



Oregon

Kate Brown, Governor

Oregon Judicial Department

Columbia County Circuit Court

230 Strand Street

St. Helens, OR 97051

(503) 397-2327

Fax: (503) 397-3226

<http://courts.oregon.gov/Columbia>

May 8, 2023

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Dear Ms. Pooley, Ms. Brooks, and Mr. Herman,

This matter came before the Court on January 13, 2023, March 29, 2023, and April 25, 2023, regarding an Objection filed by Brian G. Stout (“Respondent”) to Jennifer M. Gilbert’s (“Petitioner”) Sexual Abuse Protective Order (“SAPO”) granted by the Court on November 7, 2022. Petitioner, appearing in person with her attorney, Ms. Kara Brooks of Jill Brittle Family Law Group, and attorney Ms. Alexis Pooley, of Brindle McCormack, PC. Respondent, appearing in person and represented by his attorney, Nicholas Herman of Lower Columbia Law Group.

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The Court having reviewed the arguments, documents in the case, relevant law, testimony, and exhibits presented at trial offers this opinion letter.

At issue here is whether the Petitioner has met the burden of proof through evidence and testimony presented at trial. It is Petitioner's burden to prove to the Court that she was subjected to sexual abuse and that she reasonably fears for her physical safety. (ORS 163.763) The Court is responsible for the express and implied factual findings if they are supported by any evidence in the record. (See *H.L.P. v. Jones*, 309 Or App 108, 109, 481 P3d 415 (2021)).

The parties met through committee work by Petitioner and over the following year became active in Columbia County politics, Respondent as a candidate for position of State Representative and Petitioner as a volunteer or as an assistant with his campaign. At some point in mid-2020, the parties were consciously establishing an emotional relationship. Petitioner testified her understanding of the relationship was feeling close, emotionally connected, and supported to and by Respondent. She testified she was anticipating a friendship, and that the parties were not going to have a sexual affair. It is important to note that Respondent is a married man and was a candidate for the position of State Representative at the time.

At this first conversation between the parties, Petitioner testified that, after the agreement vis-à-vis their new status, Respondent stated "If you ever tell anybody about this, I'm going to push you off a cliff at Multnomah Falls". The SAPO recites that on this occasion, that he slapped her bottom and grabbed her arm to pull her back towards him. According to Respondent all information concerning this incident is false in its entirety. In April 2020, Petitioner alleges that

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the parties met prior to an event and alleged that Respondent pulled down her top and began kissing her breasts. Respondent testified that the paragraph is false.

The next incident, dated August 2020, Petitioner claims that Respondent pushed her down on a couch and held her arms over her head while kissing and cuddling. Petitioner testified that the day after this incident, Respondent told Petitioner he was thinking about raping her. Respondent's response was "false information, flat out lies" (January 13, 2023, FTR, 9:44:30).

After a campaign meeting in late August, early September 2020, Petitioner testified that the parties were kissing when Respondent initiated sexual contact with finger penetration and then surprising Petitioner, quickly pulled down her pants and began performing oral sex on her. Afterwards, Respondent repeatedly asked her to disrobe. Petitioner told him no several times while he was trying to unbutton and remove her blouse. Eventually, Respondent sat on the couch and was touching himself, and Petitioner understood that Respondent expected her to perform oral sex on him. So she did. Respondent testified that *he did not allow* any further contact, but the truth is that Respondent's wife interrupted the parties. (January 13, 2023, FTR 10:05:18) at which time Respondent grabbed his pants and went out after his wife.

Respondent's testimony about that evening, "I made a mistake...Ms. Gilbert offered something to me in the way of physical contact which I allowed her to do. We were close, we were friends, it was a horrible lack of judgment on my behalf" (January 13, 2023, FTR 10:03:33). Shortly after this incident, text messages between the parties dated October 12, 2020, indicate that Respondent's wife reached out to Petitioner requesting a professional friendship. Petitioner responded

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with “please leave me alone...just tried to stay friends” (Petitioner’s Exhibit 1, page 1 of 1).

The incident dated July 2021 in the petition specifies that while working an event, Petitioner claims Respondent came up behind her and thrust his hips into her bottom, grabbed her hips and physically moved her. Respondent testified it was unavoidable due to the location and the number of individuals and was a “flat out lie.” Witness Williams, a member of Elks Lodge, was present at the Columbia County Fair Beer Garden in 2021. He testified that he never saw Respondent touch the Petitioner. Witness testified that he may not have seen a moment of physical contact.

