly" disagreed that the Court made findings of stalking and domestic abuse. Hrg. 12/20/17, 109: 8.

19. The focus of Drexler's testimony and pleadings is: the permanent order was based on misleading and erroneous evidence and Drexler is actually the victim. Drexler's denial goes so far as to continue to call herself "Petitioner" even in her Motion to Dismiss where she is clearly the respondent. Drexler repeatedly brought up Brown's alleged "distortion campaign" against her and how Drexler is in therapy to address the "effects of narcissistic abuse" by Brown. Hrg. 12/20/17, 60:11-15.

20. Drexler testified at length about seeking domestic violence therapy. After the Court asked Drexler to clarify if she sought treatment as a victim or offender, Drexler answered that her treatment was as a victim of her former spouse, her mother, and Brown. Drexler testified that domestic violence offender therapy is therefore inappropriate for her as a victim. The Court told Drexler that her therapy as a victim for prior acts of domestic violence does not establish that the protection order is now unnecessary to protect Brown. Despite this, and after the hearing had concluded, Drexler filed another pleading seeking to introduce highly cumulative testimony from Sarah Bjorndahl and Roxanne Thompson: that Drexler is a victim of domestic violence and therefore therapy as an offender is not appropriate. This conduct constitutes a thinly veiled attempt to convince this Court that

the original protection order was improperly granted or seeks to convince this Court to reconsider the original protection order even after Drexler has exhausted her appellate rights and the district court upheld Judge Spahn's Order.

21. Since the PRO was granted, Drexler has withdrawn from UCD and now is enrolled in a program in another state. Drexler believes she was in close proximity to Brown two times since the PRO and each time, Drexler left. The parties no longer share the same community or schools for their children. Drexler remains on a waiting list for a community pool where Brown is a member. Drexler is no longer working on Larimer Square, near UCD, but instead will work on 17th Street.

22. During the hearing on December 20, 2017, this Court repeatedly and specifically ordered equal time limitations for presentation of evidence. Despite this, after the hearing, Drexler filed a 27-page "Notice" with additional argument, offers of proof, testimony, affidavits and exhibits. On one hand, Drexler claims that she wants all litigation to end and notes the significant costs. On the other hand, Drexler continues to reiterate the same points and makes every effort to extend this litigation by filing lengthy pleadings with additional evidence, and has even requested an additional hearing.

23. As an example of how Drexler has needlessly extended the litigation of this matter, Drexler requested and was denied an extended hearing on her motion to dismiss. In support of her request, Drexler sought to introduce testimony from two therapists by phone: her own therapist Sarah Bjorndahl and Roxanne Thompson, therapist for her sons. Exhibit A contains

10 pages of "misrepresentations" made to Judge Spahn and essentially offers of proof as to what Bjorndahl would seek to "correct." None of these statements addressed relevant factors for dismissal of the protection order under C.R.S. § 13-14-108, but instead would have been presented to argue that the original protection order was erroneously granted. Further, Judge Spahn previously found Bjorndahl "to be absolutely not credible" "for many reasons" including that she was "extremely biased" and her opinions were unsupported by evidence. PRO Tr. 10/27/15, 23. Bjorndahl "did not influence this court, was not helpful to this court in absolutely any way." PRO Tr. 10/27/15, 24:4-6.

24. Thompson's affidavit was also attached the Motion to Extend the Hearing. Nothing in Thompson's affidavit addressed relevant factors under C.R.S. § 13-14-108. Thompson's proposed testimony related to alleged trauma suffered by Drexler and her children at the hands of Brown and her children.

25. Although the Court initially excluded Bjorndahl and Thompson, the Court allowed Drexler to present her case as she wished. The case was scheduled on 12/20/17 at Drexler's request. Drexler's witnesses were not available and Drexler chose to spend her allotted time presenting other testimony.

26. Brown was not present for the hearing and did not present testimony from any other witnesses.

III. Analysis

Drexler's Motion to Dismiss Protection Order

27. Initially, this Court notes that the thrust of Drexler's Motion to Dismiss the Protection Order is that Judge Spahn erred in granting it in the first place. This claim was rejected on appeal by the district court and the Colorado Supreme Court denied cert. This Court is not at liberty to disturb what is res judicata. To the extent that Drexler now argues the PRO is no longer necessary, the Court finds as follows:

A. Legal Standards

28. Civil protection orders are necessary to prevent domestic abuse, which includes mental and emotional abuse, and stalking. C.R.S. § 13-14-100.2(2). "While stalking behaviors may appear innocuous to outside observers, the victims often endure intense physical and emotional distress that affects all aspects of their lives . . . " C.R.S. § 13-14-100.2(3). Domestic abuse includes any act or attempted act of stalking or harassment towards an intimate partner. C.R.S. § 13-14-101(2).

29. The party requesting dismissal of a permanent protection order must demonstrate "by a preponderance of the evidence, . . . that the dismissal is appropriate because the protection order is no longer necessary." C.R.S. § 13-14-108(5).

30. In considering whether to vacate a permanent protection order, the court shall consider all relevant factors including (a)-(j) below. C.R.S. § 13-14-108(6).

B. Analysis

31.

(a) Whether the restrained party has complied with the terms of the protection order. The evidence presented at the hearing shows that Drexler has complied with the protection order with the very notable exception of her continued litigation. The protection order restrains Drexler from harassing Brown. It is apparent that just like her original TRO filing, the purpose of Drexler's ongoing litigation is to harass Brown. Drexler's pleadings, including her Motion to Dismiss, are vehicles to reiterate her position as a victim, recite trial evidence, and keep Brown looped in endless litigation. While Drexler is entitled to exercise appellate rights and to file a motion to dismiss, the tone of these pleadings support the need for a permanent protection order. "Generally, activities normally protected by the constitution will not be protected when used for the purpose of harassment.

See, e.g., People v. Richardson, 181 P.3d 340, 345 (Colo. App. 2007)(finding no constitutional protection for lawsuits filed to harass and cause serious emotional distress)." Order on Appeal: 5.

32

(b) Whether the restrained party has met the conditions associated with the protection order, if any. No special conditions were imposed.

33

(c) Whether the restrained party has been ordered to participate in and has completed a domestic violence offender treatment program. The Court did not order treatment.

34

(d) Whether the restrained party has voluntarily participated in any domestic violence offender treatment program. In response to the Court's question, Drexler admitted that she has sought treatment as a domestic violence victim and not as an offender.

35

(e) The time that has lapsed since the protection order was issued. The permanent protection order has been in effect for just over two years and three months.

36

(f) When the last incident of abuse or threat of harm occurred or other relevant information concerning the safety and protection of the protected person. Drexler argues that the permanent protection order was supported by a single act in 2009. Although this argument is contracted by the PRO hearing record and was rejected by Judge Brody on appeal, Drexler fixated on this argument in her Motion to Dismiss as well as during her testimony in support of her Motion to Dismiss. The record is clear that the 2009 incident outside of Brown's home was but a thread in the fabric of deeply concerning stalking and harassing behavior that led

Judge Spahn to issue a permanent protection order.

37

(g) Whether, since the issuance of the protection order, the restrained person has been convicted of or pled guilty to any misdemeanor or any felony against the protected person, other than the original offense, if any, that formed the basis for the issuance of the protection order. Drexler does not have any criminal convictions.

38

(h) Whether any other restraining orders, protective orders, or protection orders have been subsequently issued against the restrained person pursuant to this section or any other law of this state or any other state. No other restraining or protective orders have since been issued against Drexler.

39

(i) The circumstances of the parties, including the relative proximity of the parties' residences and schools or work places and whether the parties have minor children together. The parties do not have children together. Brown moved out of the neighborhood, so the parties no longer live in close proximity. Brown is a professor at UCD and Drexler is no longer enrolled at UCD. Drexler is an attorney with Ireland Stapleton Pryor & Pascoe P.C. and in private practice.

40

(j) Whether the continued safety of the protected person depends upon the protection order remaining in place because the order has been successful in preventing further harm to the protected person. With the exception of the ongoing litigation addressed above, Drexler's abusive behavior has ceased. As a result of the PRO, Drexler removed herself from UCD and the parties are mostly no longer in the same communities. Drexler continues to deny the harm she has caused Brown and fails to acknowledge her inappropriate behavior supporting the PRO. The PRO has been successful in preventing harm to Brown outside of litigation.

41. The permanent protection order must remain in effect.

C. Attorneys' Fees

42. "The court shall assess attorney fees if, upon the motion of any part or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct . . . As used in this article, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious." C.R.S. § 13-17-102(4) emphasis added.

43. A substantially groundless claim is one for which the proponent has a valid legal theory but for which no credible evidence is presented at trial. *City of Aurora v. Colorado State Engineer*, 105 P.3d 595

(Colo. 2004). *See also W. United Realty v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984).

44. A substantially frivolous claim or defense is one for which the proponent can present no rational argument based on either law or evidence. *Id.*

45. "A vexatious claim is one brought or maintained in bad faith with the intention to annoy or harass." *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960 (Colo. App. 2001). *See also Double Oak Constr., L.L.C. v. Cornerstone Development Intern., L.L.C.*, 97 P.3d 140, 151 (Colo. App. 2003), *cert. denied* (2004) ("attorney fees may be awarded if the losing party has acted in bad faith or for oppressive reasons" in the course of prosecuting or defending an action).

46. "An award of fees is an important sanction against an attorney or party who improperly instigates or prolongs litigation. *In re Marriage of Aldrich*, 945 P.2d 1370, 1378 (Colo. 1997)." *City of Aurora v. Colorado State Engineer*, 105 P.3d 595, 618 (Colo. 2004).

47. There is no constitutional protection for lawsuits filed or pursued to harass and cause serious emotional distress. *People v. Richardson*, 181 P.3d 340, 345 (Colo. App. 2007).

48. Pursuant to C.R.C.P. 121, 1-22(a), C.R.C.P. 121, 1-22(b) applies to fees "requested pursuant to Section 13-17-102, C.R.S."

49. C.R.C.P. 121, 1-22(b) provides that "[a]ny party seeking attorney fees under this practice standard shall file and serve a motion for attorney fees within 21 days of entry of judgment or such greater time as the court may allow." Several divisions of the Colorado Court of Appeals have interpreted the language

"or such greater time as the court may allow" as "permitting a trial court to consider a bill of costs [including attorneys' fees] to be timely, even though it was filed more than fifteen days after the entry of judgment, because it was filed within 'the time allowed by the court.'" *Parry v. Kuhlman*, 169 P.3d 188, 190-91 (Colo. App. 2007) (Rule amended from fifteen to 21 days after this case was decided). While a party who delays filing her request for fees beyond the 21 days allowed by the Rule does so at her peril, *Parry*, at 190-91, "a party's failure to request an extension of time does not preclude a trial court from considering a request for an award of costs and fees which has been filed beyond the [21]-day deadline." *Id., clarifying Moyer v. Empire Lodge Homeowners' Ass'n*, 78 P.3d 313, 315 (Colo. 2003).

50. Drexler's relentless persistence in litigating (as petitioner) and relitigating (as respondent) her underlying meritless case is precisely the type of excessive and abusive litigation that must be sanctioned by attorney fees and costs. This is the exceptionally rare case in which the Court would even entertain an argument awarding fees against a petitioner in a civil protection order filing. Drexler's claims as both petitioner and respondent are substantially frivolous, substantially groundless and substantially vexatious.

51. Judge Spahn noted a pattern of filing and litigation used by Drexler to terrorize Brown, a pattern which continues to this day. Drexler's pleadings, even those purportedly addressing attorneys' fees read like motions to reconsider the trial court's findings. *See e.g.* Petitioner's [Drexler's] Reply to Response to Motion to Dismiss and Petitioner's Request to Reject and Deny Supplement to Motion for Attorney

Fees as a Matter of Law, at p.6 "the two UCD witnesses presented by Respondent, the Department Chair and the Title IX Coordinator, also misstated known facts to the court," and at p.7 "[t]he sheer number of misrepresentations presented by Respondent at the hearing makes it impossible to address them all." *See also* Petitioner's [Drexler's] Objection to Motion for Attorney Fees and Request for Denial Thereof, filed Nov. 3, 2016, in its entirety.

52. Drexler has argued that Brown's request for attorneys' fees should be denied as untimely, and that argument exemplifies one aspect of this case that is most troubling both substantively and regarding Brown's request for fees: The ongoing harassment of Brown by Drexler, even with and in the context of this litigation. The history of the relationship described earlier herein demonstrates conclusively that Brown has tried since 2009 to end her relationship with Drexler and move on, but that Drexler simply will not allow that to happen. Even six years later, after the painful publication by Drexler of the essays about their relationship, and after Drexler's attempt to invade Brown's work life, it was Drexler who initiated the protection order process, and Brown who responded in defense. After four grueling days of hearing, and the expenditure of thousands of dollars in attorneys' fees, a PPO entered against Drexler. Brown hoped it was finally over, and so she did not file for attorneys' fees, preferring even then to try to move on with her life. But again, Drexler dragged her back, filing an appeal and a petition for certiorari. Finally, Brown had had enough, and she filed her motion for attorneys' fees. Under these circumstances, the Court finds that the time it took for Brown to file

her motion for attorneys' fees is "such greater time as [this] Court may allow" pursuant to C.R.C.P. 121, 1-22 (b).

D. Modification of the Permanent Order

53. Judge Spahn was "on the fence" about how to draft the protection order in a meaningful way, not about whether the protection was necessary and supported by a preponderance of the evidence. PRO Tr. 10/27/15, 32:4-25. At the time the permanent order entered, Drexler had enrolled as a student at UCD, where Brown teaches, and Drexler conducted business downtown on Larimer Square. The distance between these locations is less than 100 yards. The Court therefore reduced the distance Drexler must remain from Brown from 100 yards to ten feet at all times. Today, Drexler is no longer an enrolled student at UCD, but is employed as an attorney with Ireland Stapleton Pryor & Pascoe PC. in downtown Denver. Brown requests the permanent protection order to be modified to change the distance from ten feet to 100 yards at all times. The permanent protection order will be re-issued in order to protect Brown while teaching at UCD and to allow Drexler to continue working without inadvertently violating the protection Order.

IV. Conclusion

54. Drexler stalked Brown from 2008 until 2015, and has continued to seek unhealthy access to Brown through litigation of these cases. Even after the permanent protection order was issued and Drexler exhausted her appellate rights in Colorado, Drexler continues to deny any wrongdoing on her part, except

for expressing regret about going to Brown's house one time in 2009. Drexler does not accept accountability for any of her other deeply concerning and manipulative behaviors towards Brown, including repeated contacts and attempted contacts directly and indirectly with Brown which supported the issuance of the permanent protection Order. Drexler repeatedly files motions reiterating that she, Drexler, is actually the victim. Each of these behaviors indicate that Drexler is unable or unwilling to discern the difference between appropriate and healthy behavior and such behavior that requires the court to intervene with a permanent Order for any one of these reasons and for any single reason listed above, Drexler has failed to demonstrate by a preponderance of the evidence that the protection order is no longer necessary. The protection order must remain permanent to ensure Brown's safety, both physically and emotionally. The Court respectfully DENIES Drexler's Motion to Dismiss the Permanent Protection Order

55. The Court is extremely reluctant to assess fees and costs against a petitioner in a civil protection order matter. As the Court stated at the Motion to Dismiss hearing "[i]t would take a substantial amount of evidence for me to assess fees against a petitioner and even then I don't know that I would."

12/20/17, 39:3-4. This is, however, that rare case. At the permanent protection order hearing, Drexler failed to provide any evidence to support her claims against Brown. Even more concerning is that Drexler, a licensed attorney, requested a protection order for the purpose of harassing and stalking Brown. The courts cannot tolerate or ignore this misuse of the

legal process. Therefore, the Court GRANTS Brown's Motion for fees and costs as respondent in 15W1193.

56. The Court GRANTS Brown's Motion for fees and costs as petitioner in 15W1242.

57. Within seven days, weekends included, Brown may supplement and make current her request for fees and costs. Drexler may respond to the supplemented fees and costs amounts only within seven days, weekend included, thereafter. The Court will issue a written Order without a hearing on the matter.

