

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0042

IN RE ORDER OF PROTECTION
OF:

TEDDEE HARRIS CUOMO

Petitioner / Appellant

v.

DEBORAH L. DERR

Respondent / Appellee

IN RE ORDER OF PROTECTION
OF:

DEBORAH L. DERR

Petitioner / Appellee

v.

TEDDEE HARRIS CUOMO &

Respondent / Appellant

ANSWER BRIEF

Appeal from the Montana Sixth Judicial District Court, Park County
Cause No.s DV-34-2023-110 and DR-34-2023-117
The Honorable Judge Brenda Gilbert, Presiding

Teddee Cuomo,
Pro Se
95 Billman Lane
Livingston, MT 59047
Appellant

Webster Crist,
Crist & Schroeder, PLLC
P.O. Box 2431
Livingston, MT 59047
Attorneys for Appellee

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STATEMENT OF THE ISSUES

1. Did the District Court commit clear error or an abuse of discretion in granting Appellee's Request for Permanent Order of Protection against Appellant?
2. Did the District Court commit clear error, an abuse of discretion, or violate Appellant's federal or state constitutional rights in denying her Request for a Permanent Order of Protection against Appellee?

STATEMENT OF THE CASE

This Appeal concerns both Parties' dueling Orders of Protection against one another.

On September 29, 2023, Appellant Teddee Cuomo filed a *Sworn Petition for a Temporary Order of Protection and Request for Hearing* against Appellee, Deborah Derr (hereinafter "Derr"). On November 15, 2023, Derr filed her own *Sworn Petition for a Temporary Order of Protection and Request for Hearing* against both Appellant Cuomo and her father, Bill Harris. The Court granted both Parties Temporary Orders of Protection ("TOPs"), pending a Hearing. Following multiple continuances, a Joint two-hour Hearing was held on December 15, 2023, to address both Parties' requests to have their TOPs made permanent. Based upon the testimony and evidence presented at this Joint Hearing, the District Court granted

Appellee Derr's request for a Permanent Order of Protection against Cuomo and Harris and denied Appellant's request for the same against Derr. Appellant Cuomo is now appealing both of these decisions by the District Court. Mr. Bill Harris passed away on or about January 9, 2024.

STATEMENT OF THE FACTS

Appellee Derr has lived and owned property at 101 Billman Lane in Livingston, Montana 59047, since 2007. Tr., p.13:9-13. Derr operates a chiropractic business (Tr. p. 52: 2-3) and a horse sanctuary non-profit from this locale known as "United in Light" (UIL), which cares for horses that have been abandoned or that need help recovering from any number of illnesses or traumatic events. Tr., p. 13:23 – 14:2.

Prior to his passing in early 2024, Bill Harris lived and owned the neighboring property at 95 Billman Lane with his wife, Judy Harris. Tr., p. 39:2-7. Billman Lane is a private road and the only means for accessing both the Harris and Derr properties. After Judy Harris passed away in late 2021 (Tr., p. 18:16-18), Appellant Teddee Cuomo, Harris' daughter, moved onto 95 Billman Lane to allegedly serve as Harris's caretaker, bringing several horses, dogs, and goats with her. Tr., 19:12-23.

While Derr had previously been allowing Harris to make free use of a water hydrant on her property to care for the few animals on 95 Billman Lane, Derr and

the UIL Board of Directors revoked this permission after Cuomo moved onto the property with her many additional animals. Tr., p. 23: 15-23; 48:4-20. After Derr's security camera caught Harris reaching through her fence to access the hydrant despite having his permission revoked, Derr installed a padlock on the hydrant. Come October of 2022, Derr found the padlock's keyhole had been filled with super-glue. Tr., p. 48:21-50:2.

From there, the situation continued to escalate through 2023, as Cuomo and Harris began to purposefully stalk and assault Derr and her UIL volunteers via numerous courses of conduct that would cause any reasonable person to fear for their safety and the safety of others.

Specifically, throughout 2023, Cuomo and/or Harris instigated unnecessary confrontations with Derr at any opportunity (Tr., p. 33:5-7); made threats toward her UIL volunteers (Tr., p. 35:10-14); fed harmful substances to her sanctuary horses (Tr., 36:23 – 37:21; 50:4 – 51:19); and trespassed onto Derr's property. Tr., p. 54:1-2). They also allowed their goats to trespass (Tr., p. 54:4-20) and their dogs to assault Derr's animals and volunteers (Tr., p. 33:9-14; 34:6-12; 51:21 – 53:15; 67:20-69:21); encouraged their horses to walk onto Derr's property so they could enter under bad-faith assertions of Montana's fence-out laws (Tr., p. 56:18 – 57:5) ; placed barricades and spray-paint for an eventual fence across Billman Lane to illegally block Derr's access to her property (Tr., 69:25 – 70:13); and repeatedly drove slowly

back and forth on the section of Billman lane by Derr's property for no apparent reason other than intimidation. Tr., p. 59:4 – 65:2; 65:4 – 67:19.

