

2010

Lori S. Allen v. Lisa K. Anger : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LORI S. ALLEN

Petitioner/Appellee,

vs.

LISA K. ANGER,

Respondent/Appellant.

Appellate Case No. 20100016-CA

District Ct. Case No. 070403425

Judge Howard

[ORAL ARGUMENT REQUESTED]

BRIEF OF APPELLANT

APPEAL FROM DEC. 2, 2009 ORDER OF THE FOURTH DISTRICT COURT,
UTAH COUNTY, HONORABLE FRED D. HOWARD
DISTRICT COURT CASE NO. 070403425

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**FILED
UTAH APPELLATE COURTS**

APR 09 2010

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STATEMENT OF JURISDICTION

The Utah Supreme Court had original jurisdiction to hear this appeal under section 78A-3-102(3)(j). UTAH CODE ANN. (2008). The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to section 78A-4-103(2)(j), as this is a “case[] transferred to the Court of Appeals from the Supreme Court.” UTAH CODE ANN. (2008).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issue: Did the trial court correctly interpret Utah Code section 76-5-106.5 when it held that the elements of the stalking statute were satisfied and that Petitioner was entitled to a civil stalking injunction? UTAH CODE ANN. (2003).

Standard of Review: “The proper interpretation and application of a statute is a question of law which [the court] review[s] for correctness, affording no deference to the district court's legal conclusion.” *Gutierrez v. Medley*, 972 P.2d 913, 914-15 (Utah 1998); *Abernathy v. Mzik*, 2007 UT App 259, ¶ 9, 167 P.3d 512. “If a case involves a mixed question of fact and law, [the reviewing court] afford[s] some measure of discretion to the district court's application of” law to facts. *State v. Hansen*, 2002 UT 125, ¶ 26, 63 P.3d 650; *see also Jensen v. IHC Hosps., Inc.*, 2003 UT 51, ¶ 57, 82 P.3d 1076.

Issue Preserved for Appeal: Appellant preserved this issue for appeal by arguing the issue to the District Court in her Memorandum in Support of Motion to Dismiss, Entering Sanctions and Attorney Fees, filed on January 30, 2008). (R. 25-27.) Appellant also argued the issue orally at the trial. (R. 145 at 84-89.)

**PROVISIONS OF CONSTITUTIONS, STATUTES, ORDINANCES, AND
REGULATIONS WHICH ARE DETERMINATIVE OR OF CENTRAL
IMPORTANCE**

There are no constitutional provisions, ordinances, rules, or regulations that are determinative of this case.

Statutes:

UTAH CODE ANN. § 76-5-106.5 (2003) provides in relevant part (note that this section (76-5-106.5) was significantly amended, but not renumbered, in 2008. The previous version is cited because it was in effect at the time of the alleged stalking):

76-5-106.5. Definitions -- Stalking -- Injunction -- Hearing.

(1) As used in this section:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.

(b) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(c) "Repeatedly" means on two or more occasions.

(2) A person is guilty of stalking who:

(a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:

(i) to fear bodily injury to himself or a member of his immediate family; or

- (ii) to suffer emotional distress to himself or a member of his immediate family;
- (b) has knowledge or should have knowledge that the specific person:
 - (i) will be placed in reasonable fear of bodily injury to himself or a member of his immediate family; or
 - (ii) will suffer emotional distress or a member of his immediate family will suffer emotional distress; and
- (c) whose conduct:
 - (i) induces fear in the specific person of bodily injury to himself or a member of his immediate family; or
 - (ii) causes emotional distress in the specific person or a member of his immediate family.

....

UTAH CODE ANN. § 77-3a-101 (2008) provides in relevant part (note that although the section was amended in 2008, the changes included a stylistic change and one other minor change, which do not affect the analysis of the statute. Therefore, the current version is cited for convenience):

77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.

(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.

(2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

STATEMENT OF THE CASE

This case involves a civil stalking injunction obtained by Lori Allen against her sister, Lisa Anger. In her affidavit in support of her request for a civil stalking injunction Lori Allen alleged that her sister participated in making a website and passing out flyers that harmed her and her family and that Lisa also helped her daughter file an emancipation petition. (R. 10, ¶¶ 4-5.) Ms. Allen also alleged that after asking her sister Lisa Anger not to contact her or her children, Lisa came to her house without permission on two occasions and made other contacts with her children. (*Id.*, ¶¶ 6-18.)

An ex parte stalking injunction was issued on Nov. 20, 2007. (R. 12.) Lisa Anger requested a hearing and after two hearings, the court issued a civil stalking injunction order on Dec. 2, 2009 against Lisa Anger. (R. 131.) This appeal followed.

STATEMENT OF FACTS

Parties and Involved Individuals

1. Appellee/Petitioner Lori Allen and Appellant/Respondent Lisa Anger are sisters. (R. 145 at 5.)

2. Lori Allen has four children: Chandra Robb, Mikayla Robb, Kira Robb, and Alaina Robb. Chandra is the daughter who was sent to the teen ranch in southern Utah. (R. 144 at 6, 8.)
3. Steve Allen is Lori Allen's Husband. (R. 145 at 46-47.)
4. Eric Richins is the brother of Petitioner and Respondent. (R. 145 at 46-47.)
5. Nathan Richins is the brother of Petitioner and Respondent. (R. 145 at 46-47.)
6. Jeremiah Anger is Lisa Anger's husband. (R. 145 at 46-47.)

General Background

7. Lisa Anger testified that "[f]or about nine years I had [Lori Allen's four] children with me a majority of their lives" because Lori Allen was going to night school and working days and also during the time of Lori Allen's five-year divorce with her husband, which ended in suicide. (R. 145 at 98.)
8. Lisa Anger also testified that Lori Allen had a physical altercation with her two oldest children in October 2006 and had gone to institutionalize herself, and said she could no longer handle her children. (R. 145 at 95-96.)

Teen Ranch

9. At the beginning of November, 2006, Lori Allen decided to send her oldest daughter, Chandra Robb, to a teen ranch in southern Utah. (R. 144 at 6, 8.)
10. Some of Ms. Allen's family members, including Ms. Anger, disagreed with Ms. Allen's decision to send Chandra to the teen ranch. (R. 145 at 48.)

Family Meeting

11. A family meeting took place on November 5, 2006, at the residence of Ms. Allen, with the apparent objective to persuade Ms. Allen to remove Chandra from the teen ranch. (R. 145 at 46, 48, 57, 58.)
12. The individuals present at the family meeting included Lori Allen (Petitioner), Steve Allen (Lori's husband), Nathan Richins (brother of Petitioner and Respondent), Eric Richins (brother of Petitioner and Respondent), Lisa Anger (Respondent), and Jeremiah Anger (Lisa's husband). (R. 145 at 46-47.)
13. Eric and Nathan asked Lori Allen to bring Chandra home from Turn About Ranch. (R. 145 at 48.)
14. The discussion at the meeting became heated. Steve Allen testified that there was "[l]ots and lots of yelling. It seemed to me everyone was against Lori, and that they wouldn't let her say a word edgewise. She couldn't defend herself without being cutoff and yelled at some more." (R. 145 at 58.)
15. Steven Allen testified that Lisa Anger was doing most of the yelling, (R. 145 at 63.), and Ms. Allen testified similarly, (R. 145 at 30.) There was testimony that others at the family meeting were yelling as well, including Lori Allen. (R. 145 at 63, 77, 100.)
16. Lori testified that after they left she started getting a migraine for which she was hospitalized for three days just before Thanksgiving in 2006. (R. 145 at 30.) Steven Allen testified that was her fourth time in the emergency room. (R. 145 at 60.) Lori stated that she had problems with migraines until February, 2007. (R. 145 at 30.)