58. Based upon changed circumstances, modification of the protection is appropriate. The permanent protection order is HEREBY AMENDED as follows: The contact exception "ingress and egress" shall be deleted. "UC Denver 1250 14th Street, Denver" is an excluded location, with the exception "Respondent is allowed on UCD campus only when enrolled as a UCD student and at all times must remain 10 feet from Petitioner and shall not attend Petitioner's lectures." Respondent shall remain 100 yards from Petitioner except "Respondent must remain at least 10 feet from Petitioner when commuting directly to/ from and attending work." At all times, respondent is to remain 100 yards from petitioner's listed home addresses. All other requirements of the permanent protection order remain the same.

DONE and SIGNED this 13th day of February, 2018.

BY THE COURT:

/s/ Chelsea Malone
Denver County Court Judge

PERMANENT CIVIL PROTECTION ORDER ISSUED PURSUANT TO § 13-14-106, C.R.S. (FEBRUARY 14, 2018)

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO

RACHEL BROWN,

Plaintiff/ Petitioner,

v.

REGINA DREXLER,

Defendant/ Respondent

Cases 15W1242
Courtroom 170

Before: Chelsea MALONE, Denver County Court Judge.

To Respondent/Restrained Person

DREXLER, REGINA

Date of Birth

04/16/1967

Sex

Female

Race

White

Weight

118

Height

5'04"

Hair

Color Blonde

Eye Color

Green

Full Name of Protected Person	Date of Birth	Sex	Race
BROWN, RACHEL	03/28/1968	Female	White
WEAVER, GEORGE	06/06/2002	Male	White
WEAVER, HENRY	08/07/1999	Male	White

The Court Finds that it has jurisdiction over the parties and the subject matter; that the Restrained Person was personally served and given reasonable notice and opportunity to be heard; that the Restrained Person constitutes a credible threat to the life and health of the Protected Persons named in this action; and sufficient cause exists for the issuance of a Civil Protection Order.

The Court Finds that the Restrained Person is not governed by the Brady Handgun Violence Prevention Act, 18 U.S.C. § 922(d)(8) and (g)(8).

> This Protection Order DOES NOT EXPIRE and only the Court can change this Order. A violation of a Protection Order is a crime and may be prosecuted as a misdemeanor, municipal ordinance violation, or a delinquent act (if committed by a juvenile) pursuant to § 18-6-803.5, C.R.S., and municipal ordinance.

The Court Orders that you, the Restrained Person, shall not contact, harass, stalk, injure, intimidate, threaten, touch, sexually assault, abuse, or molest the Protected Persons named in this action, or harm, take, transfer, conceal, or dispose of or threaten harm to an animal owned, possessed, leased, kept or held by any protected party, a minor child of any other party, or otherwise violate this Order. You shall not use, attempt to use, or threaten to use physical force against the Protected Persons that would reasonably be expected to cause bodily injury. You shall not engage in any conduct that would place the Protected Persons in reasonable fear of bodily injury.

1. Contact

It is ordered that you, the Restrained Person, shall have no contact of any kind with the Protected Persons and you shall not attempt to contact said Protected Persons through any third person, except your attorney,

- except as follows: NO EXCEPTIONS

2. Exclusion from places

You must keep a distance of at least 100 yards from the Protected Persons, wherever they may be found.

It is ordered that you be excluded from the following places and shall stay at least 100 yards away from the following places: (Please specify address(es) where the Protected Persons reside, work or attend school.)

- Home: 6220 E 6TH AVE DENVER 80220
- School: Name: UC DENVER Address: 1250 14TH ST. DENVER, CO
- Other: 22097 HWY 6 (ST JOHNS CONDOS) KEYSTONE, CO 80435

5. Other Provisions.

- Fees shall be paid by the Defendant/ Respondent

The Restrained Person shall not interfere with the protected person at the person's place of employment or place of education and shall not engage in conduct that impairs the protected person's employment, educational relationships, or environment.

6. Mandatory For Domestic Abuse Protection Orders:

- It is further ordered that

RESP. IS ALLOWED ON UCD CAMPUS ONLY WHEN ENROLLED AS A UCD STUDENT AND AT ALL TIMES MUST REMAIN 10FT FROM PETITIONER AND SHALL NOT ATTEND PETITIONERS LECTURES. IN ADDITION, RESP. MUST REMAIN 100 YARDS FROM PET. AT ALL TIMES EXCEPT WHEN COMMUTING

DIRECTLY TO/FROM AND ATTENDING WORK, AT WHICH TIME THE BUFFER ZONE IS REDUCED TO 10FT.

- This Permanent Protection Order is different from the Temporary Protection Order and requires service on the Restrained Party before its provisions become effective.

By signing, I acknowledge receipt of this Order or Restrained Person is not present in courtroom.

/s/ Sara Marks Baker
Plaintiff/Petitioner

2/14/18
Date

/s/ Chelsea Malone
Judge

Chelsea Malone
Print Name of Judicial Officer

2/14/18
Date

I certify that is true and complete copy of the original order.

/s/
Clerk

Date
2/14/18

Law Enforcement shall use all reasonable means to enforce this Protection Order

IMPORTANT INFORMATION ABOUT PROTECTION ORDERS

General Information

This Order or injunction shall be accorded full faith and be enforced in every civil or criminal court of the United States, Indian Tribe or United States Territory pursuant to 18 U.S.C. § 2265. This Court has jurisdiction over the parties and the subject matter.

Pursuant to 18 U.S.C. § 922(g)(8), it is unlawful for any person to possess or transfer a firearm who is subject to a court order that restrains such person from harassing, stalking or threatening an intimate partner of such person or a child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.

Notice to Restrained Party

A violation of a protection order may be a misdemeanor, municipal ordinance violation or a delinquent act (if committed by a juvenile) and is a deportable offense. Anyone over the age of 18 who violates this Order may be subject to fines of up to $5,000.00 and up to 18 months in jail. Violation of this Order may constitute contempt of Court. Anyone under the age of 18 who violates this Order may be

subject to commitment to the Department of Human Services for up to two years.

You may be arrested or taken into custody without notice if a law enforcement officer has probable cause to believe that you have violated this Order.

If you violate this Order thinking that the other party or anyone else has given you permission, YOU ARE WRONG. and can be arrested and prosecuted. The terms of this Order cannot be changed by agreement of the parties. ONLY THE COURT CAN CHANGE THIS ORDER.

Possession of a firearm while this Permanent Protection Order is in effect, may constitute a Felony under Federal Law, 18 U.S.C. § 922(g)(8).

You may apply to the Court for a modification or dismissal of a protection order after two years from the date of issuance of the Permanent Protection Order per § 13-14-108(2)(b), C.R.S.

Notice to Protected Party

You are hereby informed that if this Order is violated you may call law enforcement.

You may initiate contempt proceedings against the Restrained Party if the Order is issued in a civil action or request the prosecuting attorney to initiate contempt proceedings if the order is issued in a criminal action.

You cannot give the Restrained Party permission to change or ignore this Order in any way. ONLY THE COURT CAN CHANGE THIS ORDER.

You may apply to the court for a modification or dismissal of a protection order at any time, per § 13-14-108(2)(a), C.R.S.

Notice to Law Enforcement Officers

If the Order has not been personally served, the law enforcement officer responding to a call of assistance, shall serve a copy of said order on the person named/Restrained Person therein and shall write the time, date, and manner of service on the Protected Persons copy of such Order and shall sign such statement. The officer shall provide the Court with a completed return of service form. (§ 13-14-107(2-3), C.R.S.)

You shall use every reasonable means to enforce this Protection Order.

You shall arrest or take into custody, or if an arrest would be impractical under the circumstances, seek a warrant for the arrest of the Restrained Person when you have information amounting to probable cause that the Restrained Person has violated or attempted to violate any provision of this Order subject to criminal sanctions pursuant to § 18-6-803.5 CRS or municipal ordinance, and the Restrained Person has been properly served with a copy of this Order or the Restrained Person has received actual notice of the existence and substance of such Order.

You shall enforce this Order even if there is no record of it in the Protection Order Central Registry.

You shall take the Restrained Party to the nearest jail or detention facility.

You are authorized to use every reasonable effort to protect the Protected Parties to prevent further violence.

You may transport, or arrange transportation to a shelter for the Protected Parties.

ORDER ON APPEAL OF THE DISTRICT COURT (SEPTEMBER 19, 2016)

DISTRICT COURT
CITY & COUNTY OF DENVER, COLORADO

REGINA DREXLER,

Plaintiff-Appellant,

v.

RACHEL BROWN.

Defendant-Appellee,

RACHEL BROWN.

Plaintiff-Appellee,

v.

REGINA DREXLER

Defendant-Appellant,

Case Number: 15CV34373
Courtroom: 414

Before: Karen L. BRODY, Denver District Judge

Appellant Regina Drexler appeals the order of the County Court issuing a permanent civil protection

order in favor of Appellee Rachel Brown to be entered against Ms. Drexler. After reviewing the parties' briefs, the record on appeal, and applicable law, the Court finds and orders as follows:

I. Issues Presented

Appellant presents three issues to the Court:

1. Whether the record on appeal is adequate to review the order of the County Court;

2. Whether the County Court erred by considering improper evidence in issuing the permanent civil protection order; and

3. Whether the County Court erred by entering an order prohibiting Ms. Drexler from possessing or purchasing firearms.

II. Background

This appeal arises from a consolidated case in the County Court in which Ms. Drexler and Ms. Brown each sought a civil protection order for protection from the other. Ms. Brown was granted a temporary protection order on September 28, 2015. R. Tr. 9/28/15, pp. 11-12. Ms. Drexler was granted a temporary protection order on September 16, 2015. R. Tr. 9/16/15, p. 4. Both cases were then consolidated into a single hearing that was held October 15, 21, 23, and concluded on October 27, 2015.

The record reflects that Ms. Brown and Ms. Drexler were prior friends and had a one-time intimate encounter in 2008. R Tr. 10/15/15, p. 36. Following that encounter, Ms. Brown attempted to withdraw from friendship with Ms. Drexler. R. Tr.

10/15/15, pp. 38-36. This triggered a seven year history of Ms. Drexler's attempts to contact Ms. Brown and Ms. Brown's attempts to retreat from contact with Ms. Drexler. These interactions culminated in the filing of mutual verified complaints for civil protection orders. The presiding judge made findings of fact and conclusions of law on October 27, 2015 and issued a permanent civil protection order to Ms. Brown requiring that Ms. Drexler stay 100 feet from Ms. Brown's residence and at least 10 feet from her at all other times. R. Tr. 10/27/15, pp. 32, 35. Ms. Drexler appeals this determination.

III. Standard of Review

The right to an appeal from the final judgment of a county court is governed entirely by statute. *Bovard v. People*, 99 P.3d 585, 588 (Cob. 2004). Under C.R.S. § 13-6-310(2), the district court shall review the case on the record on appeal and affirm, reverse, remand, or modify the judgment; except that the district court, in its discretion, may remand the case for a new trial with such instructions as it may deem necessary, or it may direct that the case be tried de novo before the district court.

Pursuant to the Colorado Rules of County Court Civil Procedure:

> No trial shall be held de novo in the district court unless the record of the proceedings in the county court have been lost or destroyed or for some other valid reason cannot be produced; or unless a party by proper proof to the court establishes that there is new and material evidence unknown and undiscoverable at the

> time of the trial in the county court which, if presented in a de novo trial in the district court, might affect the outcome.

C.R.C.P. 411(d).

Where a district court is exercising its powers of review rather than conducting trial de novo, it cannot act as a fact finder. *People v. Gallegos*, 533 P.2d 1140, 1142 (Cob. 1975). The reviewing court "is bound by the findings of the trial court which have been determined on disputed evidence." *People v. Brown*, 485 P.2d 500, 517 (Cob. 1971). "The function of the reviewing court is to correct any errors of law committed by the trial court and not to try, nor retry, issues of fact." *People v. Williams*, 473 P.2d 982, 984 (Cob. 1970).

IV. Analysis

Appellant claims that the County Court erred by considering improper evidence in making the determination under C.R.S. § 13-14-104.5(1)(a) that there were grounds for a permanent civil protections order and by issuing an order banning Ms. Drexler from possessing or purchasing a firearm under C.R.S. § 13-14-105.5(1)(a)(I) because she does not qualify for such a ban under the federal definition of "intimate partner." Opening Br. p. 11. In the alternative, Appellant argues that the court's findings of facts and conclusions of law are insufficient to allow for appellate review. *Id.* This Court disagrees with the Appellant's characterization of the evidence considered, affirms the County Court's issuance of the permanent civil protection order in favor of Ms. Brown, and vacates the order banning Ms. Drexler from possessing or purchasing firearms as improper

under the plain language of the statute for the following reasons:

A. Insufficient Record

As an initial matter, Appellant argues—within her argument on the consideration of improper evidence—that the record on appeal is insufficient for review because "it is not clear what the basis is for the court's finding that unless restrained Ms. Drexler will continue to commit such acts or acts designed to intimidate or retaliate against Ms. Brown." Opening Br. pp. 29-30. This argument fails.

All that is required of the record on appeal is that the record be sufficiently clear in the findings of fact and conclusions of law that the reviewing court can have "a clear understanding of the basis of [the] order." *Rocky Mt. Health Maint. Org., Inc. v. Colorado Dept. of Health Care Policy & Financing ex rel. Rizzuto*, 54 P.3d 913, 918 (Colo. App. 2001). This rule is complied with even when the findings and conclusions "are brief and sparse in detail," as long as the reviewing court can determine "the basis of the court's judgment." *Manor Vail Condominium Ass'n v. Town of Vail*, 604 P.2d 1168, 1172 (Colo. 1980).

Here, the court first articulated the standard: "And then what she has to show by a preponderance of evidence . . . that unless restrained your behavior will continue or you will continue to commit such acts to intimidate and retaliate." R Tr. 10/27/15, p. 30, II 7-12. Next, the court gave the factual basis that met this standard, referencing the earlier findings of fact articulated at the hearing:

> [Y]our [Ms. Drexler's] attempt to make contact with her or get access to her has been going on for years . . . Seven years since you had a one time intimate relationship . . . I've talked about all the evidence. All the things that you do to maintain contact with her and to keep intimidating her I found quite surprising.
>
> . . . And again, I feel like the filing of this temporary protection order was yet another way for you to intimidate her and to retaliate against her.
>
> You have—your behavior has been I think obsessive. I also think that for some reason I think you make yourself believe that you're justified and you make yourself believe that you're the victim, which actually is very concerning to the Court.
>
> It is all of those reasons I think you can't control your behavior. Given the years of continued contact that you've made, . . . if you look at any one thing isolated it makes sense. When you look at the pattern it's very concerning to the Court.

R. Tr. 10/27/15, p. 30, L 15-p. 31, L 12. Here, the court referenced more than five pages of earlier detailed findings of fact that were made from the testimony of the witnesses and exhibits entered into evidence. *See* R. Tr. 10/27/15, pp. 21-29. This record is hardly brief or sparse in detail. This Court finds the record adequate for review because the findings of fact and conclusions of law are clearly articulated,

and the basis for the County Court's judgment is apparent.

B. Improper Evidence

Appellant claims that the trial court erred by considering "empirical studies, data, and training materials not presented at the hearing," the essays written by Ms. Drexler about her relationship with Ms. Brown, "Ms. Drexler's attempts to mediate with and depose Ms. Brown," and Ms. Drexler's 2009 visit to Ms. Brown's residence causing an altercation between the two women. Opening Br. p. 16. Appellant is incorrect. The County Court articulated the proper standard for granting a permanent civil protection order and made sufficient factual findings to meet that standard.

A permanent civil protection order may be issued by the county court against a person for the purpose of preventing assaults and threated bodily harm, domestic abuse, and/or stalking among other harms. C.R.S. § 13-14-104.5(1)(a). A hearing is required for the issuance of a permanent civil protection order. C.R.S. § 13-14-106(1)(a). At the hearing, the judge is to examine the record and the evidence, and may only issue the permanent order upon a finding "by a preponderance of the evidence that the respondent has committed acts constituting grounds for the issuance of a civil protection order and that unless restrained will continue to commit such acts or acts designed to intimidate or retaliate against the protected person" *Id.*

The county court articulated the grounds for the issuance of the permanent protection order as

domestic abuse. R. Tr. 10/27/15, p. 28, L 19-p. 29, L 3. C.R.S. § 13-14-101(2) defines domestic abuse for the purposes of civil protection orders as:

> [A]ny act, attempted act, or threatened act of violence, stalking, harassment, or coercion that is committed by any person against another person to whom the actor is currently or was formerly related, or with whom the actor is living or has lived in the same domicile, or with whom the actor is involved or has been involved in an intimate relationship. A sexual relationship may be an indicator of an intimate relationship but is never a necessary condition for finding an intimate relationship.