In response to all of this, Derr avoided Cuomo and Harris at all costs, directed her volunteers to do the same (Tr., 17:9-19; 72:5-8), and documented these transgressions by Appellants with photos and videos. Tr., p. 53:16-25.

On September 28, 2023, Derr was driving back to her residence when she came to a stop on an uphill portion of Billman Lane because Teddee was suddenly stopped in the middle of the road with a mare. Tr., p. 27:17 - 29:2; 45:12-14. Despite Derr remaining stationary in the right-hand lane to allow Cuomo to pass by safely, Cuomo passed by with her horse at an unnecessarily close distance to Derr's car. Tr., p. 45-15:23. Once Cuomo and her mare has passed by, Derr slowly resumed driving uphill. Tr., p. 30:19-20. In doing so, a small portion of gravel was kicked up and not caught by Derr's mudflap due to the road's incline and allegedly made contact with Cuomo's shins. Tr., p. 30:20-21; 46:25 - 47:2. Derr immediately came to a stop and got out of her car to make sure everyone was okay, but she quickly concluded that nothing beyond Cuomo's pride had been seriously injured. Tr., p. 30:21 – 31:24; 45:23- 46:25. Derr in no way intended to cause such contact, and but for Cuomo's choice to pass by at an unsafe and unnecessarily close distance to Derr's vehicle, this accident would not have occurred. Tr., p. 47:3-20.

While Derr was still compiling all her photo and video evidence to corroborate her eventual Petition for an Order of Protection, Appellant Cuomo filed for her own Order of Protection against Derr on September 29, 2023. Cuomo's *Petition* requested an Order of Protection based upon:

- 1) Derr and her volunteers recording, and calling the sheriff in response to, the actions by Cuomo, Harris and their animals described above; and
- 2) The incident on September 28, 2023.

The Court initially set a Hearing for October 17, 2023 on Cuomo's Petition, but after Derr filed her own Petition and requested that the Court hear evidence in favor of both Petitions at a Joint Hearing, a Joint two-hour Hearing ultimately occurred on December 15, 2023.

At the Hearing, Appellant Cuomo had the opportunity to question Derr, and she did so for over forty (40) minutes. Tr., p. 26:22. Throughout Cuomo's questioning of Derr, the Court reminded Cuomo to use her time wisely and to focus on the facts supporting her request for an order of protection no less than four separate times. Tr. p. 20:14-23 ; 26:22 – 27:11 ; 36:17-21 ; 41:21-23. Ultimately, Cuomo did not heed the District Court's advice and chose to spend her time questioning Derr and Mr. Harris instead of testifying herself.

In support of her request for a Permanent Order of Protection, Derr testified to all of the actions by Cuomo and Derr described above, and she admitted into

evidence numerous photos and videos which rendered her allegations beyond dispute. Tr., p. 8-16-19. Following the Hearing, The District Court issued Orders granting Derr's Petition and denying Cuomo's Petition.

STANDARDS OF REVIEW

The Court reviews a trial court's conclusions of law de novo for correctness. *Larsen v. Richardson*, 2011 MT 195, ¶ 25, 361 Mont. 344, 356, 260 P.3d 103, 112. The Montana Supreme Court "will not overturn a [lower] court's decision to continue, amend, or make permanent an order of protection absent an abuse of discretion." *Fritzler v. Bighorn*, 2024 MT 27, ¶ 7, 415 Mont. 165, 168, 543 P.3d 571, 573. "An abuse of discretion occurs when the court acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason and results in a substantial injustice. *Id.*

The Supreme Court reviews a District Court's findings of fact made in connection with a decision to continue, amend, or make permanent an order of protection for clear error. *Jordan v. Kalin*, 2011 MT 142, ¶ 19, 361 Mont. 50, 54, 256 P.3d 909, 912. A finding is clearly erroneous if it is not supported by substantial evidence, if the trial misapprehended the effect of the evidence, or if the Supreme Court's review of the record convinces it a mistake has been committed. *Id.*

