

2008

J.C. v. Christopher Blaylock : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

J.C. a person under 18 years of
age,

Petitioner/ Appellee

v.

CHRISTOPHER BLAYLOCK,
Respondent/Appellant

District Court Case No.
080902996

Appellate Court No. 20080719

BRIEF OF APPELLEE

THIS APPEAL IS FROM A CIVIL STALKING INJUNCTION ISSUED
ON JUNE 30, 2008, IN THE SECOND JUDICIAL COURT IN AND
FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE
MICHAEL D. LYON PRESIDING.

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IN THE UTAH COURT OF APPEALS

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BRIEF OF THE APPELLEE

STATEMENT OF JURISDICTION

Appellee agrees with Appellant that this Court has jurisdiction to hear this matter.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Appellee disagrees that Blaylock has applied the correct Standards of Review to his arguments in his Statement of Issues and Standards of Review as it applies to UCA 76-5-106.5. Mr. Blaylock purports to appeal the trial court’s errors of law, but is, in most cases, not actually appealing the law applied to facts but rather appealing whether the facts satisfy

and not the correctness standard. See *Young v. Young*, 979 P.2d 338, 342 (Utah 1999); Utah R. Civ P. Section 52 (a) (2008).

STATEMENT OF THE CASE

- a. **Nature of the Case** - This is a civil stalking injunction case arising on May 7, 2008 when “J.C.,” a minor, filed a petition for protection under the stalking injunction statute, UCA § 76-5-106.5 (2008). The Appellant, Christopher Blaylock, challenged the issuance of the stalking injunction and a hearing was held to litigate the dispute on 16, 25, and 30 June 2008. The trial court rendered a decision in favor of “J.C.” and Mr. Blaylock has appealed.
- b. **Course of Proceedings** - At trial, “J.C.” called seven witnesses to testify in support of her petition for a stalking injunction and she herself testified. In addition to live testimony, “J.C.” offered several photographs that were introduced and admitted into evidence for the trial court’s review. Mr. Blaylock called his father and his sister to testify and he himself testified. Mr. Blaylock also offered several photographs that were introduced and admitted into evidence. In sum, the trial court heard the testimony of eleven witnesses and reviewed numerous photographs before rendering its decision.
- c. **Disposition of the Trial Court** – The following relevant findings were made by the Trial Court in its Findings of Fact, Conclusions of Law and Granting of the Petition for a Civil Stalking Injunction:
 1. That the Blaylock masturbated in front of “J.C.” and that it offended her sensitivity.
 2. That on April 19, 2008, Blaylock took pictures of “J.C.” and her friends, with no ostensible purpose except to make them feel insecure, distressed, or fearful.
 3. That on April 17, 2008, Blaylock swerved his vehicle at “J.C.” and a friend to scare

her.

4. That on May 16, 2008, Blaylock intentionally impeded “J.C.” and her mother as they were attempting to come out of the driveway in their car, causing them to become fearful because they were uncertain of what his intentions were with his vehicle.
5. That at least on one other occasion Blaylock sat in “J.C.’s” driveway for 15 or 20 minutes with no legitimate purpose.
6. That July 4, 2006, while Ms. Lythgoe stood by her mailbox with her head down examining her mail, Blaylock drove unsuspectedly close to her and then frightened her greatly by honking his horn.
7. That on another occasion Blaylock blocked the driveway of Ms. Lythgoe.
8. That on another occasion, Blaylock shined a spotlight into Ms. Lythgoe’s home.
9. That on another occasion, Blaylock used a mirror to reflect sunlight into Ms. Lythgoe’s face.
10. That Blaylock took video pictures of Ms. Lythgoe’s home with no legitimate purpose except to harass.
11. That the acts Blaylock directed at “J.C.” were acts he knew or should have known would cause a reasonable person to fear or experience emotional distress, especially in the context of the obvious hostility that exists between these two families extending over a number of years.
12. That “J.C.” was emotionally distressed or fearful of physical injury from these acts.