Thus, the county court was merely required to make sufficient factual findings to support that Ms. Drexler committed acts constituting domestic abuse under this statutory definition and would continue to commit such acts or other acts in intimidation or retaliation.

First, Appellant speculates that the court's findings "seem to be influenced by the court's experience and training in domestic abuse and its knowledge of experts, empirical studies, data, and training manuals." Opening Br. p. 19. While judges acting as finder of fact may not consider additional factual information outside the record, they are not expected to ignore their professional and educational experience in making determinations. *See Kendrick v. Pippin*, 252 P.3d 1052, 1064 (Colo. 2011) *abrogated on other grounds by Bedor v. Johnson*, 292 P.3d 924 (Colo. 2013); *see also People v. Holt*, 266 P.3d 442, 444-45 (Colo. App. 2011); *Destination Travel*,

Inc. v. McElhanon, 799 P.2d 454, 456 (Colo. App. 1990). Here, the judge made statements regarding her training, education, and experience informing her determination that Ms. Drexler's "history falls in line with somebody who is a domestic abuser." R Tr. 10/27/16, p. 29, ll. 4-14. These statements were made following the specific findings of fact that supported her conclusion and ultimate determination to grant the protection order. This was essentially extraneous information that was not required as a finding under the statutory guideline and was not in error.

Second, Appellant appears to argue that any consideration of Ms. Drexler's essays written about her relationship with Ms. Brown or consideration of attempts to mediate with or depose Ms. Brown was improper as an infringement on constitutionally protected speech Opening Br. pp. 23-24. Generally, activities normally protected by the constitution will not be protected when used for the purpose of harassment. *See*, *e.g.*, *People v. Richardson*, 181 P.3d 340, 345 (Colo. App. 2007) (finding no constitutional protection for lawsuits filed to harass and cause serious emotional distress).

Appellee correctly notes that the County Court declined to consider the essays as an act that was grounds for a protection order, expressly stating:

> I mean all those things I was reading through and I thought this is mean. This is to upset her life. And you can do that. And if she were in here trying to get a protection order for that I'd be telling her no, you can't have a protection order for that. You need to move on and get over it.

R. Tr. 10/27/16, p. 27, L 24-p. 28, L 4. Rather, the court considered the essays as evidence of Drexler's ongoing obsession and fixation on Ms. Brown—the essays were written approximately four years after the end of the relationship—and thus relevant to the likelihood of future harassing conduct absent a protection order. *See* R. Tr. 10/27/16, pp. 15, 19, 27. Additionally, the court considered the attempts to mediate with and depose Ms. Brown as similar evidence of obsession and fixation, attempts to harass Ms. Brown and have her in one place for a confrontation. *See* R. Tr. 10/27/16, pp. 18-19, 27-28. Thus, the court properly considered the essays as well as the attempts to mediate with and depose Ms. Brown as evidence of harassment.

Lastly, Appellant claims that the County Court erred in considering an incident that occurred more than six years before the complaint was filed. Opening Br. p. 26. Appellant cites no case law or statute that bars the courts consideration of an incident more than six years prior to the filing of the complaint in issuing a protection order. The cases from other jurisdictions cited by Appellant are not persuasive here because of the lack of evidence of continued behavior between an incident warranting a protection order and the filing of the complaint in each of those cases that is present here. *See Smith v. Jones*, 915 N.E.2d 260, 262 (Mass. App. 2009); *C.M. V. v. Ackley*, 326 P.3d 604, 606 (Or. App. 2014). Here, the court found a history of continued behaviors between the incident at Ms. Brown's house six years prior and the ultimate filing for a protection order that warranted the issuance of a permanent protection order. *See* R Tr. 10/27/16, p. 31. Thus,

there was no error in the courts consideration of this incident.

The County Court did not improperly consider any evidence in reaching its determination that a permanent civil protection order was warranted to protect Ms. Brown from Ms. Drexler.

C. Firearm Ban

Appellant argues next that the County Court erred in issuing an order prohibiting Ms. Drexler from possessing or purchasing firearms. Opening Br. pp. 31-34. This argument hinges on Ms. Drexler and Ms. Brown not being intimate partners under the federal definition of "intimate partner" in 18 U.S.C. § 921(a)(32). A reviewing court examines issues of statutory interpretation de novo. *In re Marriage of Fiffe*, 140 P.3d 160, 161 (Colo. App. 2005).

When interpreting a statute, the statute should be given effect according to its plain language. *Id.* at 161, 162. Under C.R.S. § 13-14-105.5(1), a court shall order that a person may not possess or purchase a firearm or ammunition while a protection order is in effect "[i]f the court subjects a person to a civil protection order pursuant to a provision of this article and the protection order qualifies as an order described in 18 U.S.C. sec. 922(d)(8) or (g)(8)." The order described in 18 U.S.C. § 922(d)(8) is:

> [A] court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of

bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

The order described in 18 U.S.C. § 922(g)(8) is:

[A] court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Appellant argues that to qualify as an order described in 18 U.S.C. § 922(d)(8) or (g)(8) it must be an order protecting an intimate partner or child of an intimate partner under the statute. Opening Br. p. 32-33. Further, this federal statute defines intimate partner as "the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person." 18 U.S.C. § 921(a)(32). Appellant correctly notes that the Findings and Order to Supplement Protection Order and Order to Respondent to Relinquish Firearms and Ammunition states findings according to the language in 18 U.S.C. § 922(d)(8) or (g)(8) that "Respondent represents a credible threat to his/her intimate partner." R. CF, Vol. I, p. 69.

There are no factual findings in the record supporting that Ms. Drexler and Ms. Brown were intimate partners as defined by the applicable federal statute. Colorado's civil protection order statutes do not provide an independent definition of intimate partner, though the definition of domestic abuse covers those who have been involved in an intimate

relationship which does not exclude a nonsexual relationship. *See* C.R.S. § 13-14-101(2). Appellee notes instances in which the Colorado legislature has more broadly adopted federal law directing firearm bans. Answer Br. p. 17. However, in contrast to the statutory provision at issue here, the legislature in those instances provided clear language deviating from a strict federal definition. The legislature could have added such a provision in this instance and it should be presumed that this was intentional. *See State v. Nieto*, 993 P.2d 493, 500-01 (Cob. 2000).

According to the plain language of C.R.S. § 13-14-105.5(1), only those orders which qualify as orders under the federal statute are subject to the mandatory entry of a firearm ban as was done in this case. Under the applicable federal statute, Ms. Drexler and Ms. Brown cannot be determined as intimate partners because they have never cohabited. *See* 18 U.S.C. § 921(a)(32). Thus, the finding described in the court's order that Ms. Drexler was a credible threat to her intimate partner cannot be supported. *See* R CF, Vol. I, p. 69. The order of the County Court prohibiting Ms. Drexler from possessing or purchasing a firearm must be vacated.

V. Conclusion

For the reasons discussed above, the Court AFFIRMS the County Court's issuance of a permanent protection order in favor of Ms. Brown and against Ms. Drexler, and VACATES the order prohibiting Ms. Drexler from possessing or purchasing a firearm.

IT IS SO ORDERED on this Monday, September 19, 2016.

BY THE COURT:

/s/ Karen L. Brody
Denver District Judge

ORDER OF THE DENVER COUNTY COURT, PROTECTION ORDER (OCTOBER 27, 2015)

COUNTY COURT, COUNTY OF DENVER,
STATE OF COLORADO

In the Matter of
REGINA DREXLER,

Petitioner,

v.

RACHEL BROWN,

Respondent.

and

RACHEL BROWN,

Counter-Petitioner,

v.

REGINA DREXLER,

Counter-Respondent.

Case No. 2015 W 1242, DIV. 170
Case No. 2015 W 1193 DIV. 170

Before: The Hon. Theresa SPAHN, County Judge.

[October 27, 2015 Transcript, p. 3]

THE COURT: Okay, we're on the record.

The court is going—is on the record now—just trying to get a little bit organized in two cases, and that would be 15-W-1242 and also 15-W-1193. They involve two parties, Regina Drexler and Rachel Brown.

The court would ask for appearances for the record.

MS. MARKS-BAKER: Your Honor, Lara Marks-Baker on behalf of Ms. Brown who appears at counsel table.

MR. MATTHEWS: And, Your Honor, Michael Matthews on behalf of Petitioner Regina Drexler.

THE COURT: All right. The court will note for the record it's 12:38. I appreciate everybody showing up in a kind of non-traditional time for the court's findings and order in both cases.

And before I get started, I want to just say to both attorneys that both of you did a very good job representing your clients.

There was a lot of evidence that was introduced in this particular case. It really is more complicated than most cases that we see come through 170. There was a lot of evidence presented. You were both professional with each other, and I very much appreciate that.

The Court—I really have spent a lot of time going through the evidence. As I said, we had numerous exhibits that were introduced. I took very copious and detailed notes of all of the witnesses who testified and spent a lot of time going through

their testimony and checking dates. So I just wanted all the parties to know that.

This is a complicated case. I found both of these cases to be very complicated and the Court is going to enter an order—a finding and an order in each case. I really tried to spend some time organizing my thoughts and my notes so it makes sense to everybody why I made the decisions that I did.

But there's just so much that it might seem a little random at some times. But I think making a clear record is really very important. So bear with me.

Sometimes in this court when I enter orders parties aren't happy with them and tend to be emotional. That's not appropriate in this courtroom. So if you can't control your emotions then I'm asking you to step outside and your respective attorneys can stay—continue to sit through the findings of fact by the Court.

I also appreciate that we were able just to present evidence in both cases. We kind of combined the cases together. A lot of evidence that the Court considered in one case obviously spills over and is evidence obviously the Court considered in the other case. So again, that makes things a little bit more complicated. Usually I'm just entering findings of fact in one case and not two cases. I don't usually enter mutual protection orders given the statute.

So the first case that I'm going to deal with today is 15W1193, and that's *Regina Drexler v. Rachel Brown*. The Court is going to find that

the temporary protection order was entered on 9/16/15 ex parte. Obviously we proceeded to hearing in that case.

Looking back, obviously the statute—first of all, it's a civil case so it's preponderance of evidence, and the statute requires that the Court take into consideration the record. That includes the verified complaint.

When you look back at the verified complaint Ms. Drexler basically asked that this court issue a temporary protection order, and just to highlight, because Ms. Brown was repeatedly following her. She followed her in her car on 9/14. She—let me make sure—she says she's reported prior stalking behavior on multiple occasions, then advises the Court that most recently in connection with a gender based stalking Title IX complaint the University of Denver where she's a student, and that there's a no contact order in effect at this time.

Despite this Ms. Brown was following her at approximately 11:00 a.m. near the intersection of University and Evans on September 14th.

And then goes on to list in support of her petition that the Title IX complaint against Rachel Brown impairs her educational opportunities and relationships, that she— Rachel Brown became involved with my ex-husband, Charles Bruce, in connection with the termination of my marriage and subsequent custody evaluations where she engaged in conduct that adversely affected those determinations, and in retaliation for termination of our intimate relationship disciplinary ac-

tion was taken against her son, and she took action against her son.

So basically that was the evidence initially that the Court considered when issuing the temporary protection order. The Court also obviously considered the testimony of all the witnesses, there were numerous exhibits, and so the Court took all of that into consideration.

At this phase, the Petitioner has to show that the Respondent committed the acts that constituted the grounds for the issuance of the temporary protection order. And under the domestic violence theory the Petitioner has to show that there was an intimate relationship, and I think all parties agree that there was a one time intimate relationship.

And that the act, or attempted act of violence, stalking, or—so domestic abuse is described as any act, attempted act, or threatened act of violence, stalking, harassment, or coercion that is committed by a person against the other.

And then stalking is defined by 18-3-601, and actually that's a legislative declaration. I just made some notes for myself. When you look at that the declaration at the beginning of—18-3-601 is the legislative declaration of stalking, and I often look to that when I'm hearing cases where there are allegations of stalking. I think it's appropriate just to give that legislative intent some consideration today.

Stalking maintains—stalking is a serious problem. A stalker will often maintain a strong, unshakable, irrational, emotional feeling for his victim and

may likewise the victim returns these feelings or affection. The stalker often maintains the belief that despite the trivial or non-existent basis for it and despite rejection—efforts to restrict or—and the victim—the stalker believes the victim will return those feelings of affection if persistent, despite the rejection and lack of reciprocation.

Then 18-3-602 actually is the elements of stalking, and repeatedly makes any form of contact or communicates and would cause a reasonable person to suffer emotional distress and does in fact cause emotional distress.

So that's basically the first part of the permanent protection order hearing. The Court has to be able to find that there was a reason to issue the temporary protection order, that there was domestic violence or stalking, and that there's a B, as well. That unless the Court permanently restrains the party the Respondent will continue such acts to intimidate and to retaliate. So both A and B, that's the way I describe it best, have to have by a preponderance of evidence support before the Court can issue a protection order.

You know, and I do note when I consider domestic abuse and stalking, and I was looking at all of this, the statute still at the temporary phase requires that the Court may issue, if there's a credible threat that imminent danger exists to life and health, so a lot of times I think people think if there's some sort of harassment they can walk out of here with a temporary protection order. It really is tied to coercive control, abuse, intimidation. So there really is a safety issue. I

tried to address that with counsel early on in the beginning of this case.

Stalking goes on in the legislative declaration, the elements itself, to talk about that stalking is dangerous. That it is a severe intrusion. So I'm just kind of making all these comments up front.

First, one of the critical issues that were raised was the whole Title IX issue. I have to say the way that the Petitioner cleverly drafted the temporary protection order really caused the Court some concern when we were proceeding forward. The Petitioner neglected to advise me that they both had pending cases, and the Petitioner neglected to advise me that they both had no contact orders. It was very carefully crafted, as Ms. Drexler does many things, she carefully crafts many things.

After listening to the two witnesses from UCD, and I have to note those two witnesses were independent witnesses, they were neutral, they were not biased. I don't think either one of them wanted to be here and testify. It really kind of helped shed some light on the whole Title IX issue.

One thing I want to note too before I make comments on it that I thought was very important is that one of the witnesses testified—and I'll get to the details of that—that Regina Drexler provided detailed and voluminous information through counsel prior to them reaching their conclusions in the Title IX case, and that Ms. Brown, I think, provided pretty—a very nominal amount of information.

I took—I literally took their quotes and took notes as detailed as I could and there were two witnesses from UCD, and again, I cannot stress how credible I found both witnesses. They—I watched their demeanor, they were uncomfortable, they didn't want to be here. I think like everything else, everybody else, that has had to deal with the two of you, including Stanley British Primary, they probably wish that they weren't dealing with the issues that they've been dealing with.

I found them to be very credible, to be very honest, to be very careful to make sure that they were making proper statements and accurate statements.

One of the witnesses, I think her name was— Nelia Viveiros—she was basically the investigator, the Title IX investigator. Some quotes that she said that the Court took into consideration and found compelling is that Ms. Drexler provided voluminous evidence in her case. Ms. Drexler wanted to engage in mediation. Ms. Brown declined.

Ms. Brown initiated a Title IX at the suggestion of legal. It was either legal or administrative. I don't think she wanted to get involved. She did not—and she went on to say she did not want to file the Title IX—and that's Ms. Brown. She was directed to the process. That was Ms. Brown who was directed to the process.

It was also significant to the Court that Ms. Brown, she said, volunteered to be removed so Ms. Drexler could take the course. That she was the teacher or the professor but she volunteered to let somebody else teach it. She offered that

solution once Ms. Drexler signed up for that class. Ms. Brown endeavored to retreat every time. The other thing that she said that in both cases there was not sufficient cause to move forward in either case, and that both cases were fully investigated.

The other witness was the department Chair, and I think it's Kat Vlahos. Quotes that I pulled from her testimony for today was that clearly Brown was not involved in the admission process, that Ms. Vlahos, who is basically Ms. Brown's boss, had no concerns about Ms. Brown's behavior. She never had any concerns about Ms. Drexler's safety. She also said that Ms. Brown offered to allow someone else to teach the course so that Ms. Drexler could take the course that was an elective and not required and so that she would not have to un-enroll. Ms. Brown offered to withdraw from the zombie contest.