The evidence presented at the hearing regarding whether to continue, amend, or make permanent an order of protection must be substantial, credible, and constitute more than mere hearsay. *Fritzler*, ¶ 11. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence but may be less than a preponderance. *Mont. State Univ-Northern v. Bachmeier*, 2021 MT 26, ¶ 30, 403 Mont. 136, 150, 480 P.3d 233, 243. In determining whether substantial evidence supports the trial court's findings, the Supreme Court views the evidence in the light most favorable to the prevailing party. *Larsen*, ¶ 25. Regarding credibility, it is the province of the trial court, not this Court, to weigh the evidence and resolve any conflicts between the Parties' positions; The Supreme court will not second-guess the trial court's determinations regarding the strength and weight of any conflicting testimony. *Id.*

The Supreme Court reviews de novo whether lack of notice and opportunity for a meaningful hearing deprived a party of due process of law. *Watson v. West*, 2011 MT 57, ¶ 14, 360 Mont. 9, 12, 250 P.3d 845, 848.

The Supreme Court exercises plenary review over questions of constitutional law. *Ditton v. Dept. of Justice Motor Vehicle Div.*, 2014 MT 54, ¶ 15, 374 Mont.. 122, 126, 319 P.3d 1268, 1274.

SUMMARY OF ARGUMENT

The District Court did not commit clear error or an abuse of discretion in granting Derr's Petition for an order of protection against Cuomo. Unlike the Petitioner in *Fritzler*, Appellee Derr presented extensive testimony at the December 15, 2023, Hearing based entirely upon her personal knowledge, and she admitted into evidence over thirty (30) exhibits to corroborate her claims. Taken together, Derr's testimony and her exhibits easily constitute substantial evidence, given she offered far more than just a scintilla of evidence. *Bachmeier*, ¶ 30.

The District Court also did not commit clear error, an abuse of discretion, or a violation any of Appellant's federal or state constitutional rights. First, the District Court adequately explained the Parties' roles in relation to both Parties' Petitions for orders of protection. Second, the District Court's decision to not find Appellant's narrative credible was warranted in light of Derr's evidence presented at the Hearing. Third, Appellant's rights under the U.S. Constitution's Sixth Amendment, and her corresponding rights under the Montana Constitution, are not applicable in the context of an Appeal over civil petitions for orders of protection. Finally, Appellant was afforded adequate due process, in that she was given notice of the Hearing, an opportunity to be heard at said hearing, and many warnings about using her time wisely before the District Court ended her direct for running over time.

ARGUMENT

I. The District Court Did Not Commit Clear Error or an Abuse of Discretion in Granting Derr's Petition for an Order of Protection against Cuomo and Harris.

When a Petitioner files for an order of protection, a court may grant a temporary order of protection and must conduct a hearing to “determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent. MCA § 40-15-202(1); *Fritzler*, ¶ 11. When considering whether to make a temporary order of protection permanent, a court must determine whether, “to avoid further injury or harm, the petitioner needs permanent protection” by considering “the respondent’s history of violence, the severity of the offense at issue, and the evidence presented at the hearing.” MCA § 40 15-204(1); *Fritzler*, ¶ 11. To justify the issuance of a permanent order of protection based upon claims of assault or stalking, the petitioner must present substantial, credible, evidence that constitutes more than mere hearsay. *Fritzler*, ¶ 11. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence but may be less than a preponderance. *Mont. State Univ-Northern v. Bachmeier*, ¶ 30.

In *Fritzler v. Bighorn*, the Petitioner sought an order of protection against her child’s paternal grandmother, Bighorn, based upon allegations that Bighorn was actively seeking narcotics while the child was with her, that Bighorn verbally

assaulted Fritzler, and that Bighorn planned to take the child to Poplar, MT to enroll her with the Fort Peck Native Tribe so that bighorn could seek custody over the child. *Id.*, ¶ 4. The Court granted a temporary order of protection against Bighorn, and set a hearing for January 3, 2023. *Id.*, ¶ 5.

At the Hearing, Fritzler presented testimony based entirely upon knowledge from Bighorn's relatives, and she offered no additional evidence or exhibits to corroborate her allegations. *Id.* While the lower court nevertheless granted a permanent order of protection, the decision was reversed on Appeal by this Court finding that the lower court has abused its discretion by granting the order of protection over nothing more than hearsay testimony. *Id.*, ¶ 12.

Here, Appellant Cuomo asserts that Derr similarly failed to present substantial credible evidence at the December 15, 2023, Hearing in support of her request for a permanent order of protection. She also argues that the District Court committed clear error and abused its discretion by finding that Derr had in fact presented sufficient evidence to warrant a permanent order of protection against Cuomo and Harris.