STATEMENT OF FACTS

This case arose in the context of an ongoing neighborhood dispute that had existed

between three families, the Coles, the Lythgoes, and the Blaylocks for several years. (R86), (R116). When “J.C” was a young girl, Blaylock had a habit of watching her jumping on her trampoline. (R10), (R59-60). On one of these occasions, “J.C.” witnessed him masturbating as he watched her jumping on the trampoline. (R10) In more recent years, Mr. Blaylock’s behaviors toward “J.C.”, her family, and another neighbor, Judy Lythgoe, became increasingly frightening. He used a handheld video camera to film “J.C.” and her friends. (R15), (R40-41), (R45-48),(R53) He used his vehicle to frighten “J.C.” and a friend by swerving toward them in his truck and then turning away at the last minute. (R14), (R51-52) On another occasion, Blaylock used his vehicle to block “J.C.” and her mother in their own driveway to frighten them. (R12-R13), (R64-R65), (R108) Blaylock further installed numerous cameras in various positions on his house where they could be directed into areas of the Coles’ yard that “J.C.” frequented. (R65-R70) Blaylock also engaged in similar malicious behaviors toward Judy Lythgoe, to include swerving his car at her to frighten her (R116-R117), blocking her in her driveway (R120,121), using a mirror to shine light into her eyes (R125) (R, Vol 2/23, 77), filming her with a video camera from his car (R115), (R, Vol 2, 117), and shining a spotlight into her house. (R122)

SUMMARY OF ARGUMENTS

Mr. Blaylock failed to marshal the evidence reviewed by the trial court that supports its factual findings. As such the evidence should be considered by this Court as supported by the record. The trial court did not err when if found Blaylock’s behavior met the definition of stalking and that issuance of a permanent injunction was warranted.

ARGUMENT

- I. APPELLANT FAILS TO MARSHAL EVIDENCE SUPPORTING THE TRIAL COURT'S FACTUAL FINDINGS; THEREFORE, THIS COURT SHOULD ASSUME THE RECORD SUPPORTS THE FACTUAL FINDINGS.

As outlined in more detail below, Appellant entirely fails to marshal the evidence presented at trial in support of the trial court's factual findings. As such, those findings should be found by this court to be supported by the trial record. See *438 Main St. v. Easy Heat, Inc.* 2004 UT 72, 69, 99 P.3d 801. The proper result of Appellant's failure to marshal such supporting evidence is for the Appellate Court to affirm the trial court's findings without further review. See *Jacobsen v. Thomas*, 2008, WL 4183007 (Utah App.), 2008 UT App 334. The requirement for the Appellant to marshal evidence supporting the trial court's findings is clearly outlined in the Utah Rules of Appellate Procedure, which state that a party challenging a fact finding must first marshal all record evidence that supports the challenged finding. UTAH R. App. P. 24(a)(9). Indeed, the marshaling responsibility for the party challenging a factual finding is a heavy one. They must present in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in that evidence. The gravity of this flaw must be sufficient to convince the Appellate Court that the trial court's resting on this evidence was clearly erroneous. See *West Valley City v. Hoskins*, 51 P.3d 52, 55 (Utah Ct App. 2002), quoting *West Valley City v. Majestic Investment, Co*, 818 P.2d 1311,1315 (Ut. Ct. App. 1991) Had Mr. Blaylock marshaled the evidence supporting the trial court's factual findings as he was required to do by both the appellate rules and case law, it would have revealed the following:

- a. **Videotaping Incident on April 19, 2008** - On April 19, 2008, "J.C." and three of her young friends, "Z.J.," "J.E." and "B.S.," were standing in front of "J.C.'s" house getting ready to depart. All four of the youngsters witnessed Blaylock driving slowly past the front of Appellee's house with a video camera aimed at them. "J.C."