What was significant is that Ms. Vlahos made it very clear that it was common knowledge, it was well known that Ms. Brown teaches the course that Ms. Drexler signed up for and was basically—I'm using my own words—the administrator of the zombie contest.

And the other thing is that the piece that I felt was really significant to me, and really I think undermined the credibility of Ms. Drexler is that in September of 2014 Ms. Vlahos met with Ms. Drexler to make sure she felt comfortable and had a resource in the department and had that relationship, and that's been ongoing since September of 2014.

When I listened to all of that testimony the Court really is making the finding and determination that you were never denied an opportunity for the education and Ms. Brown was not trying to interfere with you going forward at the University of Denver and taking your classes.

In fact, I think the University has bent over backwards to make it so you can take your classes and go forward and get your degree. I think Ms. Brown has also once again—I think the theory of their case is retreat—did not step in the way, was willing to do anything so you could take your class, including not teach anymore. I mean not teach the one time when you would actually be taking the class.

So as far as that, that was set forth in your temporary—I mean your verified complaint. The Court is going to find that there was no evidence to support that.

The Court's also going to find that you—when you draft the complaint you say Ms. Brown repeatedly followed me, and that caused the Court concern. That is very intimidating, that is very dangerous. The Court was really concerned when the Court initially issued the temporary protection order.

There was no evidence to support that Ms. Brown is following Ms. Drexler. Like I said, there's so much overlap here it's hard for me, but the Court is going to find that first of all, I found Ms. Brown very credible. It is clear to me that she does not want any contact with Ms. Drexler. Ms. Drexler's own evidence and her own actions, and

the emails, and everything that I read confirm over and over and over again that Ms. Brown does not want any contact with Ms. Drexler. I'll go into that in a little bit more detail in a few minutes.

I also found—I think it's even reasonable to think after Ms. Brown has made it abundantly clear that Ms. Brown in any way would want any contact, go by her house, would try to follow her, I mean after listening to days of testimony, I do not understand how Ms. Drexler reaches that conclusion.

I'm also going to find that on September 13th, 2015 when Ms. Drexler puts in the complaint that she was followed by Ms. Brown, her husband, I think it's Tom Weaver, was very credible, it was a completely inadvertent contact. It was clear that she was playing tennis that day. I found him to be very credible.

I found it to be credible that the other few incidents that Ms. Drexler listed he was working in the same neighborhood in Park Hill. I just think that even though you now live on 6th Avenue and you live in Park Hill, and your husband lives in Park Hill, there's been I'm sure times when you've all passed by each other's house, and I just didn't find there was any evidence to support that Ms. Brown was repeatedly following the Petitioner in this first case that I'm dealing with.

As far as her trying to interject herself into the custody evaluation, when I saw the email to Ms. Drexler's ex-husband I found it was very clear

that they did not want any involvement in your parental responsibility case. They did not want to stir up anything that would cause you to be back in their life, to retaliate. I thought that was abundantly clear from the email that I read.

Certainly after you had, I think two PREs, you can look at all of the notes, who they talked to, who they didn't talk to, and there was just no evidence to support that in your petition either.

A lot of your testimony and your theory and your evidence was that Ms. Brown was retaliating because of the termination of your relationship. All of the evidence supports that she's the one that terminated the relationship and wanted no contact with you. If anybody between the two of you had a hard time accepting the termination of the relationship it was you, Ms. Drexler.

You went on to write two non-fiction stories. I read both of them. I found them to be very mean spirited. They were very well—I mean they were great pieces. They were interesting. They were great short stories, but they were mean. You disclose all the confidence and secrets that you both had as friends and you did it publicly. I found that those were very telling. Very telling about what's going on with you emotionally between the two of you, and who is really suffering at the loss.

The short stories, once again, you set forth in there that you wrote that she terminated the relationship. She terminated the relationship. And I have to say in Landslide you never—you literally say something like she never spoke to

me again, or my sons. She would avoid me. There were things never said. Think about all of those words. Those fly in the face of you putting in a verified complaint that she's stalking you.

What I found—I couldn't believe is that not only did you publish these—I mean that's fine, you can publish them. You can write non-fiction short stories is the best way I can describe it. She has to get over it. She has to move on with her life. I mean there's nothing that you can do about it.

But I found it—although you have a good explanation for everything, I found it rather curious that it was published at her undergrad —where she went to undergrad, but I'm going to skip past that because you had a good excuse for that.

But the one thing that was very telling is that you took one of those—I can't remember which one, I think it was the second that you wrote about the mannequins—and you read that at the school, at Stanley British Primary where your children both went to school in front of other parents.

First of all, that was once again, I think supports that you have an obsession with her. It was very mean spirited, and when you keep saying that she went to school and she was basically saying negative things about you, saying bad things about you, you are the person that went to school and highlighted your relationship in front of parents and your children. How do you think your children felt about that?

I mean even if you only read parts of it, everybody knew, right? That—when I heard that, I have to

say that is not consistent with people who are victims of domestic abuse or victims of stalking. They are terrified. They do not want to do anything to try to get the person who is stalking them or abusing them to retaliate. That said so much to me. That was so telling.

What also was very telling, just as I read through your notes that you wrote to her attorney Foster once he told you to cease and desist, and also I think something that was very telling in your 2008 emails—or maybe they were text messages that you kept every single one of. You say things like you acknowledging she's pulling away, you're distancing yourself. It's shocking, it's hurtful. I'm not sure I can get past it.

I think that's what really is going on here. I think that's really the dynamic. And your own evidence overwhelmingly supports that. Her response in that email is very clear. Nicely and politely she tells you to stop, it's over.

The other evidence I thought that was very compelling to the Court is that when you look at it in this dynamic, who is retreating and who is initiating contact at every turn? You attend the school where she teaches. I know it's the only school that teaches or offers a degree in Architecture. Whatever, I'm sure that's what you want to do. But I found that very curious.

You want access to her through mediation because you're smart enough to know that you've received a cease and desist letter now but you still want access to her in very dysfunctional ways. When they send a letter like look, just move on, at this

point now she's not just saying it in emails and text messages, she's saying it to a lawyer.

You want to mediate the Stanley British Primary issue instead of just moving on, you want to mediate after Foster, her lawyer, sends you a letter. You want to mediate—that came out through the two credible witnesses from UCD that you wanted to mediate the Title IX case. You want to depose her when you're suing the soccer coach. I mean all of those are where you're trying to get—to have some sort of contact with her in a very I think dysfunctional way.

I also think this. All that went on at Stanley British Primary—I can't even imagine being the administration dealing with the two of you. I'm sorry, I'm just trying to be realistic. They've got kids—they're trying to do a good job and teach kids at that school, all of that dysfunctional flurry of activity I think that was some way for you to maintain contact with her.

You wrote a letter—all of your behavior is not consistent with somebody who is running away trying to be safe, trying to make sure that they don't have any contact. You wrote a letter to Tom, I think it was 10/22/09.

You went to their house. I read it in your story. You admitted it on the stand. You went to their house. You admitted trying to come in the front door. You signed up for her class. I believe you knew that she was likely to be the professor. You signed up and wanted to participate in the zombie extracurricular activity that you knew she would be overseeing. You sent a five page

letter to Foster that I read through. You went to her gym class that wasn't even in your neighborhood.

I mean all of that through the years is not consistent with behavior that is somebody who really is a victim of domestic abuse or a victim of stalking. Not to mention it is hard for you to move on. You I think are really grieving the loss of this relationship and I think it's about four years later, that's when you start writing the stories.

Once again, writing them, publishing them, reading at a place where you both have your children going to school, all of that is not consistent with somebody who is a victim of domestic abuse, and our statutes are meant to protect.

I wonder about the filing of this case. After I heard days and days of evidence I really feel like you used this court and this process to once again have some sort of dysfunctional access to Ms. Brown and stir up that flurry of activity so you could be around her in a very dysfunctional way.

After I went through all of your evidence, I went through everybody's testimony, I looked at all the documents, everything is contrary to the position that you take. I mean at some point you kind of had a couple of different themes running on in your case but one of them obviously was that she's stalking you, she's retaliating because you broke up the relationship, and then in another inconsistent way your theory of the case is she told everybody I'm a dangerous lesbian, obsessive

stalker—I don't know how many times people said that—and I've been excluded from my social circles.

That was a long—let's say it happened. That was a long time ago. It's time for you to move on. Even if that did happen, which I actually don't even think there's enough evidence to support that. We had the one lady who was your friend say that—something like I wouldn't hang out if I were you with her, or I have a restraining order.

People come in here every single day and ask that this court issue temporary protection orders because somebody is being mean to them, or they're saying bad things about them, or it's on Facebook, or they're disparaging them at work, or school. That is not what protection orders and this court are about. Especially somebody who is smart and sophisticated and intelligent like you. Make new friends. Get different play circles. Volunteer.

I could—I was dumbfounded by that whole—that you were excluded from your social circles. And there was no evidence to support that that is going on at CU where you decided to go. Which is fine, you can do that.

I think there was one other email where you try to show that Ms. Brown—one email out of—if the kids were in soccer practice God only knows how many hundreds of emails went out—where she took you off because she wanted to get a shout out to the families and the other kids. And it made sense that she took you off. She doesn't want to have any contact with you. So what? She can do that. I didn't really understand how

that helped your case. And then her husband hit reply all. So it was one email where she took you off.

The Court is going to find that the evidence supports that Ms. Brown is really the person who is retreating. And October 23, 2009, her and her husband make it clear they don't want to talk to you. She doesn't want mediation. She said that over and over again.

She relocated and moved and sold her house. She took her son out of the school. She sent you a cease and desist letter in 2009. She volunteered to not teach a class and not be involved in the zombie extracurricular activity. I'm just hitting the highlights. I'm not even hitting everything.

I found Ms. Brown to be very credible. I watched her, I watched her demeanor. I felt like—I have to say there was one moment when she said—when she learned that you signed up and were taking classes—I can't remember, it had something to do with attending the university. She pulled over her car and cried. I have to say if I were her I would have pulled over my car and cried too. Because now you're going into—you've managed to get into her work place. And there's nothing any of us can do about that. And you will not let go. I would have pulled over and cried too.

Your behavior is not consistent with somebody who has suffered domestic abuse or stalking. As far as your expert, that's your therapist who was qualified as an expert in distortion campaign,

which is not a part of DSM. I think we're in V. It's been a while since I thought about it.

I found that witness to be very caring. I think she cares very much about you. She's your therapist. She is biased, as she should be. She wants you to be the best that you can be. She's there to support you. But as far as her testimony, I found her to be absolutely not credible. I have never heard of anything like distortion campaign. Basically that means somebody is being mean to you. You're grown adults. Like somebody is saying bad things to you at Stanley British Primary I think is what it is. And you needed all your therapy for that? I mean I tell people every day move on. Volunteer.

I found her not credible for many reasons. One, she's biased in your favor, which is fine. I understand that. She should be. She's your therapist. I found her extremely biased. I listened to her testimony, the distortion campaign and Hitler and everything else was— even if Ms. Brown—I mean I don't know what all was said at Stanley British Primary but that's what—she can say those things about you. You can say whatever you want about her. You do it. Not only do you do it, but you publish it.

They were years ago and you're still dealing with it? There's not even any sort of syndrome or any evidence to support that distortion campaign.

She said you were passive. And there's no evidence—I think all the evidence supports quite the contrary. I think if anything, I hate to say this but I think you're very passive/aggressive.

All of the evidence—I think she really believed and was coming from a place—because all of her information—and she admitted this—really comes from you, as it should. But the independent evidence that the Court heard over several days did not support distortion campaign.

I did not find her credible whatsoever. She did not influence this court, was not helpful to this court in absolutely any way. She did not assist the trier of fact. If anything—well—

The Court is going to find that there really was no evidence to support your positions. There was no reason for this Court to issue a temporary protection order. And certainly there is no reason to make a protection order permanent. Ms. Brown is not trying to intimidate you, follow you. There is absolutely no reason for the Court to have a protection order against Ms. Brown. So the Court is going to deny your request at this point that a protection order enter on a permanent basis.

Now I'm going to deal with the other case. The Court is now going to enter its findings on 15W1242. Again, a lot of the evidence overlaps. I have to say this was really a very difficult—this was very difficult for me in the case where Ms. Brown is the Petitioner. It's a much more complicated issue to understand.

I've already mentioned that I found Ms. Brown to be credible. I know she didn't put in her petition that she had a relationship with you. She's probably not too proud of that. That's not unusual for people to come in and not admit that up front. I actually suspected it before we even got

started in the morning. But in opening statements that was addressed right away. Other than that though I found her very credible.

I think she's traumatized by the years of you not stopping your calculating behavior. And the evidence corroborates her testimony. It really does. She retreats. If you think about like who's credible here. She pulls her son out of school in 2010, she sells her house quietly. She doesn't even list it.

All of the emails are abundantly—I mean the communications between you are very clear and very telling. You are suffering the loss of your relationship and she is ready to move on. She has to retain counsel. They give you a cease and desist letter. That doesn't stop. You still want to mediate. Again, the sea of witnesses corroborated her testimony. They corroborated her testimony and I found them to be very credible. I've made those findings in the case with Ms. Drexler.

I really feel like the real victim here is Ms. Brown, and I think that obviously you both agree you had one intimate relationship. It's clear that in an email exchange that she's moving on. It's Exhibit A and it says, December 16, 2008, "Rachel, I'm not particularly worried anymore that you're pulling away, and although it disturbs me greatly, I wish it was different, you're distancing yourself in the face of that has been so shocking and hurtful to me." I really think that's what this case is about.

She again says, "I got your text this morning. I'm not particularly interested in talking about

our friendship anymore." And so I keep making references to that. I wanted to make sure it's an email exchange. She's moving on. That's in 2008. So it's seven years now.

2009 now, it's uncontroverted, I mean everybody agrees here that you went to her home, that you wanted access to her, that you tried to get in. And I think it must have been not just like hey, can we talk. I think there must have been voices raised, it must have been a very scary experience for Ms. Brown based on kind of hearing everybody and reading what you wrote about it. I think it was a significant event and very much scared her. And very much inappropriate on your part, Ms. Drexler.

The Court is going to—I've already made findings that it went on and on and on at Stanley British Primary, they had to deal with both of you over numerous issues. That was clear to me. It was hard for me to really get a full picture of what was going on there but at that time it's clear that Ms. Brown doesn't want to mediate. She just wants to move on and still Ms. Drexler wants to mediate.

2009 Ms. Brown has to send a cease and desist letter because you just can't separate yourself and you can't just move on. You read a long rambling letter back that I read through. Again, you want mediation. You want access to her. You go to her workout facility that's not even in your neighborhood. You know she works out there. You know she's in this class. I think so you can cross paths with her.

In the spring of 2010 she removes her son from Stanley British Primary. She's the victim. She's trying to get away from you. In 2012 she sells her house and relocates to a different neighborhood. That's completely consistent with somebody who is a victim of domestic abuse and/or stalking.

In 2012 you write short stories about her. I mean I read some of the—I don't even want to repeat some of the things in there that I thought were so mean. You're just telling all of your confidences as friends and you're making them public, which destroys her, which certainly is a burden on her marriage, like she wanted her old boyfriend.

I mean all those things I was reading through and I thought this is mean. This is to upset her life. And you can do that. And if she were in here trying to get a protection order for that I'd be telling her no, you can't have a protection order for that. You need to move on and get over it. You read them at school, in a place where she had to be around other parents.

You wanted to depose her in a civil lawsuit. You decided to pursue a degree where she teaches, which is fine. I'm sure there's good reason for that. You sign up for an elective that she's teaching, and you knew it. All of that is behavior that is very concerning to the Court and supports that she is the victim here.

I think the evidence supports that you have a very unhealthy obsession and fixation on Ms. Brown. You are very calculating, you are very smart. You are very careful how you go about

things. You're smart enough not to make any direct contact, but you do whatever you can to have access to her.

Domestic abuse sometimes is very complicated and that's why I think this case was so difficult, because you have an excuse and a reason for everything, but when you look at the pattern of behavior it is very concerning to this court. You're doing it—I think a good part of it, when you look at the pattern of behavior—to manipulate and to intimidate. It rises to domestic abuse. You're doing whatever you can to control her, to make her life uncomfortable, to make her feel stress, to intimidate her.