Website and Flyers

17. In an effort to get Chandra out of the teen ranch, some of Ms. Allen's family members, including Lisa Anger, collaborated in creating a website and passing out flyers. (R. 131-32; R. 145 at 8-9, 70, 128, 129.)

Website

18. The family members created the website for the purpose of obtaining the release of Chandra from the teen ranch. (R. 145 at 69; *see* R. 147 at Exhibit No. 1 for a copy of the website.)

19. The website displayed contact information for Lori Allen and Steve Allen, including home phone numbers, work phone numbers, email addresses, and also listed their employers. (R. 144 at 7; R. 145 at 5.)

20. The website included a picture of Chandra, and the website stated her location and age. (R. 144 at 7.)

21. A picture of Steve Allen was posted on the website. (R. 144 at 10.)

22. The website encouraged people to call Mark Shurtleff and CPS. (R. 144 at 10; R. 145 at 93.)

Flyers

23. Lisa Anger testified that she photocopied flyers that her sister Wendy made, which flyers directed people to the website. (R. 145 at 128; *see also* 73-74, 101.) Nathan also testified that Wendy created the website and that he took a photo of Steve Allen which was posted on the website. (R. 145 at 79.)

24. Nathan testified that the reason Lisa Anger gave as to why personal information was displayed was “[s]o that people would call them and express their feelings.”

(R. 145 at 72.)

25. Ms. Anger stated that she sent pictures to Wendy which were used in the website.

(R. 145 at 101, 127.)

26. Ms. Anger gave the flyers to her two brothers and a friend and asked them to distribute them. (R. 145 at 73-74, 101.)

27. Nathan testified that Lisa Anger told him where to distribute the flyers: “[t]he main target places were their church, work places, neighborhoods, people that knew her, for the most part.” (R. 145 at 73-74.)

28. The flyers were distributed in the neighborhood of Ms. Allen, around her church ward, around her workplace, and on cars around her husband’s workplace. (R. 144 at 6, 8; R. 145 at 58.)

29. Lori Allen’s own children were also involved in distributing the flyers. Ms. Allen testified that “[s]omeone . . . took my children around . . . to distribute these flyers too.” (R. 144 at 9.)

30. Lisa Anger testified that the personal information such as phone numbers and employers were taken off when the flyers were passed out. (R. 144 at 130.)

Results of Flyers and Website

31. Lori Allen testified that as a result of her contact information being posted on the website, some people called her to harass her. (R. 144 at 7, 11.) To her knowledge, she did not receive any harassing emails. (R. 144 at 7, 12.)

32. Lori Allen testified that she was afraid she would lose her job because of the flyers. (R. 144 at 12.)
33. Ms. Allen also testified that she was fearful that anyone on the Internet would be able to find her and her family members, and had concerns for the safety of her children. (R. 145 at 16-17.)
34. Ms. Allen also objected to the website and flyers because it interfered with her parental authority. (R. 145 at 17.)
35. Steve Allen testified that Lori Allen was emotionally impacted during this time: “[Lori Allen] was just crying a lot, and just really, really frustrated and upset.” (R. 145 at 61.)
36. Mr. Allen stated that his employment and work relationships were negatively impacted by the flyers and website. (R. 145 at 59.)
37. Steve Allen also testified that their relationship with their neighbors was negatively impacted as a result of the flyers and the website. (R. 145 at 62.)

Emancipation Petition

38. While Chandra was at Turn About Ranch, Lisa Anger encouraged Chandra to become emancipated. (R. 131, ¶ 2; R. 145 at 17.)
39. Ms. Anger filled out the emancipation paperwork, and then drove down to Turn About Ranch so that Chandra could sign the emancipation paperwork. (R. 131, ¶ 2; R. 145 at 13, 17.)

40. The emancipation petition was eventually dismissed, as Chandra was sent to live with her Aunt Wendy in Washington State in January of 2007. (Order from Stipulation, Feb. 7, 2007 at 1-2; R. 145 at 41.)
41. The Order sending Chandra to Washington resulted from a stipulation which Lori Allen agreed to, and the court issued an order in conformance with the stipulation. (Order from Stipulation, Feb. 7, 2007; R. 145 at 31, 54.)
42. In conjunction with court proceedings, Lori Allen was interviewed by a reporter from the Salt Lake Tribune and posed for pictures. (R. 145 at 35; *see also* Kirsten Stewart, “Emancipation request splits family: The girl's aunts say she should not remain at ranch for troubled youth.” *The Salt Lake Tribune*, Dec. 16, 2006.)

Additional Contact between Petitioner and Respondent and Respondent’s Family

43. In November of 2006, Lori Allen asked Lisa Anger not to communicate with her children. (R. 145 at 17.)
44. On December 15, 2006, the Juvenile Court ordered, “Lisa Anger, Jeremiah Anger and Wendy Berg are, hereby, restrained from further interfering with Petitioner’s fundamental rights as a parent. Said restraint includes but is not limited to the following: A. Said siblings are to have no unsupervised time or communication with [Lori Allen’s] minor children. . . .” (Order, Dec. 15, 2006 at 1; R. 145 at 20.)
45. On December 30, 2006, Lori Allen let at least one of her daughters spend the night at Lisa Anger’s house. (R. 145 at 49.)

46. On January 6, 2007, Lisa Anger attended Mikayla's (Lori's daughter) soccer game and invited Lori and her children to go ice skating with her and her children that night and they all went. (R. 145 at 49-50, 106.)
47. Lori Allen and Lisa Anger attended two birthday parties together from January to May, 2007. (R. 145 at 41, 111.)
48. On March 10, 2007, Lori and Lisa did a baby shower together for Christina, their sister-in-law, including running games and putting food together. (R. 145 at 40, 112.)
49. On March 31, 2007, Lisa attended Mikayla's soccer game. (R. 145 at 112-113.)
50. On April 8, 2007, the families of Lori and Lisa had an Easter Egg hunt, and celebrated the birthday of a family member. (R. 145 at 113.)
51. On April 20, 2007, the families of Lori and Lisa went on a hike up Aspen Grove at Mount Timpanogous. (R. 145 at 41, 114.)
52. On May 5, 2007, Mikayla spent the night at Lisa's house. (R. 145 at 115.)
53. On June 6, 2007, Lisa attended the school play of Lori's daughters. (R. 145 at 116.)
54. On June 11, 2007, Lori sent Lisa an email stating, "I'm requesting that you and Jeremiah not have any further contact with my children. . . . Do not call my children. Make NO contact with them." (R. 145 at 23.)
55. Lisa's children received presents from Lori on their birthdays: July 10, 2007 and August 6, 2007. (R. 145 at 117.)