One more incident occurred at an Elks event in August 2021 in which Petitioner alleges that Respondent slowly ran his hand over her bottom as he went past her, when she turned to look at him, putting him on notice that she felt it, he acknowledged the touching and walked off. Petitioner then followed up with a text dated August 16, 2021, Petitioner texted Respondent “you need to stop”. (Petitioner’s Exhibit 7, page 1 of 2). Respondent testified that when he received this text, “it angered me greatly that she would make such an allegation” (January 13, 2023, FTR 9:50:45). This caused him to immediately respond to her text and counter allege that Petitioner caused the contact because she “was in the way or cuddling up to Backlund” (Respondent’s Exhibit 103 pg. 5).

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Respondent testified about being cornered at the Elks Lodge by Petitioner asking him if they could talk. Respondent said that he and his wife would speak with her on their way out. Respondent testified that Petitioner was irate and angry, accusing Respondent's wife of spreading rumors. Witness Tanner, a trustee of the Elks Lodge, testified that he had been informed about an altercation in the parking lot nonetheless when he got there, the parties were just talking (January 13, 2023, FTR 1:08:04). Again, when asked to describe the altercation he stated it was just conversation (January 13, 2023, FTR 1:11:08).

Petitioner's witness Williamson testified that on Flag Day 2022 that she observed that Respondent sat in a row and had an unobstructed view of the Petitioner. This witness also observed Respondent standing close to her with hand on elbow in a controlling manner in the hallway near bathroom. Another time Respondent was sitting with some Republicans, so Petitioner joined them. After a few minutes, the witness heard a loud noise like someone's hand slapped on the table and Respondent was standing up yelling at Petitioner in front of everyone at the table. (April 25, 2023, FTR 11:57:30)

In addition to denial of the specific events listed by Petitioner in the SAPO, Respondent made counter-allegations against Petitioner including claims that

- Petitioner had to be dragged off his wife twice (1-13-23 FTR 10:10:21).
- Petitioner was stalking Respondent and his family; (1-13-23 FTR 10:8:22)
- Petitioner became a member of the Elks; (1-13-2023 FTR 10:08:06).
- Petitioner attends local events (1-13-2023 FTR 10:07:56); and
- Petitioner is openly aggressive to him in public situations (1-13-203 FTR 10:08:34, 10:10:12).



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The Court addresses each counter-allegation in order.

The Court finds that Respondent's testimony concerning the statement "having to drag her (Petitioner) off his wife twice" not credible. Respondent claims Petitioner "got in his wife's face" at an event (January 13, 2023, FTR 10;10;16) and had to be drug off my wife on two separate times at this event" (January 13, 2023, FTR 10;10;21). However, testimony from other witnesses did not validate this behavior.

Respondent and his witnesses claimed Petitioner was obsessively stalking the Respondent by sitting at a city park which is "located at the edge of his driveway and surveying them coming and going...literally a rock throw" (January 13, 2023, FTR 10:08:22); Court finds Respondent's testimony concerning Petitioner stalking he and his family by sitting at a local park not credible. Petitioner testified that she used to own the home on 6th Street in Columbia City and has been going to the park for 7 years. Harvard Park is located on Sixth Street between Calvin and Penn Streets. Pursuant to Exhibit 35, Respondent's home/driveway is at the end of a dead-end road well over the length of a driveway or a rock's throw. (Petitioner's Exhibit 35).

Witness Walters called by Respondent expanded on the issue of the stalking stating that he was seen with "her kids at the park in Columbia City at the end of the drive".(January 13, 20223 FTR 11:28:02). This Witness states his house is a block away to his driveway. (January 13, 2023, FTR11:28:30).

Witness May, a contractor who was building a home for Respondent, testified that he had observed Petitioner at the Harvard Park from the year 2020 until the house was completed in December 2022. This witness estimated that it was 100 feet from the park to the property line (January 13, 2023, FTR 2:10:14).

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Witness testified that he had observed her a total number of four times at the park and could not testify if she was with her children or not. This testimony of observing Petitioner at a city park four times is not credible to sustain a stalking incident, especially since Respondent did not even reside at this residence.