Obviously I think through my different careers I've had a lot of access to domestic abuse training and there are people out there that do empirical studies and data and people like Lundy Bancroft have had a lot of training. The empirical data supports that batterers usually perceive their behaviors as justified. There's whole training sections on their sense of entitlement, they shift blame. There's a self-centeredness, they perceive their needs to be paramount and more important than anybody else's. I find that all of your history falls in line with somebody who is a domestic abuser.

I'm finding that the evidence supports that there was a reason to issue the temporary protection order in this case, that Ms. Brown is a victim of domestic abuse. There was an intimate relationship. You have committed an act or attempted an act of—I think violence going to her house

that one time—stalking like behavior, harassment.

I'm going to find that it is clear to me that she has been traumatized and suffering and stressed for years, as has her family. I would find that you repeatedly have tried to make some form of contact, whether—although it's very dysfunctional, very calculating, and that any reasonable person would suffer emotional distress, and she has suffered emotional distress. I felt like some of the things that you did I thought I would—I mean any reasonable person would feel emotional distress.

So I'm going to find—and I'm just hitting the highlights of the evidence—that there was enough evidence to support the issuing of this protection order. And then what she has to show by a preponderance of evidence—and that just means more likely than not—this is not a criminal case—that unless restrained your behavior will continue or you will continue to commit such acts to intimidate and retaliate.

I wanted to add one thing that I mentioned in your case. Well, when I'm dealing with this I think that this has been—your attempt to make contact with her or get access to her has been going on for years. I mean it's been—I'm trying to think, has it been seven years? Seven years since you had a one time intimate relationship. So what? She doesn't like you anymore. She says bad things at the school about you. I mean you do not let go.

You write—like I said, I've talked about all the evidence. All the things that you do to maintain contact with her and to keep intimidating her I found quite surprising. And again, I feel like the filing of this temporary protection order was yet another way for you to intimidate her and to retaliate against her.

You have—your behavior has been I think obsessive. I also think that for some reason I think you make yourself believe that you're justified and you make yourself believe that you're the victim, which actually is very concerning to the Court.

It is all of those reasons I think you can't control your behavior. Given the years of continued contact that you've made, and I think that counsel for Ms. Brown stated it best, if you look at any one thing isolated it makes sense. When you look at the pattern it's very concerning to the Court. That is often what happens with people who are manipulative, which is a characteristic of somebody who is a domestic abuser.

So when you look at the years like you can't move on. And the presentation of your case, I think you really believe that you're justified. I think you really think you're the victim. That's very concerning to the Court. And I am concerned for her safety and for this never ending.

I think the Court is going to find that by a preponderance of the evidence the history here supports that unless I make the protection order permanent today you will continue to intimidate

and retaliate, especially at this phase. So I am going to enter a permanent protection order.

Now with that being said we have to think about some parameters. I can't stop her from going to CU. She has a right to go and get an education. CU has dealt with all of that. I'm not dealing with that again.

I also gave a lot of thought to how do I—if I enter this order is it really meaningful because she can still go to your place of employment, she really hasn't gone by your house. And so I was really on the fence at some point to really think should I—how do we manage this, should I enter this protection order, will her behavior stop. I mean I was on the fence.

After giving thought to it I really felt like the evidence supported that she's not going to stop. So I felt like I had to issue it but how we craft it and how we manage it I think is something we may not ever be able to manage to be honest with you. I can enter it but there's no evidence to support she's going to come by your house and she's got a right to go to school.

So I'm thinking about that she obviously has to stay at least ten feet away from you at any function for the University. She obviously can't come within 100 feet of your house.

You both naturally are still going to have overlap as far as neighborhoods and passing. It's just going to happen. I don't know how to manage that. So I welcome input from either attorney.

MS. MARKS-BAKER: Your Honor, I think in sort of my brief discussions related to this issue with Katie Goodwin, who is counsel for the University of Colorado, they will abide by the Court's order in any fashion that the Court issues it. I think the Court's recommendations are reasonable.

I think there is probably safety planning the University can do to be compliant with the Court's order that doesn't need to involve the Court involving itself in the logistics, scheduling classes and the like. I think we can defer that to the University and feel comfortable with that.

So I think that these parameters make sense, and then I think there would be a comfort level allowing the University to determine on its own what additional parameters based on the Court's ruling are appropriate.

Otherwise I think the Court gets mired in sort of trying to figure out who is taking what class, and when, and how, and I just don't think that's the right way to endeavor that process.

I can make this suggestion to the Court. I just looked around, Counsel for the University isn't here. I'm certainly happy to go back to Counsel and ask whether there are particular issues the University would have to deal with and submit that in motion work.

THE COURT: I think we can probably craft something today so we don't have to keep coming back and incurring additional attorney fees. So let me hear from Counsel.

The other thing is that I don't enter these orders lightly. I do this all day long. At one point when Petitioner Drexler was putting on her case I had some concerns because I had not yet seen evidence to support the issuing of the temporary protection order.

Sometimes I do interject myself hoping that parties can reach some sort of a resolution. Parties often do in this case where they're able to walk away and discuss how can we both walk out of here without a permanent protection order. People reach agreements all the time, they agree, they don't.

But after I raised that issue I felt like okay, I just need to hear more evidence. That's why I allowed the expert to come in. I really wanted to listen to all of the evidence before the Court made up its mind, but it just never changed. I just have to say that because I know there was that one point when I brought it up.

The Court is going to issue the temporary protection order. Counsel, any recommendations you'd like to make to the Court?

MR. MATTHEWS: Your Honor, only that with regard to the distance requirement—and as I understand it that relates to the UCD property only. My concern is simply that Ms. Drexler does business on Larimer Street.

THE COURT: That's why I'm thinking ten feet away. We have people all the time who live in the same apartment complexes, they go to Metro together. We deal with this actually all the time and it's not that complicated. If they come in contact she

has to stay ten feet away from her, period. That's not hard to do in a hallway.

MR. MATTHEWS: My understanding is—

THE COURT: As far as classes and things like that, I'm going to defer I think to the CU administration.

MR. MATTHEWS: Then I just want to confirm that that is not beyond the—is the ten feet requirement beyond the parameters of UCD?

THE COURT: Yes.

MR. MATTHEWS: Yes.

THE COURT: So in other words, anywhere she may be found. And within 100 yards of her home. I mean ten feet. If they're crossing—all she has to do if they run into each other inadvertently is make sure she stays ten feet away from her.

(Brief pause)

MS. MARKS-BAKER: Your Honor, if I may. Ms. Brown reminds me they do have a secondary home in the mountains and I don't know whether we included that in our petition but if we need to give the specific address of that property we can.

THE COURT: We'll add that.

All right, then we have the issue of the motion to quash the subpoena.

Counsel, I have to say if you want to come up here, you can make any record you want. Obviously, I appreciate that you filed the motion, and I know you amended your motion. I'm going to give you what I think, and you can make any record you want.

People file motions to quash subpoenas all the time. They're pretty simple. They get filed. I rule on them. People have to subpoena witnesses even though they—you know years have past, time has past, but because obviously hearsay can't come in and a lot of times even when I was in private practice when I would subpoena everybody, because I needed it to prove my case.

I am not inclined to grant your request for attorney fees. It is a form that you can download off the State Court Administrators Office.

And often we have pro se clients and I tell them file a motion to quash. They just subpoenaed the mail, and I usually grant it. Okay? I'm not going to grant your request for attorney fees.

UNIDENTIFIED ATTORNEY: Okay.

THE COURT: All right. Is there anything further? Yes?

UNIDENTIFIED ATTORNEY: Can I just say for the record that the attorney fees were never requested.

THE COURT: Oh, I must have misunderstood it, sorry.

UNIDENTIFIED ATTORNEY: That was Mr. Matthews' suggestion. Attorney fees have never been requested in any of the documents.

THE COURT: Okay, I apologize, I'm sorry.

UNIDENTIFIED ATTORNEY: Okay. The—and actually they were specifically said that's the motivation here. The motivation is that an unreasonable subpoena was issued that has nothing to do with this case.

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: And that's—and so I would ask if you can read the motion again and see the—

THE COURT: I'm not going to make those findings. That's a whole evidentiary issue. I'm not going to make those findings.

You did a motion to quash. I quashed the subpoena. Right, am I remember it correctly?

UNIDENTIFIED ATTORNEY: No, he—Mr. Matthews withdrew the subpoena in order to moot—

THE COURT: Oh.

UNIDENTIFIED ATTORNEY: —the initial issuance of the subpoena.

THE COURT: Got you.

UNIDENTIFIED ATTORNEY: And what we are arguing is that the initial issuance of the subpoena violated Kathleen Keeland's Fourth Amendment rights,—

THE COURT: Right.

UNIDENTIFIED ATTORNEY: —because she had nothing to do with a civil protection order hearing. It's compelling someone out of their home—

THE COURT: I understand all of that.

UNIDENTIFIED ATTORNEY: Okay.

THE COURT: I'm going to deny those—your request to make those findings. I mean I think obviously at some point she provided some sort of the bullying parameters or something for the school. And so remotely she—if her evidence could have been relevant, so I'm going to deny your request.

All right, the court is going to be in recess.

(Trial adjourned 1:33 p.m.)

FINDINGS AND ORDER TO SUPPLEMENT PROTECTION ORDER AND ORDER TO RESPONDENT TO RELINQUISH FIREARMS AND AMMUNITION (OCTOBER 27, 2015)

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO

RACHEL BROWN,

Petitioner,

v.

REGINA DREXLER,

Respondent

Cases 15W1242
Courtroom 170

Before: Chelsea MALONE,
Denver County Court Judge.

THE COURT, having conducted a hearing with actual notice to Respondent, and at which Respondent had an opportunity to participate, hereby finds/orders as follows:

1. Respondent represents a credible threat to his/her intimate partner, the Petitioner, (and)(or) child of such intimate partner or Respondent, AND Respondent is prohibited from the use, attempted use, or threat-

ened use of physical force against such intimate partner (and)(or) child that would reasonably be expected to cause bodily injury.

2. Respondent shall restrain from harassing, stalking, or threatening his/her intimate partner, (and)(or) child of such intimate partner or Respondent.

3. Respondent shall restrain from engaging in other conduct that would place his/her intimate partner in reasonable fear of bodily injury to the partner (and)(or) child of such intimate partner or Respondent.

THUS, Respondent is subject to a Protection Order that qualifies as an order described in 18 U.S.C. sec. 922 (d)(8) and (g)(8), and therefore, Respondent:

1. Shall refrain from possessing or purchasing any firearm or ammunition for the duration of the order, and

2. Shall relinquish, for the duration of this order, any firearm or ammunition in Respondent's immediate possession or cont$_r$ol, or subject to Respondent's immediate possession or control, within:

- 24 hours (if served in open court) for firearms and ammunition

3. If Respondent is in custody, he/she must comply within 24 hours of release from custody.

4. Respondent shall file proof of relinquishment with the court, within 3 business days of the relinquishment as required by law/statute.

/s/ Chelsea Malone
Judge

Date: 10.27.15

By signing, I acknowledge receipt of this order.

/s/ Regina Drexler
Respondent

Date: 10.27.15

I certify that this is a true and correct copy of the original order and that Respondent was served with such a copy.

/s/ not legible
Clerk/Sheriff

Date: 10.27.15

AFFIDAVIT OF COMPLIANCE WITH FIREARM AND AMMUNITION RELINQUISHMENT ORDER (OCTOBER 27, 2015)

COUNTY COURT, CITY AND COUNTY OF DENVER, COLORADO

RACHEL BROWN,

Petitioner,

v.

REGINA DREXLER,

Respondent

Cases 15W1242
Courtroom 170

I, Regina Drexler, hereby submit this Affidavit to the Court

- I do not own or have control over a firearm or ammunition.

VERIFICATION AND ACKNOWLEDGMENT

I, Regina Drexler (name) swear/affirm of perjury, that I have read the\foregoing AFFIDAVIT and that the statements set true and correct-to the best of my knowledge.

/s/ Regina Drexler

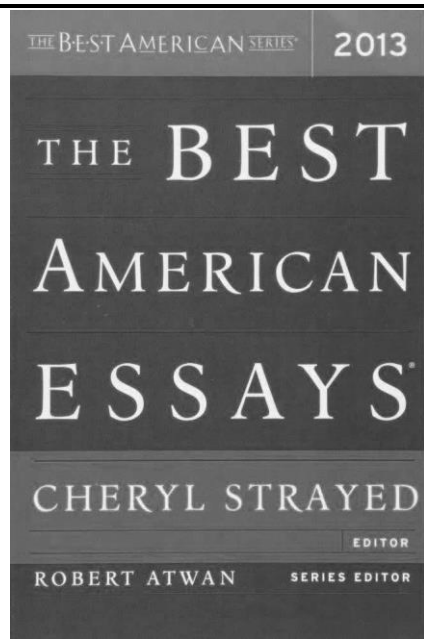
Respondent/Defendant

State of Colorado
County of Denver

Subscribed, sworn to and acknowledged to me by Regina Drexler, this 27th day of Oct, 2015.

/s/
Notary Public Deputy Clerk

NOTABLE ESSAY AWARDS, BEST AMERICAN ESSAYS AND ESSAYS OF PETITIONER



NOTABLE ESSAYS OF 2013

REGINA DREXLER,

LANDSLIDE, COLORADO REVIEW, SPRING 2012

Of all natural disasters, landslides are more devastating than most people realize. Worse, they are often triggered by other natural disasters, such as earthquakes and volcanic eruptions. Scientists refer to this as the multi-hazard effect. In one of the deadliest landslides of the last century, in the Ancash region of Peru in 1970, the multi-hazard effect was responsible for the burial and death of over fifty thousand people. Of course, in most circumstances,

death comes before burial. Where there are multiple hazards occurring nearly simultaneously, however, it is likely that even if you survive the first disaster, there is another on its way to bury you alive.

Ten years ago, as I was in my new-motherhood panic with an infant baby boy, I met her. I was taking my son out for a walk in the neighborhood with his baby jogger, doing one of my early impressions of an enthusiastic young mother. I was walking past as she called out, "How old is your baby?" It was the pickup line for the stay-at-home-mommy set, women desperate for any kind of adult interaction. "He's four months," I said as I approached. She was holding her son in her arms, standing on her perfectly manicured lawn. He was dressed as a professional golfer.

As she explained that her son was six months old, I noticed that she had not allowed herself the personal-hygiene hiatus that most new mothers, including me, had granted themselves. My hair was falling in clumps from my limp ponytail, and I had stains of breast milk and rice cereal drying on my T-shirt. Her shoulder-length light brown hair was neatly combed beneath her wide-brim sun hat, and she appeared to have just come from the dressing room at Anthropologie.

After introducing our sons, we stood there, watching them and waiting, as if they were going to exchange pleasantries. Then and suddenly, she invited me and my son to join a play-group. I accepted the invitation, although I did not seem to have a lot in common with her, or anyone else who had a baby. I was a lawyer. She gardened. Not that those things were mutually exclusive, but I know that only now. At the time, I thought we were quite different; the only way it seemed we were alike was that we enjoyed

the same movies—I had seen her before at the video store and we had spoken there a few times.

But we were not fast friends. Even after meeting in the same playgroup once a week for several years, we were not friends. At first, if I am honest, for those first several years, she was not interesting to me. She was boring, in fact. Boring in the "My life is perfect, and my son is perfect, and my marriage is perfect, and my house is perfect, and my garden is perfect" way. Boring in the way that only perfect can be, and not worth investing any emotional energy, until one summer—the playgroup's fifth summer.

Her heart had been broken that summer by her lover, an old high school boyfriend who, she had desperately hoped, would help her escape. I could understand what she was hoping to escape from: the idea that this is all there was. This life of wifedom, motherhood, laundry, sex on Saturday mornings (if then), and playing trains on the floor for hours on end. That this was all there was or would be—where time moved so fast that it made us old overnight, but where each day, hour by hour, moved so mind-numbingly slowly.

But he would not help her escape. She somehow managed to keep her heartbreak about this fact contained, and thus her marriage intact. But she had to tell someone, if only because a broken heart is too much for anyone to bear alone.

We had run into each other unexpectedly one late afternoon in the parking lot of the neighborhood grocery. As soon as she saw me, she broke into writhing sobs, the tears from her eyes and the fluid from her nose running together, down her chin and onto her blouse.