testified seeing Blaylock and said it frightened her and made her fearful for her safety. (R15). “Z.J.”, who had been involved in a prior incident with Blaylock also saw him driving by with the video camera. (R53). “J.E.” testified that he saw Blaylock pointing his video camera at them and thought it was “scary and weird.” “B.S.” testified that seeing Blaylock pointing his camera at them made her feel “extremely violated.” (R40, R41) Finally, Judy Lythgoe, a neighbor who lived across the street testified that she saw Blaylock driving slowly past the Cole’s home on April 19, 2008 (R113) Ms. Lythgoe further testified that she saw the youngsters do nothing that would appear designed to provoke or threaten Blaylock. (R113, R114) Finally, Ms. Lythgoe testified that she herself has had Blaylock point a video camera at her while driving his car. On at least one occasion she was able to photograph the Blaylock engaged in this behavior, a copy of which was introduced into evidence and reviewed by the trial court. In response to this rather substantial evidence, Blaylock claimed to not remember the incident at all. (R Vol 2, 19) This claim of amnesia is rather astonishing, particularly given the rather traumatic event involving the Blaylock and “J.C.” just two days before. Blaylock did admit to being in the habit of carrying a video camera but claimed it was to deter people from harassing him. (R Vol 2, 19) He provided no insight into what the youngsters were doing on April 19, 2008 to harass him. He also offered no explanation as to why he didn’t simply drive off in the other direction and avoid any potential confrontation altogether. (R, Vol 2, 64, 65). He did admit that if he was there with his camera on April 19, 2008, he would use it to communicate to the kids that he was a person “not to be messed with.” (R, Vol 2, 65) Blaylock’s convenient loss of memory on this allegation in the face of the overwhelming evidence against him is not credible.

The trial court found this incident occurred, that Blaylock took pictures of “J.C.” and her friends with no ostensible purpose except to make them feel insecure, distressed or fearful. (R, Vol 3, 29) The trial court’s finding on this incident is supported by a preponderance of the evidence and should be affirmed.

- b. **Swerving Incident on April 17 2008** - “J.C.” testified that on the evening of April 17, 2008, she was standing in the street with her friend “Z.J.” when she saw Blaylock approaching them in his truck. She testified that Blaylock swerved at the two of them in his truck. Blaylock’s actions frightened “J.C.” (R14) In response she gave him an obscene gesture. (R36) “J.C.” stated that after she gave Blaylock the obscene gesture, he stopped his truck. (R37) She then ran into her house to report the incident to her father. (R15) “J.C.’s friend “Z.J. “ also testified that he was with “J.C.” that night and he saw Blaylock drift his truck toward his car and then swerve away at the last minute. (R51) “Z.J.” testified that Blaylock’s actions frightened him as he thought Blaylock might actually strike his car with his truck. ((R52). He also testified that “J.C.” was frightened by Blaylock’s actions and that she exclaimed “Oh, there’s my neighbor. He’s going to kill me.” (R52) Blaylock admitted to stopping his truck abruptly but claimed it was because “J.C.” gave him an obscene gesture and he thought she might throw a rock at him. (R Vol 2, 33,34) He insisted he did not slam on his brakes to frighten her still further. (R, Vol2, 34,39) After “J.C.” reported the incident to her father, Scott Coles, Mr. Coles came out of the house to confront Blaylock. He told Blaylock that if he ever came that close to his daughter again, he would call the police. (R90) Blaylock did not deny the allegation but instead told Scott Coles “Go right ahead.” (R90) Scott Coles called police and when they arrived at the Blaylock’s home both he and his father refused