In short, unlike the Petitioner in *Fritzler* offering Hearsay, Appellee Derr presented extensive testimony at the December 15, 2023, Hearing based upon her own personal knowledge and experiences. She also admitted into evidence over

thirty (30) exhibits to corroborate the allegations within her initial *Petition* and her testimony at the Hearing.

Taken together, Derr's testimony and her exhibits easily constitute substantial evidence, given she offered far more than just a "scintilla" of evidence. *Bachmeier*, ¶ 30. This is especially so when viewing the evidence in the light most favorable to the prevailing party, as this Court has directed itself to do here. *Larsen*, ¶ 25. While Cuomo claims in a very conclusory fashion that Derr's allegations were all simply false, the District Court ultimately deemed Derr's rendition of events more credible, and it is not this Court's role to second-guess the trial court's determinations regarding the strength and weight of any conflicting testimony. *Id.*

Thus, because the Court's decision to grant Derr an order of protection against Cuomo and Harris was based upon substantial credible evidence, Cuomo has no basis to claim that the District Court committed either clear error or an abuse of discretion.

II. The District Court Did Not Commit Clear Error, an Abuse of Discretion, or a Violation of Appellant's Constitutional Rights in Denying Cuomo's Petition for an Order of Protection against Derr.

Regarding the District Court's decision to deny Cuomo's Petition for an order of protection, Appellant appears to claim the decision should be reversed and remanded because the District Court committed both clear error and abused its discretion in the following ways:

1. The District Court did not sufficiently clarify the Parties' roles or that the purpose of the Joint Hearing was to hear testimony for and against both Parties' Petitions for orders of protection;
2. The District Court ignored and/or refused to acknowledge the weight of the testimony and evidence provided in support of Cuomo's request for a permanent order of protection; and
3. The District Court denied Cuomo Due Process and violated her federal and state constitutional rights, in that Cuomo was not given an opportunity to provide her own testimony or conduct cross-examinations.

Each of these arguments will be addressed in turn, but in short, Cuomo is incorrect on all fronts.

A. The District Court Adequately Clarified the Purposes of the December 15, 2023 Hearing, and the Parties' Roles.

Appellant argues that the District Court “did not recognize [Cuomo and Harris] as defendants as well as petitioners;” that “the proceedings showed error when the matter was confused as to who was a petitioner and who was a plaintiff;” that “the court abused its [discretion] by mislabeling who was the defendant and who was the accuser.” Appellant’s Op. Br., p. 13-15

In no uncertain terms, the District Court adequately clarified the Parties’ roles and that the purpose of the December 15, 2023, Hearing was to hear arguments on both Parties’ Petitions for orders of protection against one another. In fact, the District Court began the December 15, 2023, Hearing with the following statement: “We are here today this afternoon in two cases. The first being DV 23-110. It involves Teddee Harris [Cuomo]... – versus Deborah L. Derr. The second case is DR-23-117. It involves Deborah Derr versus Teddee Cuomo and William “Bill” Harris.” Tr., p. 3:2-8. From there, the District Court explained that Cuomo would be presenting arguments in favor of her Petition first, that she could testify during this time, that Derr would present arguments in favor of her Petition after Appellant was done, and that Cuomo would have the opportunity to cross-examine any witness Derr put on the stand. Tr., p. 7:8 – 8:15. As such, Appellant’s claims quoted above are entirely without merit.

B. The District Court Did Not Commit Clear Error or Abuse its Discretion in Denying Appellant's Petition for an Order of Protection

Appellant argues that the District Court committed clear error and abused its discretion because it ignored all testimony she and Harris provided in support of their Petition; because it refused to view Derr documenting and calling authorities in response to Cuomo and Harris' misconduct as evidence of stalking¹; and because the District Court in general refused to view the situation through Appellant's warped perspective.

In light of the massive amount of evidence Derr presented at the Hearing, the District Court did not commit clear error or abuse its discretion in choosing to find Derr's narrative more credible than Appellant's account. Nearly all of Derr's testimony elicited by Appellant proved beneficial to the credibility of Derr's narrative; Harris' testimony did not yield any substantial credible evidence to support Cuomo's narrative; and unlike Cuomo, Derr provided numerous photos and videos to corroborate her narrative beyond dispute.

Moreover, Appellant is asking this Court to second-guess the trial court's determinations regarding credibility even though this Court has stated expressly that it is the province of the trial court alone, to weigh the evidence and resolve any conflicts between the Parties' positions. *Larsen*, ¶ 25.

¹ The Park County Sheriffs told Derr to photo and video Cuomo and Harris' misconduct. Tr., p. 53:16-25.