She could not help herself from repeating, "Why doesn't he love me?" I was shocked and discomforted by her grief and that she would allow me to see it. I said, "Of course he does," thinking that she meant her husband, who seemed too afraid of her not to.

Unfairly frustrated, as if I were somehow to blame for not being up to speed, she bawled, "Not him." As she continued crying, I felt a pull to embrace and comfort her, but I did not do so, fearing that she would judge such an act too intimate, not yet within the repertoire of our relationship. So instead, I tried to soothe her from a distance, "Everything will be okay. Don't cry." But she was disconsolate, and I could see for the first time that neither she nor her life was as perfect as she'd wanted everyone to believe. And as things went, her imperfections made her human, and interesting, at least to me. Because I did not have a perfect life either.

Although I did not want it to be true, I was not happily married. I had known this since a few hours after my wedding many years before. My new husband and I were in the presidential suite of a lower downtown hotel after coming from our wedding reception. He had helped himself to both of the chocolate squares that had been carefully laid on the bed next to the towels twisted into swans, their tails forming the shape of a heart appropriate for most wedding nights. He said, "Well, I just made the worst mistake of my life." Confused, I said, although it was not true, "I wasn't going to eat mine anyway." But he clarified: "No, I mean marrying you." I was still in my wedding dress.

And, just like you've heard on daytime talk shows, it got worse. His violent, episodic rages began on our

honeymoon. They were terrifying and unpredictable. They were not rational. One night I was taking out my contact lenses, the disposable ones that I had always thrown in the trash, and my husband said, "Hey, you're going to clog my sink with those." Caught off guard by what I had confused as a joke (the sink?), I laughed. Although it would have been an equally big mistake not to laugh had it actually been a joke, it was not.

He erupted, storming toward me and shaking the floor under my feet. He screamed within inches of my face. And I froze—which means, simply, that I mentally shut down and physically became paralyzed, losing all feeling in my arms and legs—becoming so light-headed that I felt like a yellow balloon, slowly floating away from myself, at risk of popping at any moment. Within moments his voice had gone hoarse and my cheeks were covered with his saliva.

It is not uncommon for people to remain in disaster-prone areas even when it is ill advised. The reasons people stay vary, but often have to do with underestimating the level of risk, the inability—financial or otherwise—to do anything different, and family ties to the area that make it difficult to leave. I stayed in my marriage for many of the same reasons. The risk of disaster was always present, but the eruptions and upheavals were not predictable enough for me to appreciate the danger inherent in staying.

In any event, after my son was born, it seemed there was no way to extricate myself. I was not in an economic position to walk away, even if I thought my husband would let me. Even more, I was not in an emotional position to accept that I would likely be forced to abandon my infant son in the danger zone,

at least on Wednesdays and alternating weekends. Of course, in retrospect, it doesn't make sense to stay in a marriage like that. All I can say, for the defense, is that it is so hard to believe it is happening that it becomes easier to pretend it is not.

At its inception, playgroup had just five kids—three boys and two girls. But none of us stopped at one baby, so by the end of all of our childbearing years, there was a total of eleven kids: three girls and eight boys. Two of those boys were mine, and two of those boys were hers. When people think of a playgroup, they likely think of a horde of kids playing together, and that's what it was. But that's not all it was, at least not to me. Over those years, it became my single emotional escape, a lifeline saving me from the disaster of my marriage and the aftershocks of sadness and grief that I was sure would overcome and crush me amid the wreckage.

I don't think that it is altogether uncommon. Finding happiness outside of marriage. You're lucky to find it at all, really.

At least one afternoon a week, we gathered in one of our kitchens and dispatched the kids to the basement—or if it was nice, outside—to play. Then the wine was opened, and playgroup started. On one of those afternoons, we were in my kitchen. Although I had spent hours cleaning in preparation for hosting playgroup, oatmeal was still stuck to my countertop. As soon as she noticed the hardened clumps, she did not just politely ignore them like the other moms. Instead, she helped herself to a sponge from my sink, sniffed it, and scrubbed the counter spotless.

As she often did, she brought a discussion topic for the afternoon.

She said, "So my new rule is that I won't give my husband a blow job unless he finishes reading a book." We all knew immediately that he would never get another one. Turning to me, she suggested, "Maybe you should try that, too." I shook my head slowly, taking a long sip of wine, and said, "No, sweetheart, bad idea. If I adopted that policy, I'd end up giving more rather than less, up from none to one or two a year." I directed her: "Under no circumstances are you to mention your 'new rule' to my husband." Laughing, her tiny crow's feet revealing themselves, she said, "I'm not promising anything."

As the afternoon sun went down, it was eventually time for everyone to go home to make their respective dinners. As children's shoes were gathered and tied, my husband walked in the back door, home from work. She was standing next to me as she turned and said to him, "So, have you finished any good books lately?" I looked up quickly, in time to catch her wink. I reached to grab her head, gently shook it, and covered her mouth with my hand. We bent over with laughter as I pushed her toward the front door and out.

In the Ancash region of Peru on May, most of the people in the picturesque mountain town of Yungay were indoors, socializing and watching the Italy-Brazil World Cup Soccer match on television. About three hundred of the town's children had gone to a circus just outside of town.

At 3:23 in the afternoon, there was a loud rumbling and the ground shook from an earthquake off the coast, many miles away. The tremor passed quickly, but the

quake caused a large section of glacial ice to dislodge well above the town. In less than three minutes, the town was obliterated by the resulting landslide, buried by the accumulated earth, ice, rock, and debris that had gathered momentum on its violent race downward. Everyone in the town was buried alive, except those few who had managed to quickly climb, ironically, to the cemetery, which overlooked the town, and the three hundred children who had been led to safety by the circus clown. The entire town was swallowed up by the slide, the tops of four palm trees the only visible markers of the town's former life.

During those years, my husband's violent and explosive out-bursts caused periodic instability and tumult, but the playgroup provided a safe haven from those upheavals. Early on, most of our conversations were about how gifted our children were and which new word or trick one of them had learned. Later, she and I traded advice and ideas on toilet training and upscale kindergartens. Later still, we exchanged advice and ideas on how to balance the demands of motherhood against everything else, both of us trying to maintain ourselves amid the mayhem and wonder of these little boys we loved without condition one minute and disdained the next as we were forced, inexplicably, to clean urine off our respective kitchen walls. Over those years, she and I gradually revealed ourselves to each other, building layer upon layer of confidences and shared experiences.

She had trusted me with her secret in the parking lot that summer day, and at some point I had also entrusted her with the shameful truth of my marriage. We were the same in that sense, each outwardly pretending our marriages were better than they were.

We had other similarities as well. We were both smart. We had both married men who were better looking than we were, which brought out similar insecurities in each of us. We were both good boy-moms, healthy and outdoorsy. We liked to snowboard, mountain bike, and camp, but, because neither of us liked to be uncomfortable, we decided to buy a pop-up camper together.

We took all four of our boys with us to purchase the camper. The saleslady at the RV outlet approached us and asked timidly, "So, will the camper be for the two of you and your sons?" We both spoke quickly, and over each other, "No, no, we're married. We're not together." And we joked, "Not that there would be anything wrong with that," because we thought of ourselves as liberal and open-minded and we had watched Seinfeld like everyone else.

The years and the weekly playgroup meetings went on, and, by the time nine years had passed and our infants had become young boys, I thought she and I had become as close as sisters. "We might as well be." She said that at the doctor's office, where we were finding out whether the cancer had spread to her other breast. She said that to the nurse who'd said we looked like sisters.

She was diagnosed with breast cancer less than two weeks after our annual playgroup trip to the mountain house. We had all chipped in to rent the house for a long summer weekend. The moms and kids arrived at the house first, late on a mid-July afternoon, the husbands not scheduled to drive up until the next day. The wine was opened, dinner was made and devoured, and the kids fell asleep together in the

basement watching a movie, their small arms and legs intertwined.

After we had emptied the third bottle of wine, she opened the tequila. As our friends succumbed to liquor and sleep, eventually only she and I were left awake, reclining in our chairs out on the expansive deck. As the full moon lit up the surrounding peaks and valleys, we listened to her iPod playlist repeat again and again. A song about a sweater poorly knit, playing over and over, forever becoming the soundtrack to that night: I do not exist, only you exist. I do not exist.

The chill from the cool mountain air quickly forced us into our thick bulky sweatshirts, and eventually under the single heavy blanket on my deck chair. And, admittedly, I was tired. And, admittedly, I was drunk. And, admittedly, I was not perfect. And because it seemed somehow inescapable, I covered my eyes with the heels of my palms and said, finally, "I think I might be attracted to you." And she said, too quietly, "I know." And then, after too long, after the humiliation started to settle in my chest like a rock, she said, "I think I feel that way, too."

I reached to grasp the front of her sweatshirt to pull her toward me, but my fingers did not catch, and instead skimmed over the slick decal on the front of her shirt. But the intention of the motion was clear, and I leaned forward and kissed her, our teeth striking hard and awkwardly. She seemed stunned, as if she had not imagined that moment before. But when I leaned forward again the next moment, her mouth willingly met mine.

We stayed out on the deck for some time, too distracted by the maneuvering of our tongues and hands to notice the parts of our bodies that were pressed painfully against the hard wood of the deck chair. We stopped to ask each other, repeatedly and too often, "Are you okay?" The answer each time was an audible but inarticulate murmur of assurance and a deeper, longer kiss. Because she was experienced, and she knew that I was not, she asked me, "Doesn't it feel softer with a girl?" I stopped long enough to answer, "It feels the same." Although it was true that it didn't feel softer, it was also true that it did not feel the same. Instead, in that moment, it felt better—kissing someone I liked and who seemed to like me.

As we started to shiver, as much from anticipation as from the cold of the night, she said, "Let's take this inside." Up in her room, she pushed me down on her bed—the bed she would share with her husband the rest of the long weekend. She asked, as she unfolded and tucked herself beneath my arm, "When were you first attracted to me?" I answered honestly, "I think when I grabbed your head at playgroup that time." I gently grabbed her head between my hands, to remind her, and she slowly lifted her lips again to meet mine. She stopped then, slowly pulling away, and said, "I thought this would happen before now." I asked, "When?" As she gathered strands of my falling hair and moved them behind my ear, she lifted her eyebrows and said, "You know when." And I did.

The entire scene had already played out in both of our heads, months earlier, late one night in an empty parking lot where her car was waiting, awash in the harsh light from the nearby streetlamp. I had given her a ride to her car after a red wine dinner at

an Italian restaurant. We were sitting in my car, facing each other, first laughing and then too quiet. Because I was afraid of what was about to happen, I started talking about our husbands, sabotaging the moment. On this night in her bed, so much time having passed since the parking lot, I was still afraid, but I did not mention our husbands.

As she reached up again to touch my breasts, I resisted and gently pushed her hands away. But she was determined and persistent, and ultimately I didn't want to push her away. Alternating between tender affection and breathless lust, with the light of the full moon bending through the long windows, I surrendered to my attraction for her.

After, she said that she wished we could travel around the world together. And again after, feeling a sudden pull to escape that I did not fully understand, I started to get up to go to my bed—the bed that I would share with my husband. As I gently pushed her hair from her face and reached around to move her arm from my back, I started to stand, saying, "I should let you get some sleep." She pulled my arm toward her and said, "Stay and hold me?" I stayed and held her until she fell asleep.

The next morning, the playgroup moms made pancakes for the playgroup kids. As we cracked the eggs, mixed the batter, fried the turkey sausage, set the table, and poured the juice, she and I avoided looking at each other. And although I wanted—at that moment, in that kitchen—to reach out and touch her and tell her that everything would be okay, that we would be okay, I did not do or say anything.

Later that afternoon, the husbands arrived. As her husband came through the door, she moved toward him and kissed him warmly. I had seen her and her husband together many times over the years, but not once had I ever seen her French-kiss him hello. Taking my cue from her, I did the same with my husband. Through the early evening, her displays of affection for her husband became more and more exaggerated. I initially tried to keep pace with her, but I soon gave up, recognizing that I could not muster the energy nor feign the affection for my husband that would be necessary to compete.

After we had made and eaten dinner, and sent the kids off to the basement to play, we all went out to sit on the same deck, under the same full moon, to listen to the same playlist, repeating over and over. She was sitting on the same deck chair, this time resting against her husband's chest, once again in the arms of her seemingly perfect marriage.

* * *

After she was diagnosed with cancer, the playgroup moms went into full cancer-battle mode, using the eight-week, rotating, organic-casserole-dinner defense to ward off our fears about her weakness, a prolonged illness and worse. Because she had cancer, it seemed ridiculous to try to talk about anything else. And what could have been said anyway without risking everything? It seemed safer then to chalk it up to being drunk. So that's what I did.

I decided to try to forget it happened. Her plan seemingly was the same. Given our common strategy, we never talked about it and instead focused on her cancer treatment. She asked me to go to doctor appoint-

ments when her husband couldn't, and I did. I sat with her on her couch as she doubled over in heaving sobs, holding her hands and confidently assuring her that she would live to see her boys turn into young men. I promised that I would take care of them if it became necessary, although I told her that I was sure it wouldn't. In truth, I wasn't confident and I wasn't sure—about anything.

By the time the nurse had said we looked like sisters, it was true that we might as well have been. It was also true that we may have been more than that. Later, though, I would understand that, for me at least, it wasn't possible to be anything more than that, that there could never be anything that was more than that.

A few months after she was diagnosed, she and I had our first argument. She was in the midst of radiation treatment and tired, but she had agreed to go to a Halloween party, at the house of a virtual stranger, to which our families had been invited. In the living room, amid the costumed crowd, we started to argue about something of no consequence. Of course, we were really arguing about something of great consequence, but neither of us was ready to acknowledge that. We were arguing, though, and as I had learned to do with my husband, I quickly tried to defuse the conflict. I embraced her and said, "I didn't mean to hurt your feelings" and "I'm sorry." But as I started to back away, she reached for and held both of my forearms, imprinting her fingertips and abruptly halting my backward motion.

Eye contact with her had always, and particularly at that moment, felt too intense. But her eyes were red and wet, and I could not avert mine from hers. In

that moment, I did not expect her to apologize for our argument or even accept my apology for it. But even more, I did not expect her to say then, without moving her eyes from mine, and without blinking, "I love you." And maybe because I did not expect it, and maybe because it was exactly the last thing I expected in that moment, and maybe because I was afraid—either of what she meant or of what she may not have meant—I did not say, "I think I feel that way, too." Instead, I pretended that I had not heard her, and I quickly looked away and stepped back. And she did too.

A landslide usually starts with a small incident, a tiny crack in the earth's surface. A seemingly insignificant fissure can fill with water and freeze, making it vulnerable upon a subsequent thaw. Combined with the force of gravity, this freezing and thawing can lead to a crushing avalanche, the earth's surface falling in on itself. When exposed to extreme temperature changes, even rock is likely to crack. Given seasonal weather patterns, this freeze/thaw cycle is most likely to cause disasters in the spring.

It is often small movements—just one rock moving out of place, a small piece of earth shifting after an early spring thaw—that first suggest that the ground beneath you is about to collapse. If you are aware enough to notice these cues in advance, you can try to minimize the potential losses by establishing protective barriers and reinforcement walls. Scientists will tell you that these efforts are, however, much less effective than evacuating. In short, it's safer to simply run away.

It seemed like a small thing, not knowing exactly how to act after she'd said something so unexpected.

Trying to act normal. But I had not recognized that I was on such dangerous ground or that her vulnerability would cause the ground to become much more unstable. And I had not noticed the subtle cues of the impending collapse that would come from her feeling rejected, in a way that was as important to her as anything else. For these reasons, I did not get my emotional walls up in time to provide any protection at all. And although it would have been advisable to do so, I also did not run away.

Everything was shifting under my feet. The place that I thought I inhabited on the planet, that felt stable, that felt safe, was about to slip out from under me. I did not know how to stop the shifting or how to put everything back in place, back where it was safe. And as I lost my footing and started to slide down, I fell further and further away from everything to which I had ever belonged.

I belonged to my family. The one with brothers and sisters, whom you don't abandon. Who doesn't know that? I also belonged to my family—the one with my husband and two boys, whom you also don't abandon. Finally, and more significantly than was reasonable in retrospect, I belonged to playgroup, or thought I belonged.