56. On August 26, 2007, Lisa Anger came to Lori Allen's home with her kids to bring presents and talk and they stayed over an hour (Lisa Anger says it was 2.5 hours and that she and Lori hugged at the time of the departure). (R. 145 at 50, 117.)
57. On September 21, 2007, Lori called Lisa and they talked for 71 minutes. (R. 145 at 43, 119, 121.) Lori testified that she told Lisa, "[d]on't call me anymore. Don't come over to my house. Leave us alone." (R. 145 at 25.)
58. On October 14, 2007, Lisa and her children stopped by Lori's house to drop off some presents from herself, Wendy, and Chandra. (R. 145 at 119.) Lisa testified that she did not know that Lori and Steve were not home at the time. (R. 145 at 119.)
59. About ten minutes after Lisa arrived, Lori and Steve came home and Lori said something like "I don't think you understand that you can't be here. . . . Will you please leave." (R. 145 at 120; *see also id.* at 26)
60. In late November, 2007, the family agreed that Lisa and Lori should not both attend the Thanksgiving dinner at her parent's home, so Lisa did not attend. (R. 145 at 51.) However, Lisa did come to the house later in the day and went downstairs to where her children were, and where the children of Lori were. (R. 145 at 53.)

Civil Stalking Injunction

61. On November 20, 2007, Lori Allen filed a Request for a Civil Stalking Injunction and Affidavit against her sister, Lisa Anger. (R. 5, 10.)

62. In support of her request for the stalking injunction, Lori Allen alleged as basis for the stalking injunction the incidents regarding the website and the flyers, the unannounced visits, the continued contacts with Lori's children, the encouragement of Chandra to file emancipation papers, and generally interfering with her parental rights. (R. 10, ¶¶ 1-18.)
63. The court granted the request for an ex parte stalking injunction on the day the Request for a Civil Stalking Injunction was submitted and Lisa Anger requested a hearing on December 11, 2007. (R. 12, 18.)
64. The court held two hearings: one on February 11, 2008, and another on May 28, 2008. (R. 144 at 1; R. 145 at 1.)
65. The court determined that Lisa Anger's actions met the requirements for stalking under Utah Code section 76-5-106.5 (2003), and enjoined her from stalking Lori Anger. (R. 131, ¶¶ 13-19.)

SUMMARY OF ARGUMENT

The District Court erred in its interpretation or application of section 76-5-106.5 when it held that Lisa Anger had committed stalking against her sister Lori Allen. UTAH CODE ANN. (2003). Lisa Anger did not engage in a "course of conduct," which section 76-5-106.5 requires as a prerequisite to a finding of stalking. *Id.* The phrase "course of conduct" is defined as "repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person." *Id.* In Section I. C., "Fulfilling the

Marshalling Requirement,” Appellant shows that her conduct did not meet the definition of “course of conduct” under section 76-5-106.5. Therefore, Appellant asks this Court to reverse the District Court’s determination that she committed stalking.

ARGUMENT

I. IT WAS ERROR FOR THE DISTRICT COURT TO DETERMINE THAT LISA ANGER HAD COMMITTED STALKING WHERE HER ACTIONS DID NOT MEET THE DEFINITION OF “COURSE OF CONDUCT” UNDER SECTION 76-5-106.5.

The District Court erred in its interpretation or application of section 76-5-106.5¹ when it held that Lisa Anger had committed stalking against her sister Lori Allen. UTAH CODE ANN. (2003). “The proper interpretation and application of a statute is a question of law which [the court] review[s] for correctness, affording no deference to the district court's legal conclusion.” *Gutierrez v. Medley*, 972 P.2d 913, 914-15 (Utah 1998); *Abernathy v. Mzik*, 2007 UT App 259, ¶ 9, 167 P.3d 512. “If a case involves a mixed question of fact and law, [the reviewing court] afford[s] some measure of discretion to the district court's application of” law to facts. *State v. Hansen*, 2002 UT 125, ¶ 26, 63 P.3d 650; *see also Jensen v. IHC Hosps., Inc.*, 2003 UT 51, ¶ 57, 82 P.3d 1076. Appellant’s brief is presented in the following sections: (A) a background of Utah’s law governing civil stalking injunctions; (B) a statutory analysis of the plain language of section 76-5-106.5, which defines stalking; and (C) fulfilling the marshalling requirement.

¹ Section 76-5-106.5 was significantly amended, but not renumbered, in 2008. UTAH CODE ANN. (2003). The 2003 version is cited because it was in effect at the time of the alleged stalking.

A. Background Civil Stalking Injunction Law

1. Procedure governing Civil Stalking Injunctions

A person may petition for an ex parte civil stalking injunction by following the procedures set forth in Utah Code section 77-3a-101.² (2008) The Utah Court of Appeals has summarized the procedures applicable to civil stalking injunctions as follows:

Once a proper petition is filed, and the trial court “determines that there is reason to believe that an offense of stalking has occurred” under section 76-5-106.5, “an ex parte civil stalking injunction may be issued by the court.” *Id.* § 77-3a-101(5); *see id.* § 77-3a-101(1). However, “[w]ithin ten days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.” *Id.* § 77-3a-101(6). “At the hearing, the court may modify, revoke, or continue the injunction,” and “[t]he burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.” *Id.* § 77-3a-101(7). In other words, to avoid having the injunction revoked, the petitioner must demonstrate by a preponderance of the evidence that respondent's conduct satisfies the elements of section 76-5-106.5. *See id.* § 77-3a-101(1), (7).

Ellison v. Stam, 2006 UT App 150, ¶ 20, 136 P.3d 1242.

2. Substantive Law Governing Civil Stalking Injunctions

The civil stalking injunction statute in section 77-3a-101 incorporates the definition of stalking found in section 76-5-106.5, which is the criminal stalking statute.

Section 76-5-106.5 defines stalking as follows:

- (2) A person is guilty of stalking who:
 - (a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:
 - (i) to fear bodily injury to himself or a member of his immediate family; or
 - (ii) to suffer emotional distress to himself or a member of his immediate family;

² Although section 77-3a-101 was amended in 2008, the changes included a stylistic change and one other minor change, which do not affect the analysis of the statute. Therefore, the current version is cited for convenience.

- (b) has knowledge or should have knowledge that the specific person:
 - (i) will be placed in reasonable fear of bodily injury to himself or a member of his immediate family; or
 - (ii) will suffer emotional distress or a member of his immediate family will suffer emotional distress; and
- (c) whose conduct:
 - (i) induces fear in the specific person of bodily injury to himself or a member of his immediate family; or
 - (ii) causes emotional distress in the specific person or a member of his immediate family.

UTAH CODE ANN. § 76-5-106.5(2) (2003). The stalking definition stated above, and found in section 76-5-106.5, contains some important defined terms. *Id.* Section 76-5-106.5 defines a “course of conduct” as “repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.” § 76-5-106.5(1)(a). The word “repeatedly” is defined as “two or more occasions.” § 76-5-106.5(1)(c).

