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4 KING COUNTY SUPERIOR COURT  
KING COUNTY, STATE OF WASHINGTON

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6 TAHLIA N. HOLT,

7 Appellant,

8 vs.

9 CHRISTINE A. IWANYK,

10 Respondent.

No. 19-2-18714-0 SEA

**DECISION ON RALJ  
APPEAL**

**CLERK'S ACTION  
REQUIRED**

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13 This appeal came on regularly for oral argument on December 20, 2019 pursuant to  
14 RALJ 8.3, before the undersigned judge of the above entitled court and after reviewing the  
15 record on appeal and considering the written and oral argument of the parties, the Court holds  
16 the following:

17 IT IS HEREBY ORDERED that the district court's denial of Appellant's Petition for an  
18 Order for Protection is remanded to the district court for clarification of its order.

19 At oral argument the parties disputed whether the district court's record supported a  
20 finding that Petitioner-Appellant, Tahlia Holt, should be barred by the doctrine of laches when  
21 she petitioned the district court for a protection order under RCW 10.14.080, after waiting 8-9  
22 months from the point of last (incidental) contact between Petitioner and Respondent, Christine  
23 Iwanyk, and the other allegedly harassing conduct had occurred 2-3 years before.

24 It is clear from the record that Respondent presented a theory of laches as an  
25 independent and discrete basis for denying the no-contact order, *see* Trans. at 15,

1 notwithstanding the earlier argument that Respondent’s allegedly harassing conduct did not fall  
2 within RCW 10.14.080. *See id.* at 11-15.

3           It is true, as Appellant contends, that the district court rejected Respondent’s substantive  
4 argument. Trans. at 16. However, it is also plain that the district court expressly took into  
5 account the delay in seeking the anti-harassment order. The district court opined first: “why  
6 hasn’t action been taken if continued contact is that great of a concern, why hasn’t – why didn’t  
7 something happen in September [approximately 8 months before]?” Trans. at 18. Then again,  
8 after appearing to credit the substantive argument that Respondent’s conduct as alleged “comes  
9 within the statutory definition” of harassment, *id.* at 21, the district court qualified that point:  
10 “However, the Court is concerned about the contacts occurring two-and-a-half to three years  
11 ago and then the last one occurring just in August [approximately 9 months before] and the  
12 latches [sic] – son of a gun – I never thought I was going to hear that today.” *Id.* However, the  
13 district court did not go on to explicitly state that it was applying laches to bar the petition.  
14

15           It is clear enough from the record that the delay was a basis for denying the petition.  
16 However, it is unclear whether the district court made adequate findings to support the  
17 application of the doctrine of laches here. The lack of clarity below is compounded by the fact  
18 that the district court appeared to acknowledge that Respondent’s conduct was harassing so as  
19 to meet the definition under RCW 10.14.080: “I think that what you have allege comes within  
20 the statutory definition.” Trans. at 21. The district court judge also noted extraneously that he  
21 didn’t want to “get involved” in the parties’ lives, expressed reservations about the government  
22 getting involved in the dispute, and hoped Ms. Iwanyk would get the message that Ms. Holt  
23 genuinely did not want any further contact. Trans. at 21, 23.  
24

25           The district court darkened the record further by noting in support of the written order  
denying the petition that Respondent proved that she “will not resume harassment of the

1 petitioner,” which is not an element for determining whether harassment has occurred. *See*  
2 RCW 10.14.080(3). The court’s concern about any resumption of future harassment comes into  
3 play only when a petitioner seeks to renew an existing protection order. *See* RCW 10.14.080(5).  
4 This was not a renewal case, and this criterion should not have been the basis for denying a  
5 petition for an anti-harassment order at this stage. If the district court indeed found there was  
6 harassing conduct that fell “within the statutory definition,” *see* Trans. at 21, the district court  
7 was compelled to issue the protection order. *See* RCW 10.14.080(3) (“At the hearing, if the  
8 court finds by a preponderance of the evidence that unlawful harassment exists, *a civil*  
9 *antiharassment protection order shall issue* prohibiting such unlawful harassment.”) (emphasis  
10 added).  
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12 If laches rightfully applied, and was supported by adequate findings, that conceivably  
13 could be an equitable defense, even if Respondent’s conduct did meet the “statutory definition”  
14 of “harassment.”

15 Laches is an affirmative defense that sounds in equity. *See King Cty. v. Taxpayers of*  
16 *King Cty.*, 133 Wn.2d 584, 644, 949 P.2d 1260, 1289 (1997). It is also an “extraordinary  
17 remedy that a party should not, under ordinary circumstances, employ to bar an action short of  
18 the applicable statute of limitations.” *Washington State Univ. v. Bernklow*, 197 Wn.App. 1038  
19 (2017). A party asserting laches has the burden to show: “(1) knowledge or reasonable  
20 opportunity to discover on the part of a potential plaintiff that he has a cause of action against a  
21 defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; and  
22 (3) damage to the defendant resulting from the unreasonable delay.” *Taxpayers of King Cty.*,  
23 133 Wn.2d at 642.  
24

25 Here, the district court’s record was ambiguous and incomplete. The district court  
appeared to agree that harassing conduct had occurred, yet did not issue a production order

1 pursuant to the mandatory language under RCW 10.14.080(3). As to laches, the district court in  
2 entertaining the argument considered only the delay component of the doctrine, but not the  
3 damage that Respondent might have suffered as a result of the delay. Nor did the district court  
4 expressly deny the petition because of laches.

5 The case is remanded to the district court to clarify the basis for its denial of the  
6 protection order under RCW 10.14.080(3), and to consider with adequate findings the  
7 applicability of Respondent's laches defense consistent with this order and the controlling test  
8 that governs the doctrine.  
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11 DATED this 26<sup>th</sup> day of December, 2019.

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15 JUDGE DAVID WHEDBEE  
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