Witness Chris Brumble's, member of Elks, testified that Respondent and he were friends and during the time Respondent's home was being built, Respondent and his wife visited often. Witness stated that (Respondent) "he was finally staying away from her" (FTR 2:42:32) This witness testified that when Petitioner indicated, she was going to attend an event, witness advised Petitioner not to attend the event. His testimony was that he had heard from other attendees that Petitioner "walked right up and started a fight" (January 13, 2023, FTR 2:42:52). This witness was not present at this event and is simply repeating a story he heard.

Petitioner did join the Elks Lodge after Respondent and they both appeared at local events. Neither of these incidents in a small town during an election cycle considered is stalking, harassing or obsessive about him. Respondent is not credible about these claims.

Witness Traci Brumble's' provided an overall background of the Columbia County Republican Party and described initially having a friendly relationship with Petitioner. Petitioner spoke with this witness on a regular basis and this witness testified that Petitioner did confront Respondent's wife at one event stating, "anytime you want to meet and talk, we can do that..." (January 13, 2023, FTR 3:09:25). This may be a reference to Respondent's testimony that Petitioner "had to be dragged off his wife twice" (January 13, 2023, FTR 10:10:21). Witness testified that Petitioner was making derogatory comments concerning the Respondent

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(January 13, 2023, FTR 4:06:01) which is contrary to the rules of the Republican Party but not illegal.

Petitioner denies being aggressive to Respondent. Petitioner claims that Respondent will not leave her alone (March 25, 2023, FTR 2:23:04). Petitioner had contact with the Elks Lodge over the past 18 months at least once a week or more. Petitioner claims Respondent stared at her, followed her, and tried to speak with her to rekindle the relationship saying that he still cared for her.

Petitioner described Respondent as the driving force behind the relationship; she was to use a specific app for communications with him with directions to delete the texts between the parties. Petitioner claimed she tried to put the distance between them, but Respondent would encourage her to continue to be with him. Immediately after the incident, Respondent's wife told Petitioner that everything was fine. (March 25, 2023, FTR 11:08:50) and that Petitioner would remain affiliated with the campaign. However, Respondent was not communicating in a consistent manner with Petitioner, and she felt more and more isolated. The parties had a second contact which Respondent pulled down her blouse and was trying to have physical contact and fondling her breasts. Petitioner did not consent to this contact.

Within days after this last episode, Petitioner ended the relationship feeling Respondent was inconsistent and unsettled as to his personal life. Petitioner testified she was striving to keep it all quiet to avoid making Respondent angry and that she was afraid of Respondent, therefore, concerned for her safety.

This affair was problematic for Respondent, a married man who was a candidate for State Representative during the election period. It is anticipated that

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his behavior that would upset his wife and the voters.

Over time, the gossip concerning the parties began spreading. Petitioner claims not to have spoken about the issue with anyone except Ms. Brumble and Mr. Walters. There was testimony that Respondent and his wife were speaking with the leadership at the Elks Lodge and that Respondent was having individual conversations with male Elk members who were acquainted with Petitioner.

Petitioner's witness Mutt testified that he and Petitioner were at the Elks Lodge together and Respondent stared at the witness, including turning his body in the chair to stare at this witness. This was the first time this witness had ever encountered the Respondent. Witness testified that he was afraid at the confrontation.

Mutt observed Respondent staring or watching Petitioner about 15 to 20 times over the past two years. Respondent confronted witness Mutt and asking if "we have a problem". Mutt and Respondent went outside to talk and according to the witness, Respondent stated "I don't know how long you been fu**ing Jenny? You do not know who she is." The conversation continued and Respondent escalated the tension by abruptly standing up and yelling at Respondent stating, "you will never be an Elk, I know people knows people, can make him go away (FTR April 25, 2023, 9:37:55). Court finds this witness to be credible.

Witness Multanen testified for the Petitioner and believed she was frightened of the Respondent. His advice to her was to never be alone with Respondent. On October 28, 2021, witness went outside and encountered Respondent by his vehicle. Respondent asked to speak with the witness "man to

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man.” Respondent stated to the witness “I had an inappropriate relationship with Jenny, but she is a lying little bitch.”

Witness McMann, a fellow Elk officer, testified that Petitioner was uneasy around Respondent. Respondent confronted this witness about whose side was he on, i.e. back me or back Petitioner. The witness believes that Respondent is a threat to Petitioner. Petitioner testified that Respondent was outside with one of her male friends talking animatedly, Petitioner saw him raise a fist to another friend, and chest bumping another male friend.