Furthermore, whether a person is guilty of stalking is based on a reasonable person standard. § 76-5-106.5(2)(a); *see also Ellison v. Stam*, 2006 UT App 150, ¶ 27. Therefore, a person is guilty of stalking if she, on two or more occasions, “intentionally or knowingly engages in a course of conduct” that would cause a reasonable person to either (1) fear bodily injury or (2) suffer emotional distress. *See* § 76-5-106.5(1)-(2).

3. Emotional Distress in the Context of Civil Stalking Injunctions

The concept of emotional distress under Utah’s stalking injunction law was imported from tort law: “the *Lopez* court borrowed the definition of emotional distress from *Russell v. Thomson Newspapers, Inc.*, 842 P.2d 896, 905 (Utah 1992), for purposes of section 76-5-106.5, *see Salt Lake City v. Lopez*, 935 P.2d 1259, 1264 (Utah

Ct.App.1997).” *Ellison*, 2006 UT App 150, ¶ 35. The *Lopez* court stated that “[e]motional distress results from conduct that is ‘outrageous and intolerable in that it offends the generally accepted standards of decency and morality.’” *Lopez*, 935 P.2d at 1264 (quoting *Russell*, 842 P.2d at 905).

The conduct complained of must be severe to lead to a finding of emotional distress. The *Ellison* court quoted *Harnicher v. University of Utah Medical Center* in its analysis of the severity of the emotional distress: “the emotional distress suffered must be severe; it must be such that a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case.” *Ellison*, 2006 UT App 150, ¶ 35 (quoting *Harnicher v. University of Utah Medical Center*, 962 P.2d 67, 70 (Utah 1998)).

The knowledge of a defendant is also relevant to the inquiry into whether the conduct is sufficiently outrageous and intolerable to meet the standard for emotional distress:

The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know.

Ellison, 2006 UT App 150, ¶ 35, (quoting Restatement (Second) of Torts § 46 cmt. f (1965)). Therefore, where the respondent in *Ellison* had previously sexually assaulted the petitioner, behavior that appeared relatively innocuous could be classified as outrageous and intolerable when taking respondent’s knowledge into consideration. *Ellison*, 2006 UT App 150, ¶ 31-33.

4. Courts look at the totality of the circumstances to determine whether stalking has occurred.

In evaluating whether the defendant has committed stalking, the court “look[s] at the totality of the circumstances in evaluating whether or not certain behavior caused the requisite emotional distress or fear of bodily injury. *Abernathy v. Mzik*, 2007 UT App 259, ¶ 14, 167 P.3d 512; *see also Ellison*, 2006 UT App 150, ¶ 27, (“[A]ny evaluation of a defendant's conduct must be considered in the context of all of the facts and circumstances existing in the case.”). The court in *Ellison* thus rejected the defendant’s assertion that each alleged occurrence of stalking must be separately considered to determine whether it alone would be sufficient to cause emotional distress. *Ellison*, 2006 UT App 150, ¶ 29.

B. The District Court erred in interpreting or applying Utah Code section 76-5-106.5 when it held that Lisa Anger had committed stalking as defined in that section because she did not engage in conduct or communication that could be construed as a “threat.”

Because Lisa Anger did not engage in a “course of conduct,” as defined in Utah Code section 76-5-106.5, it was error for the District Court to determine that she had committed stalking against Lori Allen. UTAH CODE ANN. § 76-5-106.5 (2003). In statutory interpretation, the court’s “primary goal is to evince the true intent and purpose of the Legislature.” *State v. Martinez*, 2002 UT 80, ¶ 8, 52 P.3d 1276 (internal quotation marks omitted). The “best evidence” of “legislative intent and purpose . . . is the plain language of the statute itself.” *Id.* “When examining the statutory language [the court] assume[s] the legislature used each term advisedly and in accordance with its ordinary meaning.” *Id.*

The phrase “course of conduct” is defined as “repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.” § 76-5-106.5(1)(a). A threat is defined as the expression of an intention to inflict injury on another. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976). Another definition of “threat” is “[a] communicated intent to inflict physical or other harm on any person or property.” BLACK’S LAW DICTIONARY 1480 (6th ed. 1990).” As shown below, the conduct of Lisa Anger does not meet the ordinary meaning of “threat.” Although the District Court found that Lisa Anger engaged in a “course of conduct,” the District Court’s description of Lisa’s course of conduct shows that Lisa’s actions did not meet the statutory definition. The District Court stated:

- “Respondent’s course of conduct included multiple acts including: encouraging Petitioner’s daughter to file emancipation papers; filling out emancipation forms for Petitioner’s daughter; unexpectedly coming to the Petitioner’s home on two (2) occasions despite Petitioner’s request that Respondent not communicate with her; and entering Petitioner’s home without her permission.” (R. 131, ¶ 13.)

The District Court did not explicitly connect the statutory elements in the definition of “course of conduct” with Lisa Anger’s actions. The court did not find that Lisa Anger had either (1) “repeatedly maintain[ed] a visual or physical proximity to a person or [(2)] repeatedly convey[ed] verbal or written threats or threats implied by conduct.” *See* § 76-5-106.5(1). As will be shown in more detail below, the actions of Lisa Anger are insufficient to meet the definition of “course of conduct” under section 76-5-106.5(1)(a), and it was therefore error to hold that she had committed stalking. *See id.*

C. Fulfilling the Marshalling Requirement

As it is necessary to review the facts of the case to determine whether the District Court properly applied Utah Code section 76-5-106.5(1)(a) (2003), Petitioner submits this section in compliance with the marshalling requirement. Utah Rule of Appellate Procedure 24(a)(9) states, “[a] party challenging a fact finding must first marshal all record evidence that supports the challenged finding.” U.R.A.P. 24(a)(9). Utah courts have found a duty to marshal the evidence where the court’s application of a legal standard is “extremely fact-sensitive:”

Even where the defendants purport to challenge only the legal ruling, as here, if a determination of the correctness of a court's application of a legal standard is extremely fact-sensitive, the defendants also have a duty to marshal the evidence. *See, e.g., [In re Estate of Beesley, 883 P.2d 1343, 1347-1349 (Utah 1994)]* (explaining that failure of the appellant to marshal the evidence meant findings were presumed valid, proving fatal to her legal argument).

Chen v. Stewart, 2004 UT 82, ¶ 20, 100 P.3d 1177.

The court in *West Valley City v. Majestic Inv. Co.* described the marshaling requirement:

The marshaling process is not unlike becoming the devil's advocate. Counsel must extricate himself or herself from the client's shoes and fully assume the adversary's position. In order to properly discharge the duty of marshaling the evidence, the challenger 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 the evidence. The gravity of this flaw must be sufficient to convince the appellate court that the court's finding resting upon the evidence is clearly erroneous.

West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah Ct.App.1991); *see also* *Chen v. Stewart*, 2004 UT 82, ¶ 77. Appellant sets forward the following evidence which could support the finding of the District Court.

Evidence in Support of the District Court's Order:

(1) At the family meeting on November 5, 2006 at the residence of Ms. Allen, there was a heated discussion regarding Lori Allen's decision to place Chandra in the teen ranch, and Lisa Anger was yelling at Lori Allen.