Because this is what happened as the earth began to shift: it was nearly five months later and she had been declared cancer-free, her seemingly perfect life restored. She and I were at a basement party after coming from the elementary school's spring auction, again in the house of the same virtual stranger, where we'd had our first argument. There was a full bar in the basement. This fact was, as it turned out, unfor-

tunate, because she had always held her liquor better than I.

For a few seconds we were standing there together in the basement. Not on the dance floor, but next to it. At least people were dancing. And although apparently it had been building and gathering momentum during that after-party for more than an hour, her rage seemed sudden and came at me unexpectedly. Her jaw was locked in anger, and words started spewing from between her clenched teeth. She said, "You had no right to use my babysitter." I eventually understood that she was incensed that I had hired our mutual babysitter to watch my children that evening. She glared at me, unblinking, raging in silence, waiting for me to say exactly the right thing to fix everything. But it was too much anger, and my brain froze, again.

I could not move my mouth to say that I had simply needed a babysitter that night, that she did not have exclusive rights to our shared babysitter, that I had not hired the babysitter to make her angry, that I would not intentionally do anything to make her angry. That I was not going to clog the sink. This dynamic felt so familiar, but it had never happened before with anyone but my husband. I expected it from him, but I never saw it coming from her.

I waited for her to say something. I had no choice but to wait for her to say something. That was the nature of it. I could not say anything, right or wrong, to fix everything or even to break it more. I could not think. And then, and suddenly, she was leaving.

My husband did this, too. Leaving. There was an instant thaw. I knew this, so I knew what to do. I

followed her home from the party. And I was standing at her door late at night. But it was not only her door. It was their door. And they were both standing there. And suddenly it seemed like maybe this was not the thing to do.

I cannot now reasonably argue that I did not love her, because in truth I could not have loved her more. But I did not follow her home because I was in love with her and willing to abandon my husband and two boys. It might be more interesting if that were the truth; it might have changed everything. But in that moment, she had left and I had followed, in the same way that I had followed my husband after he'd left many times before.

I followed her that night because I had learned early in my marriage that there would be significant consequences for not following, for not seeming to love someone enough to follow them. But unfortunately, with her, as with my husband, there was never going to be an "enough," no matter how many times I followed or for how long or how far. But I didn't know that then. And so I was standing at their door, not yet fully comprehending that the disaster of my marriage had already triggered a much larger and much more dangerous threat.

In the harsh light of their floodlit porch, the night air too cold for what had been such a mild spring day, I somehow managed to say, "This is not about the babysitter." And I was right about that, of course, but I could not then say what it <u>was</u> about. Her husband was standing there, and she appeared terrified that I would do so right then and there, but I did not go there to ruin her perfect life. She took cover from me all the same, moving behind her husband, retreating

into an alliance with him that I had never seen before. As she merged herself with him, I did not recognize anything about her, except her palpable fear of what I might say next. But I would not say anything next. I was there, with my imperfect hand on their perfect doorjamb, unable to say anything else and unable to move. She tried to close the door, and when she noticed my hand there, she opened the door wide enough to pry it loose and started to push me out.

Initially I could not move from the doorway of the house where I had spent so many long afternoons in deep conversation and fits of laughter. The house where I had brought her sons after feeding them huge helpings of ice cream and assuring them that their mom, just home from the hospital, was going to be fine. The house where I had brought my own sons so many times when I wanted them to feel safe, and when I wanted to feel safe myself, from the fear and uncertainty that surrounded our own home. After a moment, I gave in to the momentum of her push and stepped back. The door closed with a finality incongruent with all the things not said and done.

If you have not evacuated in advance of a landslide, there is little you can do after it starts. Due to its speed and intensity, once a landslide starts, it is nearly unstoppable. The force and momentum generated are simply too great, and thus anything in its path is likely to be taken down. The resulting losses are extensive, the damage total, and the changes to the landscape are permanent. The effects of a landslide are often so large and dramatic that it is difficult to ever stabilize the affected area. And it is not advisable to ever build there again.

There would be consequences for not saying and not doing exactly the right thing, for not putting everything back in place, and for being too afraid to do anything else. And there would be consequences for not running away. Despite everything—our shared lives, our shared confidences and experiences, our shared intimacies—and maybe because all of those things made her feel too vulnerable, too imperfect—she would start to say to the other playgroup moms, to her husband, to my husband, to her children, to the principal and teachers at the elementary school, to our mutual babysitter, to the virtual stranger, to everyone in our shared community, that I had followed her home because I was a lesbian, a stalker, and an unstable and dangerous threat to her, her husband, and her children. As evidence of my dangerous and erratic propensities, she would say that I had even grabbed her head and shaken it. She would never mention the mountain house or tell anyone that she loved me.

She knew that I would never mention these things either, even in my own defense, because to do so would have exposed me and my sons to the dangers inherent in living with and divorcing an abusive spouse. She was smart enough to know then that she could say anything she wanted about me and that I would not be able to do or say anything to defend myself or my children with the truth. I had made my bed by sleeping in hers, and I would have to lie in it.

She never spoke to me or my sons again. If I was walking down the sidewalk in front of the busy school, and she was also walking down that same sidewalk from the other direction, upon noticing me she would veer off the cement, well into the grass, careful to

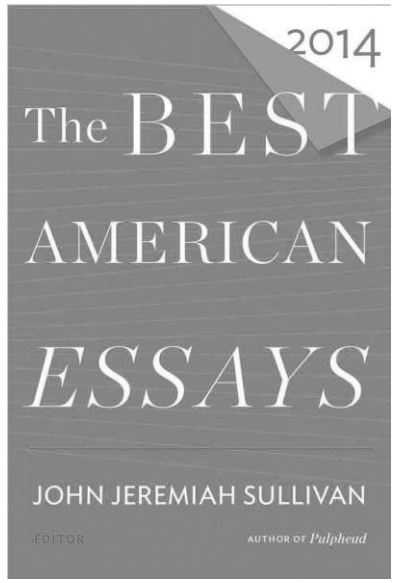
show that she was maintaining a safe distance. Her sons would run in the opposite direction if they saw me in the school hallway. She would not let her boys play with or talk to mine. Our playgroup membership was hastily terminated. At the time, my sons were five and nine, and they did not understand what was happening or why they could not play with their friends. I was forty-two, and I could not help them understand. In this story, not even the children would be spared.

Soon, not having any escape from it, I lost my marriage. Admittedly, that may have been no great loss. But like a natural-disaster victim wandering dazed through the remnants of a former life, I slowly came to understand that there had been enormous losses. I had forever lost my friend—my sister—my family with the husband and two boys, and the playgroup. I did not belong anywhere. These losses were very real, the destruction total. The truth would be forever covered by her undisputed accusations. I would be buried alive, with all of her secrets buried with me.

In the end it wouldn't matter whether I had fallen in love with her or hadn't. She wouldn't believe or be satisfied with either. And so my life as I knew it would be obliterated, so much so that sometimes, later, I would wonder if it had ever existed at all. My sons would be the only evidence of my former life. They would be daily reminders of my past, but also of my present and future. And in spite of her efforts to help my husband gain custody from me, I had my boys. They somehow survived the landslide with me, and I would build our lives again, this time on different and more stable ground.

After a disaster, survivors often become numb to a world seemingly oblivious to their suffering. In their disoriented state, they move in slow motion through their newly surreal lives, where not even the air feels familiar. They are dismayed that life can go on for anyone as before, that anyone could be so unaffected by the large-scale disaster that has left them in ruins.

It had been nearly five months prior that she had said she loved me. In every moment since and before, there were things that should have been said and things that should have been done. But they weren't said and they weren't done, by either one of us, and so we did not avert or escape the devastation. And although I don't understand how, the world keeps turning on its axis and the seasons keep changing. My thoughts are in the same place, circling, and circling back, over the vast and battered remains of the emotional landslide. The world goes on without noticing that the landslide has taken me down. And in fairness, it has probably taken her down, too. But it's like the world is oblivious to the heartbreak of it all. And that is a stunning realization at some level. As stunning as the realization that it is spring again.



NOTABLE ESSAYS OF 2014

REGINA DREXLER,

STEALING MANNEQUINS, WEST BRANCH, NO. 72, WINTER 2013

I accidentally started waving to the mannequin. Or mannequins really, but only one ever seemed to wave back. The mannequin would be important to the story, but I didn't know that as I waved.

The mannequin belonged to my new neighbor, Linda, but she would not be important to the story. Except that she had a gun. I never saw it, but she once told our other neighbor, Mitch, that she had one. She told him about the gun after his dog somehow got free and ran into her house. She said she would shoot his dog the next time it came into her house. I believed

her, and Mitch did too. She was the type of person who would have a gun and shoot a dog. She liked cats.

I was living next to Linda with my husband and two young sons. I was not the type of person who would have a gun. I did have a dog, though, so I had a six-inch cement barrier poured along the fence that separated Linda's yard from mine, to make sure my dog never got out. The last thing I needed was a dead dog.

Linda actually owned three mannequins. I didn't realize there were so many until I found myself on her porch one early summer afternoon, surrounded by them. They were fully dressed, all in winter coats despite the weather, seemingly having a tea party. Two were seated together with porcelain teacups, empty, in front of them. The other one was upright, supported by a solid metal stand connected at her torso. She was holding up one hand, seemingly in friendly greeting to passers-by. The three mannequins appeared to be having a conversation. I decided to steal the standing one, the one to whom I had waved.

I stole the mannequin for my friend Deana.

Since I waved to the mannequin and confided that small embarrassment to her, Deana and I joked about stealing it. We would have to get drunk first (of course), and then we would take her. It became a well-worn subject of conversation over the next several years, yet there was never a clear understanding of our intentions with respect to the mannequin once we had her. But on the morning of the day the "For Sale" sign was placed in Deana's yard, the plan for the mannequin suddenly crystallized, at least for me. I would steal the mannequin and place her next to

the "For Sale" sign in Deana's yard. I would use the mannequin to showcase the home, just like the models on The Price is Right.

I knew she would move anyway, but by stealing the mannequin for her, I hoped Deana would understand, in a way she otherwise might not, how much she meant to me and how much I wanted her to stay.

Of course, I should have probably considered the potentially deterrent effect of a mannequin, dressed in full winter garb on a warm summer afternoon, on a prospective home buyer. And probably I should have also considered the related potentially detrimental effect of the mannequin on the mood of Deana's husband, should he discover it before she did. But I didn't consider either of these things, and instead, as the morning wore on, I became more and more committed to my plan. So that by the time Linda was leaving for her four-hour nursing shift in the early afternoon, I had become convinced that there simply could be no higher or better use for a mannequin.

A few months after I took the mannequin from Linda's porch, Deana would tell me that her husband had pinned her against the carpet one winter night in their new house. She said, "pinned against the carpet."

Although we had known each other for many years, I did not understand until that moment that we were living similarly secret, violent lives with our husbands. And while I felt a deep connection to her as a result, I did not feel strong enough then to offer her any support. I had not been able to help myself by that point, so I could provide no assistance to her. When, months later, I could and asked her about it, she explained that she

had only meant that her husband had her back against the wall. As in figuratively. But being "pinned against the carpet" is not the same as having your back against the wall. It's not the same at all really. If, as I was surveying the mannequin tea party, I had known about the carpet waiting out in the future for Deana to be pinned against it, I would have understood (in a way that many would not) that Deana would suffer too much for my mannequin stealing, and I would have left the mannequins to their pretend tea.

I suspect Deana's husband was never really angry about the mannequin per se, or really any other specific or definable thing. Instead, I imagine that, like my husband, he was simply angry with life, with anything that disturbed the ordinary sameness of his days. Deana would be pinned against the carpet, perhaps not because of the mannequin itself, but rather for all it threatened to disturb.

Deana was planning to move out of our old, well-established neighborhood to a new tract house in a sprawling development about 20 miles away. She would say that she was relocating so she and her husband would have a bigger home in which to raise their two growing boys. But I understood that she was moving to try to get a fresh start, believing things would be better with her husband simply by changing settings. I had tried that too.

I understood then that she was also moving to distance herself from her feelings for Rachel.

Deana had been living a few blocks away, in the same neighborhood as us, for years, and my sons and I had become accustomed to seeing her and her two

sons—along with Rachel and her two sons—every few days for late afternoon playdates and happy hours.

Rachel was also unhappy in her marriage, although her unhappiness stemmed from different issues than Deana's or mine. Simply, Rachel's husband would never satisfy her spousal expectations. Specifically, he would never be financially successful or provide her with vicarious stature in our small community. Rachel, Deana, and I were all living similar lives, though, in the sense that, despite the fact that we were each unhappy in our marriages, we outwardly appeared to be enthusiastic and cheerful young wives and mothers.

Of our six boys, I had the youngest. But nearly two years after I had given birth to my younger son, I still had not yet shed the many baby-related pounds associated with that pregnancy. During one late afternoon playdate, while sitting in her kitchen, Rachel disclosed her preference for wearing bikini thong underwear. I laughed, assuming she was joking. Registering her confusion at my laughter, Deana explained to Rachel that neither she nor I would wear bikini thong underwear because we both instead needed "ample panties for full fannies." Deana was funny like that, and although she did not have some of the physical attributes typically required for the label, she was beautiful--but more in the way that someone who makes you laugh is inescapably appealing.

Deana described herself as "big-boned," and she seemed comfortable with the idea that she would never appear particularly thin. In contrast, it was important to Rachel that she fit within the strict standards of the beautiful label (and all other labels relevant to social station). So, Rachel worked hard to maintain

her appearance and corresponding image. She had quickly lost her baby related weight and was the first of us to trade in the elastic-waistbands of our sweat pants and pajamas in favor of $180 low-rise, designer-label jeans.

I was not "big-boned" and had instead been thin and fit prior to the body ravaging that came from pregnancy and breastfeeding. And so shortly after my younger son turned two, I started an earnest campaign to lose weight. Following Rachel's advice, I survived solely on protein bars and vanilla lattes for nearly a year. Although it seems likely that I will eventually die of a brain tumor as a result of my diet that year, I lost so much weight so quickly that I was able to start wearing my pre-pregnancy clothes again before my younger son's third birthday.

And it was soon after, one evening as the three of us were walking to a rare dinner out, to a chic sushi place in the heart of the downtown dating district, that I began to strut my old body down the sidewalk. I was finally feeling the smallest bit attractive again, so it was exceptionally bad timing for Rachel to then turn to me and say, "I have several pairs of jeans that are way too big for me; would you like them?" I stopped mid-strut, turned to her and said, "Thank you, but sweetheart, I will never want your 'fat jeans.'" In a quick effort to mitigate the slight tension arising from the exchange, Deana laughed, took each of us by one arm, and turned us back in the direction of the restaurant. The three of us walked together the rest of the way, arms around each other.

Back then, for years before I stole the mannequin, I thought Rachel, Deana, and I were in a three-way best friendship. But Rachel and Deana called each

other "sister-friends." No one ever called me that. At the time, I thought that was because each of them, otherwise sister-less, understood that I, having four actual sisters, was not in need of any more. But now (and it seems so obvious), I understand it meant I was not in any kind of three-way best friendship at all. They were "sister-friends," and I was not.

At some point, though, Deana fell in love with Rachel. Rachel did nothing to discourage it, frequently flirting with and teasing Deana during our late afternoon playdates. Many times, sitting on one of our respective couches, our boys playing together either outside or in the basement, Rachel would kick off her stylish ankle boots, lift her feet, put them in Deana's lap and say, "Will you rub my feet?" Deana would push her feet away, saying, "No, rub your own damn feet." Laughing, Rachel would lift them back up onto Deana's lap and say, "Please, just a little." Deana would not rub her feet then, but she would not push them away again either.

I didn't blame them. For Rachel, I understood it felt good to have someone like you that much, and for Deana I understood it felt good to like someone that much. Certainly, given my relationship with my husband, I could understand the temptation. But I pitied Deana then, as in, "Poor her. She is in love with someone who will never love her back."

As I struggled to get the metal stand loose from the mannequin's torso under the cover of Linda's shaded porch, I quickly understood that the task of stealing the mannequin was going to be more difficult than I first imagined. When I finally managed to break her free from the stand, I realized she was taller than me

by at least two inches, heavy, and quite difficult to manage, particularly given her bulky winter clothes.