to answer the door to speak with them. (R, Vol 2, 49-50) At trial, Blaylock claimed he refused to answer the door because he was afraid he would be attacked by police. He testified that he'd seen news reports about corrupt police officers hurting people. (R. Vol II, 51) He admitted, however, that he personally had never been pulled out of his house or vehicle and attacked in any way by police. (R, Vol 2, 50) Blaylock's refusal to discuss the matter with police that night is particularly suspicious in light of his own testimony that police had been called on him or other members of his family at least 75 times (R, Vol 2, 88) and his father's testimony that the police had been called on members of his family at least two times a month for many years, (R145) If Blaylock and his father's testimony is to be believed, police appearing on Blaylock's doorstep on April 17, 2008 would have been a routine matter and he had absolutely nothing to fear from their arrival. This makes Blaylock's explanation on this point not credible. A better and more reasonable inference, and the inference the trial court apparently made, was that Blaylock knew he had engaged in dangerous behavior toward "J.C." and her young friend and consequently wanted to avoid being questioned by police about it. "J.C.'s" version of what happened on April 17, 2008 was further bolstered by Judy Lythgoe, who testified that she too had been the victim of Blaylock's reckless driving when on July 4, 2006, he swerved his vehicle onto Ms. Lythgoe's side of the road, came up on her from behind where she was standing at the street curb and honked his horn at her, scaring her deeply (R,117) Ms Lythgoe also testified to another incident that occurred on July 5, 2006, when Blaylock, apparently angered because someone had called the police on him for lighting fireworks, drove up and down the road several times, weaving from one side of the road to the other and squealing his

tires. (R119) Ms. Lythgoe's testimony supports "J.C.'s" that it is in Blaylock's nature to use his vehicle to frighten people, particularly women and children.

"J.C.'s" evidence presented at trial and Appellant's suspicious behavior in refusing to discuss the matter with police establishes this incident by preponderance of the evidence and it should be affirmed.

- c. Blocking Driveway Incident on January 27, 2005** – "J.C." testified that on January 27, 2005, she and her mother were in their car, preparing to leave their driveway to attend a Reflections Award Ceremony. As they were approaching the end of the driveway, Blaylock drove his car quickly up and blocked their path. (R11, R12, R13) She testified his actions frightened her. "J.C.'s" mother, Sheryl Coles, testified to the same incident. She stated that when she and "J.C." got into her car, she saw Blaylock sitting in his car in front of his house with the lights on and the engine running. She waited several minutes to give Blaylock an opportunity to depart the area. When he did not she finally decided to proceed. As she approached the end of her driveway, she saw Blaylock drive quickly forward and block the end of her driveway with his car. She could see that Blaylock's car was still running because she could see smoke coming out of his exhaust. (R 63, R64) This incident was particularly frightening to Ms. Coles both for her own safety and for the safety of "J.C." as she had experienced two similar incidents with the Blaylock in the past. In September of 2004, Blaylock had on one occasion used his vehicle to force the car she was driving off the road and on another occasion he had engaged in a dangerous game of "chicken" with her at a four-way stop. (R 65, R66) "J.C.'s" father, Scott Coles, also testified regarding this incident. He testified that he

was in a separate car on the evening of January 27, 2005 and was about to follow his wife and "J.C." out of the driveway. He saw his wife stopped at the end of the driveway and that Blaylock was blocking her path with his own vehicle. He could see Blaylock's vehicle was still running. Mr. Coles got out of his vehicle and went to the end of the driveway to confront the Blaylock. At no time did he see the Blaylock's vehicle stop running or witness the Blaylock trying to restart the vehicle. Mr. Coles testified that after a short exchange of words, Blaylock immediately drove away. (R 87-89) Blaylock claimed this incident was just an unfortunate accident and that his car had simply stalled on him at the end of the Coles' driveway. (R, Vol 2, 16, 17) He offered a photograph of the vehicle in an attempt to support his assertion that the car did not run well. (R18) The photograph did nothing to support his assertion that on January 27, 2005, the car had stalled. When asked about the maintenance history or repair bills, Blaylock claimed his father did all the work on the car so there was no maintenance history to be had. (R, vol 2, 72) Just two weeks prior to this incident, Judy Lythgoe had suffered a similar experience with Blaylock blocking the end of her driveway with his car. (R 120, R121, R123) She was on her way to perform an errand at church and saw Blaylock sitting in his car on the opposite side of the road with the engine running. As she started to pull out of her driveway he engaged in a bizarre cat and mouse game with her. When she would move, he would move. When she would stop, he would stop. This continued until Blaylock was blocking Ms. Lythgoe's driving and honking his horn at her. Ms. Lythgoe was so frightened by Blaylock's behavior she went back inside her house and called the police. (R121) Blaylock testified he could not remember this incident. (R, Vol 2, 73) Ms. Lythgoe's experience with Blaylock that was so

strikingly similar to the experience the Coles had with him tends to undermine his claim that the incident on January 27, 2005 was a mistake or accident. The evidence presented on this allegation at trial supported the trial court's finding by a preponderance of the evidence and should be affirmed.

