

Trummel vs. Mitchell and Mitchell vs. Trummel
#01-2-04698-5 SEA, 19 April 2001
Motion for reconsideration of an Antiharassment Order
against NWU member Paul Trummel.
Judge James A. Doerty, Washington Superior Court
refused to reconsider and denied the motion.

THIS TEXT, TAKEN FROM THE RECONSIDERATION MOTION, CONTAINS THE BASIS FOR THE APPEAL

1.0. Motion and Relief Requested.

Petitioner and Counter Respondent Paul Trummel, by and through his attorney of record, Robert J. Siegel of Merkle Siegel & Friedrichsen, moves this court for an Order on Reconsideration, revising the Court's Order of April 19, 2001 by narrowly tailoring the relief awarded to petitioner in a manner which addresses the issues raised, but avoids infringing upon Mr. Trummel's constitutional rights.

The order states that: Paul Trummel is restrained from entering the premises known as Council House, 1501 17 Avenue, Seattle, King County, Washington, or coming within 500 feet thereof. Paul Trummel is also restrained from contacting in person, by mail, electronically, by telephone, by writing, or through any third person any resident of Council House and any board member, staff, or employee of Council House at any location - permanently.

2.0. Statement of Facts

Mr. Trummel is a resident of Council House, a HUD subsidized eldercare facility in Seattle. Stephen Mitchell is the administrator of Council House. On March 6, 2001 Mr. Trummel obtained an ex parte antiharassment order from this Court restraining Stephen Mitchell and his staff from harassing Mr. Trummel. He also obtained an order in forma pauperis. On March 20, 2001 at a hearing before the Honorable James Doerty, the Court denied Mr. Trummel's request for a permanent antiharassment order and retained jurisdiction. Until this time, Mr. Trummel had been representing himself pro se. Mr. Trummel sought to appeal the Court's denial of his motion and took steps to order the transcript of proceedings of the March 20th hearing from the court reporter. On April 11, 2001 Mr. Trummel obtained yet another order in forma pauperis from the Hon. Suzanne Barnett. Notwithstanding the order(s) in forma pauperis, the Court did not instruct the court reporter to provide a transcript in forma pauperis to Mr. Trummel. On April 12, 2001, without prior notice to Mr. Trummel, this Court, sua sponte, entered a Citation and Order On Contempt against Paul Trummel, on the basis that he allegedly disregarded the Court's retention of jurisdiction and had sought to bring this matter before another judge, i.e., "judge shopping". The Court's Order required Mr. Trummel to appear on April 19, 2001 to show cause why he should not be adjudged in contempt of court and punished. On April 13, 2001 Mr. Trummel received notice of the Order of Contempt via regular mail.

On April 19, 2001 at hearing before The Hon. James Doerty on both the Court's Citation and Respondent Mitchell's Petition For Antiharassment Order, the Court entered the Order which is the subject of this Motion.

At that same hearing Mr. Trummel, acting pro se, requested that the Court grant a short continuance to allow him to obtain legal counsel. The Court denied Mr. Trummel's request for a continuance.

3.0. Statement of Issues

Should the Court reconsider its Order entered on April 19, 2001, by vacating the Order, or, in the alternative, should the Court modify its Order in a manner that narrowly tailors the relief to the issues raised, and avoids interfering with Mr. Trummel's constitutional rights?

Should the Court reconsider its decision to deny Mr. Trummel a reasonable continuance to provide an opportunity to obtain legal counsel to represent him at a full and fair hearing?

Should the Court allow Mr. Trummel a full and fair hearing on the facts?

4.0. Evidence Relied Upon

The files and records herein.

5.0. Authority and Discussion

This Motion is brought pursuant to KCLR 7. The Court's Antiharassment Order was entered pursuant to RCW 10.14 et seq.

5.1. RCW 10.14.020

The definitions section of the statute, defines "Unlawful harassment" as "*a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate purpose.*" RCW 10.14.020(1). RCW 10.14.020(2) specifically exempts constitutionally protected activity from the reach of that conduct which may be restrained under the statute. In defining "Course of conduct" subsection (2) states in pertinent part "*Constitutionally protected activity is not included within the meaning of 'course of conduct'.*"

Further, RCW 10.14.190 entitled *Constitutional Rights* specifically exempts constitutionally protected rights stating: ***Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly.***

In the case at bar, much, if not all, of the conduct alleged against Mr. Trummel falls under constitutionally protected activity. For instance, Mr. Trummel's investigative work into the administration of Council House; his publication of a newsletter regarding his investigations; his dissemination of the newsletter containing information and the results of his investigations to residents of Council House; instances of satire, however offensive to particular residents, are likewise protected, as is Mr. Trummel's right to associate freely with those residents of Council House he chooses, and who choose to associate with him.