I would first need to make sure the coast was clear, that no one would see me take the mannequin from the porch and across my lawn to my backyard gate. I considered the idea that I could simply act confident about it, as though Linda had requested that I remove the mannequins, one by one, from her porch that afternoon. But then I remembered Linda's gun and decided a covert operation would be my best option.

I peeked around the porch column, and not seeing anyone outside on our tree-lined block (so unusual it could mean only that the universe wanted me to take the mannequin at that moment), I decided to make a break for it. I grabbed her around the waist and ran, half-carrying, half-dragging her through Linda's weed-strewn garden and across my manicured lawn. I leaned her against the fence as I fumbled with the gate latch. As the gate sprung open, I grabbed her and secreted her inside my backyard. I had never stolen anything before, and the adrenaline rush was nearly overpowering. As I was surveying the mannequin's full outfit in the safety of my backyard, I checked my watch. I only had an hour before I had to pick up my sons from their elementary school. I had to work fast.

Deana did not want to be in love with Rachel, of course, but that didn't change the fact that she was. And it was likely that Deana was more afraid of Rachel than in love with her. Sometimes, though, there is such a close relationship between fear and love that it is hard to tell the difference. At least it was for both Deana and me. In significant part, our confusion between the two kept us each in our respective unstable

and destructive marriages. It also likely kept us in our relationships with Rachel.

One late afternoon, Rachel and her sons arrived at my house an hour earlier than our scheduled play-date with Deana. Sitting on a barstool at my kitchen counter, Rachel started talking about a virtual stranger, another mother with whom we were both acquainted who was attracted (so obviously) to one of the few stay-at-home dads we knew. Rachel intended to inject herself into the relationship between the virtual stranger and the stay-at-home dad, for no reason other than to prove she could. As she explained her plan, I said, "You're a little bit scary." She smiled and said, playfully, "Do I really scare you?"

I told her that I thought she was safe. But I did not think she was inherently safe. Never that. The reason I thought she was safe in fact had nothing to do with her. Instead, I knew what she was capable of, or at least I thought I knew. And so armed with that knowledge, I thought I could protect myself, in a way that the virtual stranger could not. But what I did not consider was what Rachel was capable of if she was hurt. I never considered that, I think, because I did not understand that she could be hurt. I never considered that her hurt, in fact, would drive everything. Given the truth of that, both Deana and I should have been afraid.

Deana's fear caused her to pull me--neck deep--into the threesome. For many years, I had been on the periphery of their "sister-friendship." I had also been excluded from their "fun group," which consisted of weekly get-togethers with the two of them and their sons. Fun group was a well-kept secret from me for several years. However, over time, likely in direct

correlation to her increasing depth of feelings for Rachel, Deana started inviting me to fun group and all other activities involving Rachel. I sometimes now wonder what Rachel thought about that, if she understood that pulling me in was a defensive move on Deana's part. It hardly matters now, but I sometimes still wonder.

As I was about to load the mannequin into my car, I considered that Deana's house was on Seventeenth Avenue, a busy street. I decided that pulling the mannequin out of the passenger side of my SUV would afford better cover than removing her from the back. I put her in the car, lying across the rear seat, covering my younger son's booster. But as I tried to close the door, I found her feet and high heels were blocking it. I quickly readjusted her, slanting her more sideways on the back seat. Although I heard a small pop, I pushed the door closed with force and drove to Deana's.

The small sound was not insignificant, though, as I discovered in removing the mannequin from my car. As I was lifting her from the backseat, she came apart at her midsection. On Seventeenth Avenue, with traffic speeding by, I found myself holding only the top half of the mannequin. I looked over her shoulder into the backseat. She had been wearing a housedress of some kind underneath her coat, which when removed with her torso left the lower half of her body completely naked, save for her red high heels. I was holding her upper body, awkward with heavy clothing, trying to determine my next move. In retrospect, my next move should have been to put the top half of her back in my car and speed away. But you never do what you should have done in retrospect.

Instead, I pulled the top half of the mannequin, dragging her by her armpits along the ground as if rescuing her from a burning aircraft, to the "For Sale" sign planted in Deana's lawn. I quickly ran back to retrieve the rest of her from my back seat. As I was sitting on Deana's lawn with the two halves displayed before me, and as cars were starting to slow down as they passed to assess the scene, I decided to change my approach from covert to confident. I started acting like I was supposed to be on Deana's lawn lifting the housedress of the mannequin to better calculate how to reassemble her. I acted with assurance as I picked up her naked lower body, turned her at a ninety degree angle to match up the latching system at her mid-section and twisted her body back together. I calmly stood her up next to the sign, smoothing out her dress and coat and adjusting her winter hat.

She started to tip over, but I righted her quickly. Only when she started slumping over again did I notice I had attached her together backwards, with her feet pointed 180 degrees from the direction of her sharp, pointy breasts. She was unstable, but I had no time to fix her. After propping her up a final time, I calmly walked back to the car, got in, and went to pick up my sons from school.

It is important to say that, a short time after I stole the mannequin for Deana, I slept with Rachel. It seems like I should admit that, even though we didn't do everything there was to do. I'm not sure what to call it if I don't say that we slept together. We hooked up, we messed around, in a bed, and then we fell asleep. But there was no penetration, if that's the standard. I have no idea what the standard is. Whatever it was, I want to say I slept with her so

that there is no question about what it is that I should be ashamed of. It was a betrayal of Deana, and I don't want to try to minimize it now by pointing to everything we could have done but did not do.

Rachel was married, yes, and I was also married, yes, and of course I know I should feel bad because I slept with Rachel under those circumstances. But for many reasons, I don't. But I could not feel worse about sleeping with Rachel given how Deana felt about her. It was not a kind friend-thing to do.

Of course, I want to get some credit for saying, for being able to pull away from Rachel long enough to say, "We shouldn't do this. We need to stop." I want there to be some appreciation for how hard that was to do, would have been for anyone to do, to stop kissing her then. And when Rachel, smiling and pulling me back, asked, "Oh yeah, why?" I also want to get credit for saying, "Deana." And I want even more credit for not then also saying, "Because Deana is in love with you." I will not get credit for any of these things, though, because when Rachel answered, "We can't think about her now," and pulled me back again, I simply shrugged (because her statement seemed so logical) and slept with her anyway.

So there will be no credit given, and instead, there will be a consequence for my betrayal. And there should be, I know, as much as I don't want to deserve one.

As the afternoon went on, Linda's usual four-hour nursing shift seemed entirely too short. Finally, my phone rang. It was Deana's ringtone, the Heartless Bastards' "All This Time." I assumed Deana was calling

to acknowledge my incredible mannequin feat. But instead, she simply explained she had left work to pick up her sons from school and wanted to come over for an afternoon playdate and a drink. "Okay," I said, which is what I always said. I was hoping she would drive by her house on the way to mine, but after I opened the door and let her and her sons in, it was clear she had not yet seen the mannequin.

The next call came from Rachel, her ring The High Strung's "She's Not Even Mad at You," also asking to bring her sons over for a playdate. "Okay, but here's the deal and I may need help." I quickly explained the situation. She said only, "We'll see you in five."

The first hour or so of the playdate was uneventful, but as it got closer and closer to 5:30, when Linda was scheduled to return home, I grew more and more concerned about the mannequin. And the gun. Rachel, who was sitting next to Deana at my kitchen counter and less than three feet away from me, started texting. She asked me, "What's your plan?" I texted back, "At a minimum I will need to deliver a ransom note next door very soon." Rachel looked over at her phone casually, but then as she read the text she laughed out loud. And admittedly the whole situation was funny, but I was becoming increasingly distressed and my sense of humor was waning. Stealing the mannequin was the worst thing I had ever done, but I didn't want to get shot for it.

And then Deana's husband called her. He had no special ringtone. He told her that their neighbor had called him about a "body" in their front yard and she should go home to meet the police whom he planned to call next.

In a moment that should have informed everything that followed, Rachel said, "Well, we better get going" She was out of the house, with her sons, within two minutes.

I started waving at Deana, who was still on the phone with her husband, and quickly said, "It was me. It's the mannequin. It was a joke." Deana smiled, then looked stricken as she listened to her husband rant. I understood then, at 5:15, that I had to go retrieve the mannequin immediately, before Deana's husband or the police arrived at the scene (my fingerprints being all over even the most private parts of the mannequin), and before Linda came home to her gun. I left Deana in my house, futilely trying to explain the humor of the mannequin to her husband, as I ran to my car.

Unfortunately, my eight-year-old son was following closely behind me asking, "What's wrong Mama? Where are you going?" And in my most proud mothering moment to date, and not having the time to try to convince him to stay with Deana for five freaking minutes, I said, "Hurry, get in the car! Get in the car! We have to go get something I took and put it back where I found it right away." And of course, he had a million questions on the three-minute car ride to Deana's house, which were mostly just variations of "Isn't stealing against the law?" and "What were you thinking?"

By stealing the mannequin for Deana, I disturbed a delicate and unstable balance of emotions running between the three of us. Certainly, Rachel would deny being hurt by my juvenile prank. But it must have signaled something significant to her, maybe how much I cared about Deana, maybe how Deana and I had

developed a friendship independent of her. It was an alliance which Rachel could not abide.

At the time I stole the mannequin, I did not understand that doing so would undo the fragile connection holding our threesome together. I only understood that later, after I slept with Rachel.

It is a fair question, why Rachel slept with me instead of Deana. The shortest and easiest answer is that Rachel was not attracted to Deana. Because she was not attracted to her, it was safe for Rachel to flirt with and tease Deana, to keep her engaged for the game, and ego, of it. However, over those years Rachel did become attracted to me. And I to her. Of course, I hate to admit that now.

Because Rachel was attracted to me, she would disrupt the friendship developing between me and Deana by sleeping with me. I realize it is somehow worse, that I slept with Rachel only because I wanted to, without having any other good reason for it. But I think it is also somehow better.

As I pulled up and saw the mannequin lying face and ass down in Deana's yard, I told my son to wait in the car. I ran to get her, and as I struggled to carry her under my arm back to the car, my son, thoughtfully, opened the back hatch for our getaway. I heaved her inside and sped back home. It was 5:25. I pulled into our garage, and leapt out to open the back. I grabbed her and ran to our backyard gate. As I opened the gate and quickly assessed the risk of witnesses (minimal enough), I ran across my front yard with the mannequin in the direction of Linda's porch. My son was trailing just behind me, still insisting on answers to his questions about the legalities of it all.

As I was running back to the porch, the mannequin somehow lost her hat and wig. I started pleading with my son, frantically, "Please, will you just grab the hair? Grab the hair!" And he did because he is a good boy and he loves me. He had become my accomplice. We put the mannequin back on her stand on Linda's porch, and we agreed that stealing was a very bad idea.

Shortly after I slept with her, Rachel would point to my mannequin stealing as the first evidence that I had become emotionally unbalanced and was not acting "right." Rachel would need for me to be seen as not acting right. To Rachel then, I suddenly became all of the things she was most afraid of being. If I was unstable, she was not. If I was the lesbian, then she didn't have to be. If I was a bad mother, she could finally be a good one. Stealing the mannequin had been a joke, of course. But because I stole the mannequin for Deana, Rachel would even eventually cite it, in the custody battle that ensued with my husband as we were divorcing, as evidence that I had involved my son in criminal activity.

Rachel likely felt hurt, first by the close friendship developing between me and Deana, and later as a result of her confused feelings about me. With respect to the latter, to be fair, it is also likely that she felt scared. But for Rachel, any uncomfortable feeling, whether fear or hurt or otherwise, would only ever come out as anger. Don't ask me why this was so. There are simply people like this.

In her anger, Rachel commenced my undoing. It started seemingly unprompted one day, when she appeared to avoid talking to me. Thereafter, her efforts to evade me became undeniable as she started to act

like I intended to set her on fire, routinely moving in the opposite direction whenever I approached. I imagined from the outside, if anyone had been paying attention (which no one ever does), that we looked like opposing magnets, always moving together but staying the same distance apart at all times. I slowly noticed that other people too, once friendly, had started to avoid me. It took me some time to figure out what was happening. My delay was in some part attributable to my unwillingness to believe that I was expendable, hat I offered nothing, friendship or otherwise, that she was not willing to sacrifice. Denial seemed to provide me the only viable form of self-protection.

It is interesting what people don't tell you. No one will ever say, "By the way, Rachel says you are a criminal and a lesbian and unstable and a bad mother. Do you have any comment?" Instead, the mere nature and audacity of the accusations are such that no one will ever repeat them to you. And that makes them indefensible, and will leave you undefended. But I need to stop here, because this is not a story about Rachel. This is a story about Deana.

The only person who would understand how unfair the allegations were, how wrong, was Deana. Deana was the only person who could reasonably explain that stealing the mannequin had been a joke and thus did not itself establish a newly emerging mental illness. Without Deana to defend me, though, there would be only one thing I could say that could reasonably explain the motivations behind Rachel's claims. But that would mean telling the truth about my relationship with Rachel in the midst of my custody battle with my husband. And it would also mean telling Deana.

I had wanted to tell Deana what happened from the beginning, from the first night in Rachel's bed. It felt like too big of a secret, too big of a betrayal, to keep from her, and it felt too difficult for me to manage alone. So I had asked Rachel, as I was getting up to leave her bed, "How are we going to tell Deana?" I don't know what I expected Rachel to say then, but making direct eye contact and giving me a look equal parts distress and disdain, she said, "We are not telling Deana." I did not agree or disagree, but when she asked me to lie back down with her, I did.

It was not until months later, after 10,000 opportunities to tell Deana had come and gone, that I finally told her. When, very late one night on the telephone, it happened that Deana was again speculating about Rachel's change in behavior towards me, her theories so pathetically off-base and ill-informed, I finally felt compelled to help her understand. Deana was saying, "I don't know, maybe it's because she thinks that you're acting like a 'bitchy sister,' or maybe . . . " I cut her off, "No Deana, I am not acting like a 'bitchy sister' or anything else. Rachel is acting so fucking weird because she's freaked out that we hooked up." Silence. "What?" Deana asked quietly. It was a fair question, and there was no going back. I said, "All of this shit is happening because we hooked up." And she asked the only other questions that she would ever ask me about it, "How long ago did it start? Was it about two years ago?" Her time reference confused me then and still does, but I answered, "No, it only happened last summer." And I said, "I'm sorry I didn't tell you before now. I know I should have."

I thought then that if there was anyone in the world who would understand the nature and extent of the trouble I was in, it would have been Deana. But in mistaking her feelings for mine, she only accused, "You're in love with her." And what I thought then but did not say was, "I know you are, but what am I?" Instead, I said, "No, Deana, I am afraid of her." She said she had to hang up then. And with that, our friendship was over.

Deana was never angry at Rachel because she slept with me. Deana had always been afraid that Rachel would hurt her. She was emotionally prepared for that. In contrast, though, Deana trusted me. It was the same way I felt about her. And what we both learned, nearly simultaneously, was that although it is very painful when someone you love hurts you, it breaks your heart only when someone you trust does.

Because I had broken her heart, Deana was not inclined to defend me against Rachel's allegations. The fact that she did not was even more shocking and hurtful than the allegations in the first instance, and in turn unfairly lent the accusations some credibility. And it wouldn't matter to Deana that I was sorry. She would never forgive me. And so she would never help me, no matter how high the stakes. To Deana then also, I was expendable. I became lost in the idea that I was worth so little to people I valued so much.

I still get lost in every part of that.

Sometimes I think this way: I know that the consequences of breaking Deana's heart should be significant. But what if, by sleeping with Rachel, I saved Deana from being the one to sleep with her (which Deana would have, my name likely not coming

up at all)? And what if I saved Deana from facing the consequences of sleeping with Rachel, which would obviously turn out to be quite severe? Shouldn't these things be factored into the analysis of what punishment I deserved? And wasn't it enough that I didn't get (or take) the girl? Did I really deserve to have my life ruined? And admittedly, it could have been worse. I could have lost custody of my sons. And although I didn't, I lost nearly everything else as a result of Rachel's accusations. It occurs to me now that I might rather have been shot.

I know it is pointless to think this way, but sometimes I still do.

In the end, it would be Rachel who would take Deana from me. Rachel and Deana would remain friends, and my consolation always would be only that it is an unstable friendship, forever put together ass backwards. It was built mostly of fear rather than love, and it would always be that way. And even with all the time in the world, there would be no way to fix it.