November 10, 2021, witness testified that he saw Petitioner sitting at table he went to sit with her. Within a few minutes, Respondent came over to the table. When Respondent was reminded by the witness that Respondent had just referred to Petitioner as a “lying little bitch” leaving the witness to inquire as to why Respondent was at the table. Respondent became angry, stood up, clenched his fists yelling “get out of my Lodge” (FTR 9:59:18, April 25, 2023). Respondent then beginning yelling at the witness about a past transaction about a truck. Respondent “just flew off the handle” according to the witness.

At another event in Clatskanie several weeks later, Respondent again approached the witness with request to talk “man to man”. Respondent was asked by the witness to apologize for the last interactions, witness was not interested. Witness testified that he observed Respondent staring stating “It was strange, his focus on Jenny” (April 25, 2023, 10:02:21-10:02:28). Witness testified that he observed one-half dozen times that Respondent was staring at her.

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Witness Layda testified that Respondent followed Petitioner to the bathroom and witnessed repeated and unwanted contact, staring, and classified the action “if looks could kill (April 25, FTR 10:21:50). In this witness’s view, Respondent was stalking Petitioner at the Elks Lodge. During the election period, after this witness spoke against any “me too” candidates, he received a cease-and-desist letter from Respondent, essentially denying the candidate his free speech rights.

Witness Burbank (sister) testified that she observed Respondent stare at Petitioner on a regular basis. She testified that others asked her and her husband why Respondent was staring at Petitioner. The witness observed that in December 2021, after Petitioner left to get something out of her vehicle. Petitioner asked her sister to keep an eye on Respondent. According to the witness, he watched Petitioner walk all the way to the door and then he went running out the side door to follow her. The witness panicked and raced outside and yelled towards Petitioner if she needed any help. By this time, Respondent had come up behind her and she did not see him. He immediately left when witness showed up.

Respondent argues to the Court that Petitioner orchestrated a scheme to falsely accuse him of (his admitted) inappropriate behavior and after the news about the situation was revealed Respondent began disparaging Petitioner claiming she was lying, which she wasn’t. The argument states that Petitioner then sought the SAPO one day before election day hoping that if Respondent no longer holds the State Representative position, as Precinct Captain, Petitioner could influence the County Commissioners to choose the Petitioner’s candidate. Respondent argues Petitioner concocted this scheme to obtain a legislative aid position in Salem, Oregon. The Court does not find this argument justifiable in any manner

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Petitioner must have reasonable fear for their physical safety with respect to the Respondent (ORS 163.763(2)(b)(A)) and these feelings of alarm or coercion must be objectively reasonable. Repeated and unwanted contacts must cause the victim reasonable apprehension regarding their personal safety/safety of immediate family (ORS 30.866(1)). There only needs to be a single incident of abuse and standard for proof is by a preponderance of the evidence which is more likely than not that Respondent sexually abused Petitioner and placed her in fear of future abuse.

Petitioner's testimony was extremely credible, and the Court finds that Respondent was not credible. With respect to the element of fear, the witness testimony indicated that Respondent has been aggressive or forceful with other individuals Respondent perceived as threats. Petitioner observed the behavior directed at other individuals, had heard the threats directed at her and had a reasonable fear that Respondent would continue to harass, and retaliate including spreading untrue gossip to anyone and everyone. With respect to the sexual abuse, the Court finds that Respondent did commit an act of abuse meaning the touching of the sexual or intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party without consent.(ORS 163.305(5)).

The Court determines that the SAPO will be upheld.

Petitioner and Respondent began a friendly relationship and when Petitioner ended it, Respondent pursued her after the breakup, when that approach failed, he began confronting the friends who were supporting Petitioner. Respondent then amplified the bullying by the malicious and unjustified harming of Petitioner's reputation.



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Finally, Respondent switched to the playing the victim stating that Petitioner had to twice be dragged off his wife (not true), he was being stalked (not true), Petitioner joined the Elks and attends events just to harass or stalk him (not true), Petitioner is openly aggressive to him in public (not true).

Ms. Brooks, Ms Fischer, please prepare a final Judgment unless you would want the Court Form.

Respectfully,


Cathleen B. Callahan
Circuit Court Judge

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