d. **Masturbation Incident** – This incident could not be identified to a specific date, but according to “J.C.’s” testimony it occurred approximately four or five years ago when she was just nine or ten years old. She had been experiencing problems with Blaylock watching her jumping on the trampoline. She said he would watch her then he’d stop for a while and then it would start up again. (R10) (R19) She further testified that on one occasion while she was jumping on the trampoline, she saw Blaylock watching her and that he was masturbating. (R10) When she saw him engaged in this behavior she fled the area and ran into her house and reported it to her father, Scott Coles. Scott Coles in turn initially consulted with his wife, Sheryl Coles, and then reported the incident to police. Mr. Coles testified that a blonde female police officer came to their home and spoke with him about the incident but much to his frustration his report was apparently never investigated. (R87) “J.C.’s” aunt, Stacey Thompson, testified and reported that on one occasion she witnessed the Blaylock staring at “J.C.” while she was jumping on the trampoline. She testified that she made eye contact with him and that her presence did not seem to deter his behavior in the least. Finally she found the behavior so unnerving that she directed the Coles children to go into the house. (R59, R60) In response to this allegation, Blaylock offered a few defenses. First, he claimed he was diabetic and that he suffered diabetes related seizures that would make him go

into trances and “just go into a stare.” (R, Vol 2, 19) Unfortunately, he did not offer a single piece of medical evidence to support his claim. In response to this incident and, perhaps in broader terms, a defense to all of “J.C.’s” allegations, Blaylock offered what can best be described as the “Good Mormon Boy Defense.” He testified that because at the time the alleged masturbation incident occurred he was serving as a youth leader in his LDS Ward, he would never engage in this type of behavior. (R, Vol 2, 9-10) Indeed, on cross-examination he further denied having masturbated ever, not once from age 12 to age 21. (R, Vol 2, 60-61) When weighed against the Twainian supposition that 95 percent of young men masturbate and the other 5 percent are liars, the trial court apparently found Blaylock fell squarely within Mark Twain’s fifth percentile. Mr. Blaylock’s good Mormon boy character defense is further undermined by his malicious behavior toward his devout Mormon neighbor, Judy Lythgoe as outlined above. In addition to “J.C.’s” and her Aunt Stacie’s eyewitness testimony and Blaylock’s incredible flat denial, another piece of evidence was introduced at trial that proved very telling. For at least two years, Blaylock had a bank of cameras mounted way up on the television antenna on top of his house. (R124) These cameras were configured in such a way that they could peer down into the Coles’ backyard and particularly onto the area where “J.C.” played on her trampoline. (R 70, R71) Photographs of these cameras with depictions of their line of sight were introduced into evidence at trial. While Blaylock insisted that none of his so-called security cameras were operable, he offered no objective proof of it. He did admit that he had connected them up to a television monitor (R, Vol 2, 59). He further conceded that if the cameras had been operable and properly configured, he would have been able to see “J.C.” jumping on her

trampoline. (R, Vol 2, 60) Whether the cameras Blaylock placed on his television antenna worked or not, his placement of them violated the stalking injunction statute. If they were operable, he was using them to watch the little girl for the likely reason of sexual gratification. If they were not operable, then he placed them there for the specific purpose of making “J.C.” believe they were working and thereby causing her emotional distress. The trial court, after carefully considering all of the evidence found it established this allegation by a preponderance and it should be affirmed.