A family meeting took place on November 5, 2006 at the residence of Ms. Allen, with the apparent objective to persuade Ms. Allen to remove Chandra from the teen ranch. (R. 145 at 46, 48, 57, 58.) The individuals present at the family meeting included Lori Allen (Petitioner), Steve Allen (Lori's husband), Nathan Richins (brother of Petitioner and Respondent), Eric Richins (brother of Petitioner and Respondent), Lisa Anger (Respondent), and Jeremiah Anger (Lisa's husband). (R. 145 at 46-47.)

Eric and Nathan asked Lori Allen to bring Chandra home from Turn About Ranch. (R. 145 at 48.) The discussion at the meeting became heated. Steve Allen testified that there was "[l]ots and lots of yelling. It seemed to me everyone was against Lori, and that they wouldn't let her say a word edgewise. She couldn't defend herself without being cutoff and yelled at some more." (R. 145 at 58.)

Steven Allen testified that Lisa Anger was doing most of the yelling, (R. 145 at 63.) and Ms. Allen testified similarly, (R. 145 at 30.) There was testimony that others at the family meeting were yelling as well, including Lori Allen. (R. 145 at 63, 77, 100.)

Lori testified that after they left she started getting a migraine for which she was hospitalized for three days just before Thanksgiving in 2006. (R. 145 at 30.) Steven

Allen testified that was her fourth time in the emergency room. (R. 145 at 60.) Lori stated that she had problems with migraines until February, 2007. (R. 145 at 30.)

The District Court did not mention the family meeting as a basis for finding that Lisa Anger had committed stalking. (R. 131-33.) No evidence was presented at the hearings regarding whether Lisa's words or conduct at the family meeting could be considered a threat. (R. 145; R. 144.) Although yelling at a heated family meeting is not excusable, it should not form the basis for a stalking injunction.

(2) Lisa Anger collaborated in the creation of the website and printed and passed out flyers directing people to the website.

In an effort to get Chandra out of the teen ranch, some of Ms. Allen's family members, including Lisa Anger, collaborated in creating a website and passing out flyers. (R. 131-32; R. 145 at 8-9, 70, 128, 129.) The family members created the website for the purpose of obtaining the release of Chandra from the teen ranch. (R. 145 at 69; *see* R. 147 at Exhibit No. 1 for a copy of the website.)

The website included contact information for Lori Allen and Steve Allen, including home phone numbers, work phone numbers, email addresses, and listed their employers. (R. 144 at 7; R. 145 at 5.) The website also displayed a picture of Chandra and stated her location and age. (R. 144 at 7.) A picture of Steve Allen was posted on the website. (R. 144 at 10.) The website encouraged people to call Mark Shurtleff and CPS. (R. 144 at 10; R. 145 at 93.)

Lisa Anger testified that she photocopied flyers that her sister Wendy made, which flyers directed people to the website. (R. 145 at 128; *see also* R. 145 at 73-74, 101.)

Nathan also testified that Wendy created the website. (R. 145 at 79.) Nathan testified that the reason Lisa Anger gave as to why personal information was “[s]o that people would call them and express their feelings.” (R. 145 at 72.) Ms. Anger stated that she sent pictures to Wendy which were used in the website. (R. 145 at 101, 127.)

Ms. Anger gave the flyers to her two brothers and a friend and asked them to distribute them. (R. 145 at 73-74, 101.) Nathan testified that Lisa Anger told him where to distribute the flyers: “[t]he main target places were their church, work places, neighborhoods, people that knew her, for the most part.” (R. 145 at 73-74.) The flyers were distributed in the neighborhood of Ms. Allen, around her church ward, around her workplace, and on cars around her husband’s workplace. (R. 144 at 6, 8; R. 145 at 58.) Lori Allen’s own children were also involved in distributing the flyers. Ms. Allen testified that “[s]omeone . . . took my children around . . . to distribute these flyers too.” (R. 144 at 9.) Lisa Anger testified that the personal information such as phone numbers and employers were taken off when the flyers were passed out. (R. 144 at 130.)

Lori Allen testified that as a result of her contact information being posted on the website, some people called to harass her. (R. 144 at 7, 11.) To her knowledge, she did not receive any harassing emails. (R. 144 at 7, 12.) Lori Allen testified that she was afraid she would lose her job because of the flyers. (R. 144 at 12.) Ms. Allen also testified that she was fearful that anyone on the Internet would be able to find her and her family members, and had concerns for the safety of her children. (R. 145 at 16-17.) Ms. Allen also objected to the website and flyers because it interfered with her parental authority. (R. 145 at 17.)

Steve Allen testified that Lori Allen was emotionally impacted during this time: “[Lori] was just crying a lot, and just really, really frustrated and upset.” (R. 145 at 61.) Mr. Allen stated that his employment and work relationships were negatively impacted by the flyers and website. (R. 145 at 59.) Steve Allen also testified that their relationship with their neighbors was negatively impacted as a result of the flyers and the website. (R. 145 at 62.)

In the Order of 12/02/09, Judge Howard stated that “[t]he website and flyers are a disturbing matter to the Court because of the Petition for Emancipation filed in December 2006.” (R. at 132.) In the Hearing of 05/28/2008, Judge Howard highlighted the website and the flyers as the principal basis for his finding that Lisa Anger committed stalking:

“First of all, that which is paramount and large and has a looming impression in the case is the preparation of the flyers, and the institution of the website relative to the response of the petitioner to place Shandra in the boot camp or the ranch. I believe that that was not a small matter or a harmless matter, but a large and disturbing matter that constituted an assault on the parenting objectives . . . of the petitioner regarding her daughter.”

(R. 145 at 150. *see also* R. 131, ¶ 7 where Judge Howard stated, “Respondent’s actions were an assault on the Petitioner’s parental rights.”) Although interfering with the parental rights of others is generally not a good idea, the stalking statute does not list “assaulting parental rights” as a “course of conduct” sufficient for a finding of stalking. *See* UTAH CODE ANN. § 76-5-106.5(1)(a) (2003). The court did not state that Lisa Anger’s conduct in assisting in the flyers or website was threatening, nor did the court find that she was “repeatedly maintaining a visual or physical proximity to” Lori Allen

through such actions. *See id.* Consequently, Lisa Anger's participation in the website and flyers is inadequate to support a finding of stalking.

Furthermore, it is not difficult to understand Lisa Anger's concern and actions regarding the children of Lori Allen considering that Lori's children lived with Lisa the majority of the time for about nine years. Lisa Anger testified,

"For about nine years I had the children with me a majority of their lives. . . . I was their primary care giver when they were living at the home with me at times. Lori went to night school and worked days from '97 to '99, around that time, while her husband worked and lived weekdays in Spanish Fork. So they lived in my home around that time. . . . Then for five year – through a five year divorce with her husband, which ended in suicide, I took care of the kids most the time. They were home schooled, and a lot of the time they were with me. Probably, I'd say, 60 percent of their time with me. Every summer, every Christmas break, every Easter break, at least every other weekend they were with me in my home, living in my home, all four children."