Accordingly, Appellant's claims summarized above offer no legitimate basis for reversing the District Court's decision to deny Appellant's Petition for an order of protection.

C. Appellant was Afforded Procedural Due Process and No Constitutional Rights were Violated.

Finally, Appellant argues that that the District Court committed clear error and an abuse of discretion by violating her rights to Due Process and her right to testify and conduct cross-examination. Both of these arguments are without merit.

The Sixth Amendment generally guarantees the *criminally accused* the right to meet adverse witnesses face to face at trial. *State v. Strommen*, 2024 MT 87, ¶ 17, 416 Mont. 275, 287, 547 P.3d 1227, 1235 (emphasis added). The purpose of the federal and state constitutional rights to personal, in-court face-to-face confrontation and cross-examination of adverse witnesses is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding.... *Id.*; U.S. Const. amend. 6; Mont. Const. art. 2, § 24.

The guarantee of due process has both a procedural and a substantive component. *State v. Egdorf*, 2003 MT 264, ¶ 19, 317 Mont. 436, 441, 77 P.3d 517, 521. Substantive due process bars arbitrary government al actions regardless of the procedures used to implement them and serves as a check on oppressive

governmental action. *Id.* The requirements for procedural due process are 1) reasonable notice so as to give every interested party 2) the opportunity to be heard at a meaningful time and in a meaningful manner. *Steab v. Luna*, 2010 MT 125, ¶ 22, 356 Mont. 372, 377, 233 P.3d 351, 355; U.S. Const. amend. 14; Mont. Const. art. 2, § 17.

Here, in the context of an Appeal over *civil* Petitions for orders of Protection, Appellant has not been criminally accused, meaning her rights under the Sixth Amendment of the U.S. Constitution and Article 2, Section 24 of the Montana Constitution are wholly inapplicable. While Appellant nevertheless asserts that she was denied the opportunity to conduct cross-examination, Appellant was able to question Derr face-to-face for over forty (40) minutes, and Derr put no other witnesses on the stand beyond herself.

Moving on, Appellant was also afforded all due process owed. Appellant was adequately notified of the December 15, 2023, Hearing by the District Court Clerk, and Appellant was given the opportunity to be heard at said Hearing. The fact that Appellant chose not to heed the District Court's four separate reminders about using her time wisely (Tr. p. 20:14-23 ; 26:22 – 27:11 ; 36:17-21 ; 41:21-23) and wasted her opportunity to testify does not change the fact that the District Court gave Appellant this opportunity. In light of the District Court's multiple reminders, Appellant also cannot argue that the District Court's decision to cut Appellant's

direct short at the end of her time was a violation of Appellant's Substantive Due Process rights.

As such, Appellant's requests for reversal on these grounds are baseless.

CONCLUSION

Based upon the foregoing, this Court should find that the District Court did not commit any clear error, committed no abuses of discretion and did not violate any of Appellant's federal or state constitutional rights. Accordingly, this court should affirm the District Court's decisions to both deny Appellant's Petition for an Order of Protection and grant Appellee's Petition for an Order of Protection, finding that the District Court. The Stay on Derr's Order of Protection should also be expressly removed.

DATED this 6 of November 2024

CRIST & SCHROEDER, PLLC

By: *Webster Crist*
Webster M. Crist
Attorney for Appellee

CERTIFICATE OF COMPLICANE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with proportionally spaced Times New Roman typeface of 14 points; is double spaced (excluding any footnotes and long quotations, which are single spaced); has left, right, top and bottom margins at one inch; and has a word count of 3,675 words, as calculated by Microsoft Word, excluding the Table of Contents, Table of Authorities and Certificate of Compliance, which does not exceed the 10,000 word limit.

DATED this 6th of November 2024

CRIST & SCHROEDER, PLLC

By: *Webster Crist*
Webster M. Crist
Attorney for Appellee

Certificate of Service

I hereby certify that I served a full, true and accurate copy of the foregoing document on the 6th day of November, 2024, to the following named person:

_____ by personal service

_____ by electronic filing service

 X by depositing a copy of same in the United States Mail,
postage prepaid, and addressed as follows:

Teddee Harris-Cuomo
95 Billman Lane
Livingston, MT 59047

DATED this 6th of November 2024

CRIST & SCHROEDER, PLLC

By: *Webster Crist*
Webster M. Crist
Attorney for Appellee

CERTIFICATE OF SERVICE

I, Webster Mallory Crist, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-06-2024:

Teddee Harris Cuomo (Appellant)
95 Billman Lane
Livingston MT 59047
Service Method: Conventional

Electronically Signed By: Webster Mallory Crist
Dated: 11-06-2024