e. **Parking and Watching Incident** - Witness Judy Lythgoe testified that the Appellant had a habit of sitting in his driveway in his vehicle for up to twenty or thirty minutes at a time for no apparent purpose. She testified that this happened frequently. (R114) Sheryl Coles identified the area within Appellant’s line of sight as the driveway and front lawn of her home, the area of her home most often frequented by “J.C.”. (R70). “J.C.’s” testimony regarding subparagraph (a) above further corroborates Blaylock’s continuing and inappropriate interest in her. While Blaylock admitted that he was in the habit of sitting in his truck he insisted it was only to finish a telephone conversation or listen to the end of a song on the radio and that it was not for the purpose of watching the “J.C.” Admittedly, the evidence on this finding is not extensive and it was not litigated much at trial. Nevertheless, the trial court found that Blaylock engaged in this behavior with no legitimate purpose (R30), a finding that is not clearly erroneous.

II. THE TRIAL WAS CORRECT IN FINDING THAT BLAYLOCK ENGAGED IN A COURSE OF CONDUCT THAT CAUSED “J.C.” TO FEAR FOR HER SAFETY AND SUFFER EMOTIONAL DISTRESS; THEREFORE, ISSUANCE OF A PERMANENT CIVIL STALKING INJUNCTION WAS WARRANTED.

Mr Blaylock alleges the trial court committed legal error by finding the elements of the stalking injunction statute had been met. (App Brf, 13). He then admits that whether the statute has been met in this case requires a review of the facts. (App Brf. 15) Indeed, the bulk of Blaylock's brief, nearly 25 pages, offers little more than an attempt to relitigate the factual findings of the trial court in the Court of Appeals. He attacks the credibility of Appellee's witnesses, disputes the facts, and claims the trial court's factual findings were mistaken, but makes very few arguments that the law was applied incorrectly. As such, the trial court's factual findings in this case should not be set aside unless found to be clearly erroneous since due regard is to be given to the opportunity of the trial court to judge the credibility of witnesses. Utah R. Civ P. Section 52 (a) (2008). The trial court's findings in this case are clearly supported by a preponderance of the evidence. Mr Blaylock seems to want to attack each of "J.C.'s" allegations in isolation without considering them in combination or how the larger context of the ongoing neighborhood feud may have intensified them. The question of whether Blaylock's conduct violated the civil stalking statute must be considered cumulatively in light of all of the facts and circumstances of the case and it would be erroneous for the trial court to have considered each incident separately. See *Ellison v. Stamm*, 2006 UT App 150, 13. In this case, Blaylock clearly knew his family had been having ongoing problems with "J.C.'s" family as well as the neighbors across the street for an extended period of time. (R, Vol 2, 6-9) As such, he knew or should have known that the hostile acts he engaged in toward "J.C." would be reacted to at a higher level of emotion or stress than if someone without his history with her family had engaged in the same or similar behavior. He engaged in such acts anyway and it was reasonable for the trial court to conclude that his behavior was intentional and calculated to frighten this young girl or cause her emotional distress.

CONCLUSION

After a careful review of the documentary evidence, assessment of witness credibility and observation of witness demeanor, the trial court found that at least two instances of stalking were committed by Mr. Blaylock and that therefore a permanent civil stalking injunction was warranted. Mr Blaylock failed to marshal evidence to support the trial court's findings; therefore, this court should uphold the factual findings of the trial court. The trial court was in a uniquely advantageous position to make these observations and findings and, as demonstrated in this reply brief, those findings were clearly supported by a preponderance of the evidence and they were not clearly erroneous. As such Appellee respectfully requests that the findings and decision of the trial court be AFFIRMED.

DATED this ____ day of February, 2009.

GARY D. ANDERSON

Attorney for Appellee

CERTIFICATE OF MAILING

I certify that on this ____ day of February, 2009, I served two copies of the foregoing Brief of Appellee upon Dee W. Smith, Counsel for Respondent/Appellant, by mailing it to him by first class mail with sufficient postage prepaid to the following address:

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