(R. 145 at 98.) As Lisa Anger's actions were part of a family effort to help her niece, Chandra Robb, to get out of a teen ranch, her participation should not form the basis of a finding of stalking. This is especially true where her conduct cannot be linked to the "course of conduct" requirements in section 76-5-106.5(1)(a). UTAH CODE ANN. (2003).

(3) Lisa Anger encouraged Chandra Robb to become emancipated, filled out the emancipation petition, and drove to southern Utah so that Chandra could sign it.

While Chandra was at Turn About Ranch, Lisa Anger encouraged Chandra to become emancipated. (R. 131, ¶ 2; R. 145 at 17.) Ms. Anger filled out the emancipation paperwork, and then drove down to Turn About Ranch so that Chandra could sign the emancipation paperwork. (R. 131, ¶ 2; R. 145 at 13, 17.)

The emancipation petition was eventually dismissed, as Chandra was sent to live with her Aunt Wendy in Washington State in January of 2007. (Order from Stipulation, Feb. 7, 2007 at 1-2; R. 145 at 41.) The Order sending Chandra to Washington resulted from a stipulation which Lori Allen agreed to, and the court issued an order in conformance with the stipulation. (Order from Stipulation, Feb. 7, 2007; R. 145 at 31, 54.) In conjunction with court proceedings, Lori Allen was interviewed by a reporter from the Salt Lake Tribune and posed for pictures. (R. 145 at 35.)

In the Order of 12/02/09, Judge Howard stated that “[t]he website and flyers are a disturbing matter to the Court because of the Petition for Emancipation filed in December 2006.” (R. 131, ¶ 6.) Lisa Anger’s actions regarding the emancipation petition do not fit the definition of a “course of conduct” sufficient for a finding of stalking as her actions could not be construed as a threat, and she did not “repeatedly maintain[] a visual or physical proximity to” Lori Allen through such actions. *See* UTAH CODE ANN. § 76-5-106.5(1)(a) (2003).

(4) Lisa Anger had contact with Lori Allen and her children after Lori Allen asked Lisa not to contact them.

In November, 2006, Lori Allen asked Lisa Anger not to communicate with her children. (R. 145 at 17.) On December 15, 2006, the Juvenile Court ordered, “Lisa Anger, Jeremiah Anger and Wendy Berg are, hereby, restrained from further interfering with Petitioner’s fundamental rights as a parent. Said restraint includes but is not limited to the following: A. Said siblings are to have no unsupervised time or communication with [Lori Allen’s] minor children. . . .” (Order, Dec. 15, 2006 at 1; R. 145 at 20.)

However, after that occasion, Lori and Lisa and their families did many family activities together, including soccer games, a hike, birthday parties, ice skating, a baby shower, and school plays. (R. 145 at 40-41, 49-50, 106, 112-115.)

On June 11, 2007, Lori sent Lisa an email stating, “I’m requesting that you and Jeremiah not have any further contact with my children. . . . Do not call my children. Make NO contact with them whatsoever, via mail, email, internet, chat, or through any other means. DO not pass messages to them through any third party.” (R. 131, ¶ 4; *see also* R. 145 at 23.) Lisa’s children received presents from Lori on their birthdays: July 10, 2007 and August 6, 2007. (R. 145 at 117.) On August 26, 2007, Lisa Anger came to Lori Allen’s home with her kids to bring presents and talk and they stayed over an hour (Lisa Anger says it was 2.5 hours and that she and Lori hugged at the time of the departure). (R. 145 at 50, 117.)

On September 21, 2007, Lori called Lisa and they talked for 71 minutes. (R. 145 at 43, 119, 121.) Lori testified that she told Lisa, “[d]on’t call me anymore. Don’t come over to my house. Leave us alone.” (R. 145 at 25.) On October 14, 2007, Lisa and her children stopped by Lori’s house to drop off some presents from herself, Wendy, and Chandra. (R. 145 at 119.) Lisa testified that she did not know that Lori and Steve were not home at the time. (R. 145 at 119.) About ten minutes after Lisa arrived, Lori and Steve came home and Lori said something like “I don’t think you understand that you can’t be here. . . . Will you please leave.” (R. 145 at 120; *see also* R. 145 at 26.) Ms. Anger immediately left.

In late November, 2007, the family agreed that Lisa and Lori should not both attend the Thanksgiving dinner at her parent's home, so Lisa did not attend. (R. 145 at 51.) However, Lisa did come to the house later in the day and went downstairs to where her children were, and where the children of Lori were. (R. 145 at 53.)

The District Court held that "Respondent's course of conduct included multiple acts including: . . . unexpectedly coming to the Petitioner's home on two (2) occasions despite Petitioner's request that Respondent not communicate with her; and entering Petitioner's home without her permission." (R. 131, ¶ 13.) However, at the hearing of 05/28/2008, the court characterized the actions of the parties after the incident with the website much differently than is stated in the Order, which Order was written by the attorney of Lori Allen. Judge Howard's statement from the hearing is reproduced below:

Now, what also is clear in this case is that following that action [regarding the flyers and website], the parties engaged in what . . . in other words, I don't know what the best characterization would be, but I would suggest that it might be characterized as reparative efforts on the part of the parties to try to salvage the relationship and engage in family actions. I think perhaps that's an effort of good will and good faith and speaks well of them. I don't mean to be critical of either one of them in that effort, but I do not believe, taken together as I hear all the evidence, that that nullified what occurred before, or in some way made moot what occurred before, or somehow eclipses what occurred before. Taken together, I'm not persuaded that is the case.

(R. 145 at 151.) It is clear from reading the transcript of the Hearing that Judge Howard was concerned with the actions of Lisa Anger in regards to the flyers and the website, and not with her actions after that point.

On both occasions when Lisa Anger unexpectedly came to Lori Allen's home, she was bringing gifts to family members. On the first occasion (Aug. 26, 2007), Lisa Anger

asked if they could come in and talk and give gifts, and Lori Allen said yes. (R. 145 at 118.) Lori Allen said that Lisa and her children stayed for over an hour, though Lisa says it was two and one-half hours. (R. 145 at 50, 118.) That visit cannot be a basis for a finding of stalking because there was no threat, and Lori consented to Lisa's presence in her home.

On the second occasion when Lisa came bringing gifts (Oct. 14, 2007), and Lori and Steve Allen were not in the home, Lisa testified that she did not know they were not home, and that she left promptly after Lori became angry and asked her to leave. (R. 145 at 119.) That visit should not constitute the basis of a finding of a "course of conduct" under 76-5-106.5(1)(a), because Lisa's conduct was not a threat, and she did not "repeatedly maintain[] a visual or physical proximity to a person."


Lori objected to Lisa's presence not because Lisa was threatening or because Lori was fearful of Lisa. Nathan Richins testified that during the last ten years when he was closely associated with Lisa and saw her almost every day, he has not known her to be physically dangerous or threatening. (R. 145 at 81.) Rather than being fearful of Lisa, Lori did not want Lisa in her home because of personal animosity and bitterness. Therefore, the visit of October 14, 2007 should not constitute a basis for a finding of stalking.