The Court should be further aware that Mr. Trummel has neither published nor disseminated anything to the residents of Council House, with the exception of a notice of resident meeting, since December/January of this year. Thus, notwithstanding that Mr. Trummel's activities complained of are largely constitutionally protected, there is absolutely no need whatsoever for any type of protective, or antiharassment order in this matter. This and other facts, pertinent to Mr. Trummel's defense should and would have been brought to the Court's attention if Mr. Trummel had been granted a short continuance in order to retain counsel, which request was denied by the Court.

5.2. RCW 10.14.030

RCW 10.14.030 sets forth the pertinent considerations for the court in determining whether a course of conduct serves any *legitimate or lawful purpose*.

Subsection (1) requires the court to consider whether *Any conduct between the parties was initiated by the respondent only or was initiated by both parties*. Here, there was no showing that Mr. Trummel only initiated contact between himself and Mr. Mitchell, or as to the other individual residents of Council House, on whose behalf Mr. Mitchell purportedly brought his petition. In fact, as administrator of Council House, there are numerous instances of mutually initiated contact that regularly and necessarily would occur between Mr. Mitchell and the residents, including Mr. Trummel. Mr. Trummel's written Response To Petition refers to instances wherein it was Mr. Mitchell and/or those in his employ who initiated contact with Mr. Trummel. In fact, it was just such instances of contact that led Mr. Trummel to first move for an antiharassment order himself only weeks prior to the filing of cross-petitioner's petition.

Subsection (2) requires the court to consider whether *the respondent has been given clear notice that all further contact with petitioner is unwanted*. Here, there has been no showing by either Mr. Mitchell or the other residents of Council House that clear notice was given to Mr. Trummel that all further contact is unwanted. The scope of the Court's Order covers all of the approximately 200 residents of Council House. Indeed, some of these residents are Mr. Trummel's friends and acquaintances.

Subsection (3) requires the court to consider whether *the respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner*. Here, even if the Court were to determine that somehow Mr. Trummel's journalistic endeavors alarmed or annoyed Mr. Mitchell, or certain residents, such determination must be made in light of the overriding constitutional considerations and deference to Mr. Trummel's first amendment rights, or other statutory authority. Subsection (4) states another consideration by the court is whether *the respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to: (a) Protect property or liberty interests; (b) enforce the law; or (c) Meet specific statutory duties or requirements*. Here, Mr. Trummel has consistently maintained that most of his efforts have been directed at bringing to light certain unlawful conduct and improprieties in the administration of Council House, including attempts to squelch his free speech rights, i.e., to protect his liberty interests. Further, Mr. Trummel's efforts have been directed at enforcing HUD regulations and to compel the Council House administration to comply with specific laws.

Subsection (5) requires consideration of whether *the respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner*. Here, Mr. Mitchell has not complained of any invasion of his privacy. Mr. Trummel specifically refutes that his intent was to intimidate, be hostile, or offensive. He has not been provided a full and fair hearing at which, with the assistance of counsel, he could fully explain his intentions, or to refute the allegations made by residents of Council House, which he contends were fabricated, and orchestrated by Mr. Mitchell who obtained multiple declarations by coercing and intimidating residents. Such allegations should be taken very seriously in light of the highly vulnerable elderly population residing at Council House, and their obvious susceptibility to intimidation and manipulation.

Further, there are approximately 200 residents of Council House. The Court's Order applies to all residents, most of whom filed no statement in this matter, and whose rights to continue to associate and have contact with Mr. Trummel have been violated by the broad sweep of the Court's antiharassment order.

5.3. The Court's Decision To Deny Mr. Trummel A Full And Fair Hearing On The Merits Violates His Right To Due Process.

Every citizen has the right to both procedural and substantive due process under both Article I, ¶3 of the Washington State Constitution and the Fourth Amendment of the U.S. Constitution. The Court's decision to deny Mr. Trummel's request for a continuance to retain counsel violates Mr. Trummel's right to procedural and substantive due process in that he was denied the right to a full and fair hearing on the facts. This is particularly disturbing in light of the fact that Mr. Trummel was not represented by counsel and presented no evidence in his own defense.

Justice requires that in light of the serious allegations presented against Mr. Trummel, including 41 declarations, he be given the opportunity, as requested, to be represented by counsel, and further, that counsel be provided with adequate time within which to conduct adequate discovery in order to respond to and refute the allegations.

Given that the thrust of cross-petitioner's Petition was that Mr. Trummel's allegations against him were "baseless" and "unsubstantiated", anything less than a full factual hearing serves to deprive Mr. Trummel of his right to due process under the law. This Court has no way of knowing with any reasonable degree of certainty whether Mr. Trummel's allegations against Mr. Mitchell were true. In fact, HUD has commenced an investigation of the Council House administration at the behest of Mr. Trummel. That investigation is ongoing. Accordingly, without a full and fair hearing on this issue, Mr. Trummel is greatly prejudiced, and his right to due process is arguably violated. The possibility that the HUD investigation may in fact confirm Mr. Trummel's allegations makes it imperative that the antiharassment Order against Mr. Trummel be vacated until a full and fair hearing on the facts is held.

The Court could have entered the Order as a temporary order and ordered a further hearing, thus affording Mr. Trummel full and fair access to counsel, and an opportunity to present his case on equal footing with respondents, who were represented by counsel. It would not have been unduly prejudicial to respondents were the Court to have continued the case for a reasonable period of time to provide Mr. Trummel an opportunity to retain counsel. The Court should reconsider its decision in this regard and provide Mr. Trummel a reasonable continuance to obtain counsel to represent him in a full and fair hearing, including adequate time within which to conduct appropriate discovery.

5.4. RCW 10.14 Is Not Designed To Penalize People Who May Be Overbearing, Obnoxious, or Rude.

In one of the only cases by the Washington courts construing this statute, the court of appeals in *Burchell v. Thibault*, 74 Wash. App. 517, 874 P. 2d 196 (1994) found that the statute is not designed to punish conduct which may be characterized as overbearing, obnoxious, or rude, but rather, is geared to protect those victims to whom objectionable behavior is directed. The acts alleged and attributed to Mr. Trummel could be more appropriately viewed as obnoxious, overbearing, or rude rather than presenting any real threat or actual harassment. Specifically, the Petition alleges that Mr. Trummel "writes offensive and defamatory newsletters and statements about Council House staff and residents and distributes his writings throughout the residence." Petition, page 2, lines 11-13. The Petition goes on to state that "He has instigated numerous groundless investigations of Council House by government agencies, including HUD, with the intent to distract Stephen Mitchell from the performance of his administrative duties to the detriment of the elderly population receiving Council House services." Petition, page 2, lines 13-16. and that "He also creates and fosters a hostile and fearful residential environment by means of his written and oral allegations which constantly allege that

he and others are subject to prejudice, bias and persecution.”, Petition, page 2, lines 19-21. Such allegations, even if proven to be true, would certainly be constitutionally protected behavior.

However, without a full factual hearing on the merits of these allegations, Mr. Trummel has no reasonable way to refute such allegations, nor does the Court have any way to accurately assess the merits of such allegations.

In light of the limited evidence presented, by Mr. Mitchell alone, can the Court say with any reasonable degree of certainty, or to a preponderance of the evidence, that Mr. Trummel's statements are truly “offensive” to all Council House residents?, or that the investigations he has initiated are truly groundless?, or that his acts are truly to the detriment of the elderly population at Council House?, or that he truly fosters a hostile and fearful residential environment?, or that he and certain others have not been subjected to prejudice, bias and persecution?. We submit not. Mr. Trummel should not be punished for such vague statements of conduct, much of which is constitutionally protected.

In *Burchell*, the court also held that the scienter aspect of the statute not only goes to the commission of the conduct, but to the identity of the targeted victim as well. Here, the Court's Antiharassment Order purports to cover all of the residents of Council House (approx. 200). The majority of those individuals made no allegations against Mr. Trummel, and at best would be unintended or incidental victims of any unwanted conduct. The court in *Burchell* specifically said that an “incidental victim not the target of harassment does not require protection from further unwanted contact” under the statute. Consequently, those unidentified, incidental individual residents of Council House should not be covered by an order under this statute.

5.5. As Written, The Antiharassment Order Is Overly Broad And Permanently Bars Mr. Trummel From Returning To His Own Home.