CONCLUSION

The District Court erred in interpreting Utah Code section 76-5-106.5 when it held that Lisa Anger had committed stalking as defined in that section because she did not

engage in a “course of conduct” which is a requirement for a determination of stalking. *See* UTAH CODE ANN. § 76-5-106.5 (2003). Lisa Anger did not engage in conduct or communication that could be construed as a threat, nor did she “repeatedly maintain[] a visual or physical proximity to a person.” *See Id.* Appellant asks this Court to reverse the District Court’s determination that Lisa Anger committed stalking.

DATED this 9 day of April, 2010.



Randy S. Ludlow
Attorney for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2010, I caused to be mailed, by deposit in the United States Mail, two (2) true and correct copies and one (1) CD of the foregoing **BRIEF OF APPELLANT** to the following:

Ron D. Wilkinson
815 East 800 South, Suite 101
Orem, Utah 84097
Attorney for Petitioner/Appellee

/s/
SHARLA J. WEAVER, Legal Assistant

ADDENDUM

1. Judge Howard's Amended Findings of Fact, Conclusions of Law, and Order on hearing dated December 2, 2009
2. UTAH CODE ANN. § 76-5-106.5(2) (2003)
3. UTAH CODE ANN. § 77-3a-101 (2008)

EXHIBIT 1

FILED
Fourth Judicial District Court
of Utah County, State of Utah
12/2/09 WA Deputy

RON D. WILKINSON (5558)

Attorney for Respondent
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**IN THE FOURTH DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH**

LORI ALLEN,

Petitioner,

v.

LISA ANGER,

Respondent.

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER ON HEARING**

Civil No: 070403425

Judge: Howard
Commissioner Thomas R. Patton

This matter, came before this Court on the 11th day of February 2008 and the 28th day of May 2008, the Court now enters the following Findings of Fact and Conclusions of Law, and Order on Hearing:

FINDINGS OF FACT

1. In approximately November 2006, Respondent printed flyers that included the name of the Petitioner's husband, Steve Allen.
2. Respondent encouraged the Petitioner's daughter, Chandra Robb, to file emancipation papers. Respondent's encouragement included filling out the forms and

traveling to the Turn-About Ranch, where Chandra Robb was receiving treatment, to have Chandra to sign the papers.

3. On or about June 11, 2007, Petitioner's requested that Respondent not communicate with her family.

4. On June 11, 2007, after attempts to speak with the Respondent to resolve the issues, Petitioner sent the Respondent an email requesting that she have no further contact with Petitioner's children. The email specifically stated: "Do not call my children, either on our home phone, cell phone(s) or at their friends' homes. Make NO contact with them whatsoever, via mail, email, internet, chat, or through any other means. DO not pass messages to them through any third party."

5. Despite said email and request, Respondent continued to make contact with the Respondent's children in violation of the Petitioner's request as follows:

A. Respondent unexpectedly came to the Petitioner's home on August 26, 2007 and October 14, 2007.

B. On October 14, 2007, Respondent arrived at the Petitioner's home when she was not present and entered Petitioner's home and spoke with her children. Petitioner arrived home to find the Respondent in her home.

CONCLUSIONS OF LAW AND ORDER ON HEARING

6. The website and flyers are a disturbing matter to the Court because of the Petition for Emancipation filed in December 2006.

7. Petitioner's decision to seek treatment for Chandra Robb at Turn-About Ranch was ultimately a decision that she had the right to make as Chandra's parent. Petitioner's request that the Respondent not contact her children was also ultimately a decision that she had the right to make as a parent. Respondent's actions were an assault on the Petitioner's parental rights.

8. It is apparent to the Court that this matter involves an unfortunate family conflict that has been very emotionally straining to the Petitioner.

9. Utah Code § 77-3a-101(2) provides that "any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred."

10. Utah Code § 76-5-106.5(2) provides that "A person is guilty of stalking who: (a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person . . . to suffer emotional distress . . . (b) has knowledge or should have knowledge that the specific person . . . will suffer emotional distress."

11. Utah Code § 76-5-106.5(1)^(a)~~(b)~~ defines "Course of Conduct" to include "repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person."

12. Utah Code § 76-5-106.5(1)(c) defines “repeatedly” as “two or more occasions.”

13. Respondent’s course of conduct included multiple acts including: encouraging Petitioner’s daughter to file emancipation papers; filling out emancipation forms for Petitioner’s daughter; unexpectedly coming to the Petitioner’s home on two (2) occasions despite Petitioner’s request that Respondent not communicate with her; and, entering Petitioner’s home without her permission.

14. Respondent’s actions would cause any reasonable parent emotional distress.

15. Respondent’s actions clearly caused the Petitioner severe emotional distress.

16. Respondent’s excuses for her actions are disingenuous, and thus, the Court finds that she intentionally and knowingly committed stalking against the Petitioner.

17. Respondent is enjoined from committing further acts of stalking against the Petitioner.

18. Respondent is restrained from coming near the Petitioner’s residence and place of employment and the residence, place of employment, and/or school of the Petitioner’s husband, Steve Allen, and her minor children.

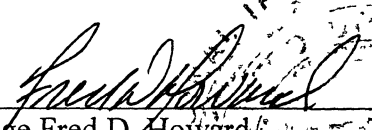
19. Respondent is restrained from contacting, directly or indirectly, the Petitioner, Petitioner’s husband, Steve Allen, and Petitioner’s minor children; including

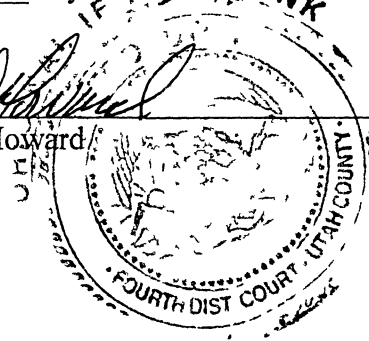
written or telephone contact with the Petitioner, and Petitioner's employer, and fellow workers.

20. The stalking injunction entered in this matter expires three (3) years after the date that it was served.

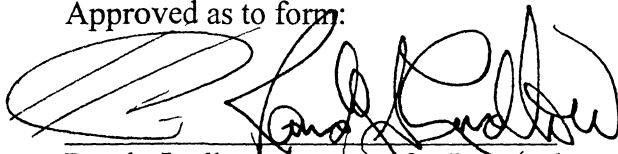
21. Petitioner's counsel shall prepare the appropriate Order.

DATED this 2nd day of November ^{DELETED} 2009.


Judge Fred D. Howard



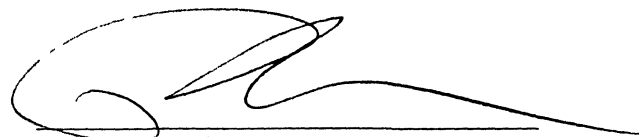
Approved as to form:


Randy Ludlow, Attorney for Respondent
as modified

NOTICE OF INTENT TO SUBMIT FOR SIGNATURE

Pursuant to the Utah Rules of Civil Procedure, you are, hereby, notified that the foregoing Order will be sent to the Court for signing upon the expiration of five (5) days from the date of this Notice, plus three (3) days for mailing, unless a written objection is filed with the Court prior to that time.

DATED this 6th day of November 2009.