Orders for protection are extraordinary remedies and should be exercised with due constraint, and narrowly tailored to accomplish the specific remedy so as not to unduly infringe upon an individual's legitimate rights. Here, the Court could have entered a much more narrowly tailored order, which would have provided an appropriate remedy under the circumstances. For instance, the Order could specifically prohibit Mr. Trummel from harassing Mr. Mitchell, and any other residents who individually apply for such protection. It is not necessary, and serves no just purpose for the Court to completely bar Mr. Trummel from his own home, and from having any contact with other residents, some of whom are Mr. Trummel's friends and acquaintances. Barring Mr. Trummel from going within 1,000 feet of petitioner's residence and workplace effectively prohibits Mr. Trummel from returning to his own home – *permanently!*, and from speaking to or even corresponding with his own friends – *permanently!*. Surely, the Court could not intend such a grossly unjust result.

5.6. As Written, The Antiharassment Order Violates Mr. Trummel's First Amendment Rights To Free Speech.

Mr. Trummel is a professional journalist, who has practiced in his field for years. Both the First Amendment of the U.S. Constitution and Art I, ¶ 5 of the Washington State Constitution, and cases construed thereunder, guarantee all citizens the right to free speech and prohibit prior restraints upon that right. The Court's antiharassment order entered herein effectively prohibits Mr. Trummel from exercising his constitutional right to free speech, and places unlawful prior restraints upon his exercise of those rights by, among other things: prohibiting him from communicating with any resident at Council House; keeping him from the tools of his trade, which are kept and used where he resides at Council House. Further, the Order would have a chilling affect upon Mr. Trummel's right to free speech by effectively punishing him for nothing more than exercising that right.

Because much of the so-called “harassment” complained of by Mr. Mitchell consists of his objection to Mr. Trummel’s allegations against his duties as director of Council House, without a full and fair hearing on those allegations, Mr. Trummel is effectively being punished for exercising his right to free speech, also in violation of HUD regulations and State landlord tenant law.

5.7. As Written, The Antiharassment Order Violates Mr. Trummel’s Right To Freedom Of Association.

The U.S. Constitution, Amends. I and XIV, and the Washington State Constitution Art. 194 guarantee each citizen the right to freedom of association. As written, the Court’s Order effectively serves to deny Mr. Trummel his right to freely associate with those individuals with whom he chooses by barring him from being at Council House, visiting with anyone at Council House, communicating with anyone at Council House. Mr. Trummel has many friends and acquaintances who reside at Council House, none of whom joined in or supported the petition for antiharassment order brought by Mr. Mitchell. Mr. Mitchell does not have the authority to act on behalf of those individuals at Council House who have not granted him that authority. In fact, Mr. Mitchell’s authority to act on behalf of any of the residents of Council House under the statute in question is dubious at best. The Order interferes with Mr. Trummel’s constitutional right to freely associate.

5.8. As Written, The Antiharassment Order Violates Mr. Trummel’s Right To Equal Protection Under The Law.

The U.S. Constitution Amends. V and XIV, and the Wash. Const. Art 1912, guaranty citizens the right to be treated fairly and equally under the law. As written, the Court’s Order violates Mr. Trummel’s right to equal protection by effectively treating him differently from other similarly situated residents whom may have had complaints lodged against them both in Council House and in other eldercare facilities.

5.9. As Written, The Antiharassment Order Awards Relief Beyond That Requested In The Petition.

The relief requested by Mr. Mitchell et al was set forth at page 6, ¶C of the Petition For Antiharassment Protection Order. Nowhere in the Petition did cross-petitioners request that Mr. Trummel either be permanently barred from Council House, or that he not be permitted to have any contact with any resident at Council House. Accordingly, notwithstanding the Court’s broad discretion in such matters, the Court may be viewed to have exceeded its authority in awarding relief above and beyond that which was requested in the Petition. The Court should reconsider its decision and modify the Order consistent with those legitimate requests in the Petition.

5.10. As Written, The Antiharassment Order Violates Mr. Trummel’s Right To Travel.

Both the U.S. Constitution and the Washington State Constitution guarantee citizens the right to travel freely without restraint. As written, the Court’s Order would unduly restrain Mr. Trummel’s right to travel by prohibiting his contact with “Any Resident of Council House...At Any Location”. Under such overly broad constraints, Mr. Trummel could be found in contempt if he were to merely run into a resident on a bus, on the street, in a café, or other public place. The Court should reconsider its Order and narrowly tailor it accordingly.

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