Ron D. Wilkinson

MAILING CERTIFICATE

I certify that on this 9th day of November 2009, I sent *via* first-class mail, postage prepaid, a copy of the foregoing *Amended Findings of Fact, Conclusions of Law, and Order on Hearing* to:

Randy Ludlow
185 South State St. # 208
Salt Lake City, UT. 84111


_____ 

EXHIBIT 2

UTAH CODE ANN. § 76-5-106.5(2) (2003) provides:

76-5-106.5. Definitions -- Stalking -- Injunction -- Hearing.

(1) As used in this section:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.

(b) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(c) "Repeatedly" means on two or more occasions.

(2) A person is guilty of stalking who:

(a) intentionally or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person:

(i) to fear bodily injury to himself or a member of his immediate family; or

(ii) to suffer emotional distress to himself or a member of his immediate family;

(b) has knowledge or should have knowledge that the specific person:

(i) will be placed in reasonable fear of bodily injury to himself or a member of his immediate family; or

(ii) will suffer emotional distress or a member of his immediate family will suffer emotional distress; and

(c) whose conduct:

(i) induces fear in the specific person of bodily injury to himself or a member of his immediate family; or

(ii) causes emotional distress in the specific person or a member of his immediate family.

(3) A person is also guilty of stalking who intentionally or knowingly violates a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or intentionally or knowingly violates a permanent criminal stalking injunction issued pursuant to this section.

(4) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(5) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking or a member of the victim's immediate family was also a victim of the previous felony offense; or

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (7).

(6) Stalking is a felony of the second degree if the offender:

(a) used a dangerous weapon as defined in Section **76-1-601** or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (5); or

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses.

(7) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time shall operate as an application for a permanent criminal stalking injunction limiting the contact of the defendant and the victim.

(a) A permanent criminal stalking injunction shall be issued without a hearing unless the defendant requests a hearing at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance. The court shall give the defendant notice of his right to request a hearing.

(i) If the defendant requests a hearing, it shall be held at the time of the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance unless the victim requests otherwise, or for good cause.

(ii) If the verdict, finding, or plea of guilty, guilty and mentally ill, plea of no contest, or acceptance of plea in abeyance was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the victim in the district court as an application and request for hearing for a permanent criminal stalking injunction.

(b) A permanent criminal stalking injunction may grant the following relief:

(i) an order restraining the defendant from entering the residence, property, school, or place of employment of the victim and requiring the defendant to stay away from the victim and members of the victim's immediate family or household and to stay away from any specified place that is named in the order and is frequented regularly by the victim; and

(ii) an order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm, including personal, written, or telephone contact with the victim, the victim's employers, employees, fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(c) A permanent criminal stalking injunction may be dissolved upon application of the

victim to the court which granted the order.

(d) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(e) A permanent criminal stalking injunction issued pursuant to this section shall be effective statewide.

(f) Violation of an injunction issued pursuant to this section shall constitute an offense of stalking. Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(g) Nothing in this section shall preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or permanent criminal stalking injunction.

EXHIBIT 3

UTAH CODE ANN. § 77-3a-101 (2008) provides:

77-3a-101. Civil stalking injunction -- Petition -- Ex parte injunction.

(1) As used in this chapter, "stalking" means the crime of stalking as defined in Section 76-5-106.5. Stalking injunctions may not be obtained against law enforcement officers, governmental investigators, or licensed private investigators, acting in their official capacity.

(2) Any person who believes that he or she is the victim of stalking may file a verified written petition for a civil stalking injunction against the alleged stalker with the district court in the district in which the petitioner or respondent resides or in which any of the events occurred. A minor with his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(3) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions, ex parte civil stalking injunctions, civil stalking injunctions, service and any other necessary forms in accordance with the provisions of this chapter on or before July 1, 2001. The office shall provide the forms to the clerk of each district court.

(a) All petitions, injunctions, ex parte injunctions, and any other necessary forms shall be issued in the form adopted by the Administrative Office of the Courts.

(b) The offices of the court clerk shall provide the forms to persons seeking to proceed under this chapter.

(4) The petition for a civil stalking injunction shall include:

(a) the name of the petitioner; however, the petitioner's address shall be disclosed to the court for purposes of service, but, on request of the petitioner, the address may not be listed on the petition, and shall be protected and maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific events and dates of the actions constituting the alleged stalking;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of stalking, which may be in the form of a police report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the allegation of stalking.

(5) If the court determines that there is reason to believe that an offense of stalking has occurred, an ex parte civil stalking injunction may be issued by the court that includes any of the following:

(a) respondent may be enjoined from committing stalking;

(b) respondent may be restrained from coming near the residence, place of employment, or school of the other party or specifically designated locations or persons;

(c) respondent may be restrained from contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party; or

(d) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(6) Within 10 days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking injunction.

(a) A hearing requested by the respondent shall be held within 10 days from the date the request is filed with the court unless the court finds compelling reasons to continue the hearing. The hearing shall then be held at the earliest possible time. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(b) An ex parte civil stalking injunction issued under this section shall state on its face:

(i) that the respondent is entitled to a hearing, upon written request within 10 days of the service of the order;

(ii) the name and address of the district court where the request may be filed;

(iii) that if the respondent fails to request a hearing within 10 days of service, the ex parte civil stalking injunction is automatically modified to a civil stalking injunction without further notice to the respondent and that the civil stalking injunction expires three years after service of the ex parte civil stalking injunction; and

(iv) that if the respondent requests, in writing, a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested.

(7) At the hearing, the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred.

(8) The ex parte civil stalking injunction and civil stalking injunction shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order."

(9) The ex parte civil stalking injunction shall be served on the respondent within 90 days from the date it is signed. An ex parte civil stalking injunction is effective upon service. If no hearing is requested in writing by the respondent within 10 days of service of the ex parte civil stalking injunction, the ex parte civil stalking injunction automatically becomes a civil stalking injunction without further notice to the respondent and expires three years from the date of service of the ex parte civil stalking injunction.

(10) If the respondent requests a hearing after the ten-day period after service, the court shall set a hearing within a reasonable time from the date requested. At the hearing, the burden is on the respondent to show good cause why the civil stalking injunction should be dissolved or modified.

(11) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction

and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(a) The effectiveness of an ex parte civil stalking injunction or civil stalking injunction shall not depend upon its entry in the statewide system and, for enforcement purposes, a certified copy of an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil stalking injunction on the respondent.

(b) Any changes or modifications of the ex parte civil stalking injunction are effective upon service on the respondent. The original ex parte civil stalking injunction continues in effect until service of the changed or modified civil stalking injunction on the respondent.

(12) Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the court shall enter a copy of the changed or modified civil stalking injunction and proof of service or acceptance of service in the statewide network for warrants or a similar system.

(13) The ex parte civil stalking injunction or civil stalking injunction may be dissolved at any time upon application of the petitioner to the court which granted it.

(14) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent. Charges may be imposed by the clerk's office for any additional copies, certified or not certified in accordance with Rule 4-202.08 of the Code of Judicial Administration.

(15) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The district court shall hear and decide all matters arising pursuant to this section.

(16) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees.

(17) This chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation.