2010

# Mark E. Towner v. Michael Ridgway : Brief of Appellant

Utah Court of Appeals


Michael Ridgway; Appellant, Pro Se.
Mark E Towner; Appellee, Pro Se .

# IN THE UTAH COURT OF APPEALS

| | |
|---|---|
| **MARK E TOWNER**<br>Petitioner and Appellee,<br><br>vs.<br><br>MICHAEL RIDGWAY<br>Respondent and Appellant. | **Case No 20100208-CA** |

## REPLY BRIEF OF APPELLANT

## APPEAL FROM THE RULINGS OF THE THIRD DISTRICT COURT, SALT LAKE COUNTY THE HONORABLE DENISE P. LINDBERG AND THE HONORABLE SANDRA N. PEULER

Mark E Towner
1331 Green St.
Salt Lake City, UT 84105

Appellee, Pro Se

Michael Ridgway
317 K St Apt B
Salt Lake City UT 84103

Appellant, Pro Se

IN THE UTAH COURT OF APPEALS

| | |
|---|---|
| **MARK E TOWNER**<br>Petitioner and Appellee,<br><br>vs.<br><br>**MICHAEL RIDGWAY**<br>Respondent and Appellant. | **Case No 20100208-CA** |

# REPLY BRIEF OF APPELLANT

## APPEAL FROM THE RULINGS OF THE THIRD DISTRICT COURT, SALT LAKE COUNTY THE HONORABLE DENISE P. LINDBERG AND THE HONORABLE SANDRA N. PEULER


Mark E Towner
1331 Green St.
Salt Lake City, UT 84105

Appellee, Pro Se

Michael Ridgway
317 K St Apt B
Salt Lake City UT 84103

Appellant, Pro Se

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Cases**



**Constitutional Provisions**



**Rules**



**Statutes**

## INTRODUCTION

Mr. Michael Ridgway, "Mr. Ridgway" in his Opening Brief, argues for the vacating of all proceedings in the instant case, on the ground that, due to Mr. Towner's multiple manifest failures to perfect the petition by which he initiated suit, (R. 1-9.), hereafter, "the petition," and which triggered the issuance of the initial Ex Parte Civil Stalking Injunction, hereafter, "the ex parte injunction," that subject jurisdiction matter was never invoked in this case.

Specifically, Mr. Ridgway argues that because Mr. Towner failed to strictly comply with three essential requirements of Utah's civil stalking statute, Utah Code Ann. § 77-3a-101 (2006), (that he verify (authenticate) his petition, that he enumerate at least two specific instances of stalking, and that he corroborate said allegations with tangible evidence of sufficient quality as to establish probable cause), that the Court must vacate the proceedings for lack of subject matter jurisdiction. (Aplt. Br. at R.15.)

In their Reply Brief, Mr. Mark Towner ("Mr. Towner") and Mrs. Carrie Towner[1] ("Mrs. Towner"), fail to rebut the claim that Mr. Towner's petition is facially deficient. But driven by a fervent desire to have the Court permanently vindicate their dubious allegations that Mr. Ridgway was and/or is a stalker, the Towners, nonetheless, urge the

---

[1] While this case was brought solely by Mr. Mark Towner and while his wife, Mrs. Carrie Towner, has never been a petitioner in this case, it is nonetheless true that at every stage in his brief, Mr. Towner refers to himself in the plural. As a courtesy, and to avoid confusion, and not out of a belief that Mrs. Towner is an actual petitioner, Mr. Ridgway, in his reply brief, refers to Mr. Towner in the plural, as well.

Court to reject Mr. Ridgway's appeal, though wholly on the basis of either erroneous or irrelevant claims. (Aple. Br. at 17-18.)

As stated in his opening brief, Mr. Ridgway has chosen to wage only one attack in his appeal: he challenges the District Court's presumption of subject matter jurisdiction, citing multiple manifest and fatal defects in Mr. Towner's initiating petition, defects which should have precluded a finding of strict compliance with the requirements of statute, which should have, in turn barred the invocation of subject matter jurisdiction.

The Towners restate the case as follows: "[T]he sole issue in this case is whether the unsigned petition for an ex parte civil stalking injunction is void." (Aple. Br. at 5)

While at first, their characterization of Mr. Towner's petition as "unsigned" might seem innocent, a deeper review of the counter arguments advanced by the Towners suggests a potentially insidious attempt to silently deny, or at least conceal, the existence of three very real and very large "elephants in the room," i.e., defects that are much more problematic for the Towners than the mere absence of Mr. Towner's signature.

Interestingly, the Towners never do admit that Mr. Towner did not sign his petition. To the contrary: "Using the Online Court Assistance Program for a civil ex parte stalking injunction as directed by a Court Clerk [, and a]s directed by the computer assisted program, Mr. Towner answered the prompted computer questions and gave a signed completed copy of this paperwork to the Court Clerk." Emphasis added. (Aple. Br. at 5.)

Mr. Towner replies with a series of arguments that may be summarized as follows:

{1} Even if the petition is defective, Mr. Ridgway has waived his right to attack subject matter jurisdiction because he did not preserve the issue of a missing signature in the District Court. (Aple. Br. at 13.)

{2} Mr. Towner *did* sign his petition. The fact that said signed petition does not figure in the record is due to a "clerical error" on the part of the Court, an error that was "beyond the control" of Mr. Towner, and which the Court must either excuse or give him opportunity to correct by a remand to the District Court for an evidentiary review of his allegations of misplacement of his actual signed petition. (Aple. Br. at 12.)

{3} By accepting service of the amended civil stalking injunction, Mr. Ridgway effectively waived his right to appeal on the ground of a defective initiating petition for an ex parte stalking injunction, i.e., his right to later attack the District Court's presumption of subject matter jurisdiction. (Aple. Br. at 15.)

{4} Should the Court find that a missing signature *is* material, i.e., not excusable, it must remand the case to the District Court to allow the Towners to prove their contention that Mr. Towner *did,* in fact, submit a signed petition. (Aple. Br. at 16-17.)

Each of these arguments is invalid, as Mr. Ridgway will demonstrate in his present reply.

## SUMMARY OF ARGUMENT

Mr. Ridgway's responses to the Towners' arguments can be summarized as follows:

{1} The record shows that Mr. Ridgway *did* preserve his attack on the legal sufficiency of the petition, by means of written and oral objections presented as early as

24 hours after the injunction's imposition. This fact is, however, irrelevant, since no such preservation is necessary in an appeal attacking subject matter jurisdiction.

{2} The record provides no support whatsoever for a claim of clerical error which could excuse the absence of signature from Mr. Towner's petition. Further, the Towners do not advance a claim of excusability for the other manifest errors in the petition, among them Mr. Towner's failure to authenticate his petition before filing it with the District Court.

{3} No waiver, either affirmative or implied, can be presumed by acceptance of service of a civil stalking injunction, since it is impossible to waive subject matter jurisdiction when an appeal implicates the same, and since Mr. Ridgway clearly preserved his objection(s).

{4} Because evidence of statutory compliance must appear affirmatively in the record, and as it is plainly lacking, the question is answered. Further, since Mr. Towner makes no claim that clerical or other errors beyond his control were to blame for the remaining substantial omissions in his petition, and as all such errors are manifest, a remand to the District Court could ultimately serve no meaningful purpose for either party. Said request should be denied.

## ARGUMENT

### I. Mr. Towner's arguments concerning preservation are invalid.

#### A. As attacks on subject matter jurisdiction are not waivable and may be raised at any time, no preservation of said issue was required in the District Court.

The non-waivability of subject matter jurisdiction is one of the most fundamental principles of American jurisprudence, a principle which has been stated and upheld on many occasions by Utah's appellate courts. While it is true that, "[a]s a general rule, a timely and specific objection must be made in order to preserve an issue for appeal," Terrell v. McBride, 2006 UT App 191, citing State v. Whittle, 780 P.2d 819, 820-21 (Utah 1989), this rule does not apply to questions of jurisdiction. "Subject matter jurisdiction cannot be waived." Fauver v. Hansen, 803 P.2d 1275 (Utah App. 1990), citing Transworld Systems, Inc. v. Robison, 796 P.2d 407 (Utah App. 1990) (per curiam).

"Furthermore, subject matter jurisdiction cannot be conferred upon a court by consent or waiver, and a judgment can be attacked for lack of subject matter jurisdiction at any time." Van Der Stappen v. Van Der Stappen, 815 P. 2d 1335 (Utah App. 1991), citing Thompson v. Jackson, 743 P.2d 1230, 1232 (Utah App. 1987). Emphasis Added.

Additionally, the Court has ruled:

> Rule 60(b)(4) [the equivalent to Utah Rule 60(b)(5)] authorizes relief from void judgments.[5] Necessarily a motion under this part of the rule differs markedly from motions under the other clauses of Rule 60(b). There is no question of discretion on the part of the court when a motion is under Rule 60(b)(4). Nor is there any requirement, as there usually is when default judgments are attacked under Rule 60(b), that the moving party show that he has a meritorious defense. Either a judgment is void or it is valid. Determining which it is may well present a difficult question, but when that

> question is resolved, the court must act accordingly. By the same token, there is no time limit on an attack on a judgment as void. The one-year [three-month, in Utah] limit applicable to some Rule 60(b) motions is expressly inapplicable, and even the requirement that the motion be made within a "reasonable time," which seems literally to apply to motions under Rule 60(b)(4), cannot be enforced with regard to this class of motion. A void judgment cannot acquire validity because of laches on the part of the judgment debtor.

Garcia v. Garcia, 712 P. 2d 288 (Utah 1986). Emphasis Added.

### B. Though he had no obligation to do so, the record confirms that Mr. Ridgway did preserve his attack on subject matter jurisdiction in the District Court.

Mr. Ridgway contends that an attack on *judgments as void* obviates any requirement for preservation of his issue on appeal. This fact makes a rebuttal against a claim of failure to preserve unnecessary. It is nonetheless true, however, that Mr. Ridgway *did* preserve this issue in the trial Court, this, in contradiction to a central allegation of the Towners' Reply Brief. (Aple. Br. at 13.)

More than five years ago, on May 12th, 2006, a direct assault to the legal sufficiency of Mr. Towner's initiating petition was formally lodged, *less than 24 hours after Mr. Ridgway was formally served notice of the existence of this lawsuit*, by means of a motion to dissolve the initial ex parte injunction. (R. 26-28.)

In oral arguments at an emergency hearing held the same day, Mr. Ridgway's counsel was emphatic in his denunciation of Mr. Towner's failure to bring particulars and evidence before the Court sufficient to warrant the issuance of the ex parte stalking injunction served to Mr. Ridgway just the day before, i.e., sufficient to meet the statutory requirements for the same. (R. 96:3.)

Mr. Ridgway's motion to dissolve the injunction was, of course, completely and solely founded on an attack against the petition; and as there had been no hearings in the case at the moment said motion was filed, the only possible basis Mr. Ridgway could have relied upon at that stage of proceedings was an attack on the legal sufficiency of the initiating petition, *i.e., an attack on subject matter jurisdiction.*

Attacks on the legal sufficiency of a petitioner's compliance with a suit-enabling statute are inherently attacks on subject matter jurisdiction , as explained, *infra*, Argument II.

The only new element to this attack, now that Mr. Ridgway is at the appeals level, is the specific mention of Mr. Towner's failure to *verify* his petition, as required by statute, a defect not noticed by anyone in this case until Mr. Ridgway took notice of it just weeks before filing his Opening Brief.

Neither the verification defect nor the other two named defects can be overlooked or excused by the Court, as will be explained below. And the claim by the Towners that a theory of laches now applies is patently incorrect. Garcia v. Garcia, 712 P. 2d 288 (Utah 1986).

Even if it were true that Mr. Ridgway's attacks on subject matter jurisdiction were only first raised on appeal, "[i]t is well-settled that subject matter jurisdiction may be raised at any time, by either party or the Court." State v. Valdez, 65 P.3d 1191 (Utah App. 2003), ¶ 4 (citing State v. Perank, 858 P.2d 927, 930 (Utah 1992)); *see also* Thompson v. Jackson.

Further, the Towners' omissions are indeed "plain" and inexcusable error, which the Towners themselves acknowledge is an exception to any rules requiring preservation. (Aple. Br. at 13.)

Mr. Towner's failure-to-verify defect might properly be viewed as the least serious defect of the three Mr. Ridgway now highlights in his appeal. Nevertheless, as shown in Bentz, to submit a petition without verification when the statute so commands is not only serious, it is, standing alone, fatal; and the District Court, having taken jurisdiction of the case in the face of such an error, clearly, worked harm to Mr. Ridgway.[2]

At every stage of these proceedings, Mr. Ridgway has maintained his argument that the injunctions entered in this case were invalid due to the failure of the Towners to meet their burdens, under the statute, to prove, by even a preponderance of the evidence, that Mr. Ridgway had ever stalked Mr. Towner. This failure was never more substantial than in the case of Mr. Towner's petition. The court must vacate the injunctions for lack of subject matter jurisdiction.

### C. The issue of preservation is irrelevant because a void judgment cannot acquire validity due to laches on the part of a respondent.

A simple citation of a single authority should suffice to make this clear: "A void judgment cannot acquire validity because of laches on the part of the judgment debtor." Garcia v. Garcia, 712 P. 2d 288 (Utah 1986). Emphasis Added.

Mr. Towner's objections to the appeal based on a failure to preserve, (even if there had been no preservation, which is not the case) are invalid.

---

[2] " 'Plain error' is error which is obvious and harmful." See State v. Whittle, 780 P. 2d 819 (Utah 1989).

### D. Failure to strictly comply with the prerequisites to suit voids subject matter jurisdiction.

"[F]ailure to strictly comply with [the statutorily specified] requirements [for bringing suit] results in a lack of jurisdiction." Gurule v. Salt Lake County, 69 P.3d 1287 (Utah 1989); and Greene v. Utah Transit Auth., 109, ¶¶5-16, 37 P.3d 1156 (Utah 2001).

Mr. Towner's petition clearly fell short of strict compliance with three of the requirements found in § 77-3a-101. Case law is replete with examples where, when a Plaintiff failed to strictly comply with as few as one of the enumerated mandates within a statute allowing one citizen to sue another, the implicated case was dismissed for lack of subject matter jurisdiction.

Such fatal errors include failure to commence suit within a statutorily specified time frame, Varian-Eimac, Inc. v. Lamoreaux, 767 P. 2d 569 (Utah App. 1989); failure to submit a notice of claim to a statutorily specified governmental functionary, Gurule v. Salt Lake County; and, directly on point in the context of this appeal, failure to comply with a statutory requirement to initiate court action by means of a *verified* petition. Bentz v. Judd, 714 NE 2d 203 (Ind. Ct. App. 1999). Emphasis added.

In Bentz, where the petitioner appealed the lower court's dismissal of a case involving an election contest over petitioner's failure to properly authenticate his initiating petition, as mandated by statute, the Court ruled:

> Compliance with the verification requirement is necessary to invoke the subject matter jurisdiction of the trial court. State ex rel. Young v. Noble Circuit Court, 263 Ind. 353, 332 N.E.2d 99, 102 (Ind.1975). When the verification requirement is not complied with, the trial court lacks subject matter jurisdiction. Id. As Bentz properly observes, the essential purpose of

> a verification is that the statements by the petitioner in the petition be made under penalties for perjury," citing Board of Dental Examiners v. Judd, 554 N.E.2d 829, 831 (Ind. App.1990). Emphasis Added.

Id. While the Court, in Gurule, did grant that an exception to the requirement of strict compliance can be made in cases where an enabling statute is found to be ambiguous, the Towners allege no such ambiguities in § 77-3a-101. Mr. Ridgway contends that the language of said statute is not ambiguous. In the absence of such ambiguities, the salient and pertinent principles established in Bentz, standing alone, should be sufficient to resolve the question at hand. Mr. Towner's petition is facially and irreparably deficient, insofar as the past proceedings in this case are concerned. Subject matter jurisdiction is lacking. The judgments in this case must be vacated.

**E. Mr. Towner's initiating petition was not perfected sufficient to invoke subject matter jurisdiction in this case, in that it did not strictly comply with the statutory prerequisites for seeking a civil stalking injunction under Utah law.**

Utah Code Annotated § 77-3a-101 establishes substantial requirements that must be met to initiate a civil stalking suit against one accused of stalking. As detailed in Mr. Ridgway's opening brief, three major requirements for bringing suit were not met by Mr. Towner, and said defects are plainly visible in his initiating petition (R.1-3): his failure to authenticate his petition (R.3.), his failure to enumerate specific allegations of stalking (R.2.), and his failure to provide corroborating evidence of stalking. (R.4-9.) Mr. Ridgway showed, in his Opening Brief, that these defects are manifest and substantial. (Aplt. Br. at 11-15.) Simply put, each of the requirements was wholly evaded by Mr. Towner, whether wittingly or through inadvertence.

The Towners dismiss, out of hand, the bulk of Mr. Ridgway's complaints of fatal omissions, with one sweeping and audacious denial: "Mr. Towner complied with all of the regulations of § 77-3a-l0l", (Aple. Br. at 11.) but they leave it to the Court to divine exactly how that is so.

Almost as if to seduce the Court into forgetting that Mr. Ridgway's detailed indictments of Mr. Towner's failure to comply with statute have obliterated any pretense of jurisdiction, the Towners wax quizzical on the mystery of the signatureless petition.

Why "the Verified Petition ... the Court has on record" ... "is not signed by Judge Maughan", [sic], they cannot say.

But the Towners do admit that the petition does, in fact, lack signatures; though they seem, at times, confused as to whose signature should have figured thereon. "The Verified Petition ... the Court has on record, is stamped and initialed by the Court Clerk, but it is not signed by Judge Maughan.... Mr. Towner cannot explain why Judge Maughan's signature is not in the Court record." (Aple. Br. at 11.) (This as though there is some requirement that a judge sign a petition in order to make it valid).

The Towners report that Mr. Towner did, in fact, give "a signed completed copy of" [his petition] to Clerk of the Court, but fail to speculate as to why or how said signed copy found its way into Mr. Towner's personal files rather than into the keeping of the District Court. (Aple. Br. at 11.)

Having been rebuffed in their attempt to insert such a signed copy of the petition into the record, (see, Court of Appeals order of denial of April 12, 2011), the Towners advance what might have been, but for the rules of the court, a reasonable request – that

if the Court finds the absence of the signature "material," it remand the case to the District Court to allow Judge Sandra Peuler the option of replacing the unsigned version of the petition with the version which has been quietly sitting in the Towners personal files for the last five years. The Court can grant no such request. The record is sufficient to demonstrate Mr. Towner's failure to comply. The Towners present no substantive evidence to the contrary, and in their Reply Brief, specifically decline to refute these three allegations of error. The Court has no choice but to find that Mr. Towner's petition is facially deficient.

## II. Mr. Towner's claim that Mr. Ridgway had actual notice of either the petition or the signed injunctions is irrelevant to the issue at hand, as subject matter jurisdiction cannot be waived nor conferred.

In the Towners' Summary of Argument, they characterize as "ironic" Mr. Ridgway's suggestion that the stalking injunctions in this case are void due to lack of subject matter jurisdiction. (Aple. Br. at 12.) The Towners deride such a claim, arguing that 1) Mr. Ridgway would, in time, receive "actual notice of the [defective] petition,"(Aple. Br. at 12.) notwithstanding any defects in Mr. Towner's initial petition, the Court amended, and then extended for a full three years, the Towners' initial stalking injunctions against Mr. Ridgway, presumably making them valid in the process. (Id.)

The Towners reason that because the Court continued to act and to render rulings and orders in this case, it obviously *had* jurisdiction, so any defect(s) in their initial petition that may have been detected since the time they prevailed in the District Court must be seen as harmless and "not material." (Id.)

Such statements betray a fundamental misunderstanding, both of the nature of Mr. Ridgway's challenge, and of the fundamental theory and principle of subject matter jurisdiction that underlies his challenge.

Contrary to the claims made by the Towners, and as seen in the following citation, subject matter jurisdiction is an all-or-nothing proposition. If it is absent, then all actions taken in its absence are irremediably void and cannot be reinstated by the court or by waiver. As the Utah Supreme Court has ruled with great emphasis: "A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." Basso v. Utah Power & Light Co., 495 F.2d 906, 909 (10th Cir. 1974), cited in Vijil, 784 P. 2d 1130 (Utah 1989). Even more to the point at hand: "[A] judgment is void when entered by a court that lacks subject matter jurisdiction over the controversy, and must be set aside under Utah R.Civ.P. 60(b)(5). (*Id.*) Furthermore, subject matter jurisdiction cannot be conferred upon a court by consent or waiver[.]" Thompson v. Jackson, 743 P.2d 1230, 1232 (Utah App. 1987) (cited in Vijil).

## III. Mr. Towner's claim that Mr. Ridgway "affirmatively represented" that he had no objections to the proceedings, while untrue, is irrelevant to the issue at hand as subject matter jurisdiction cannot be waived nor conferred.

Mr. Towner would have the Court believe that handing over one's wallet at the point of a street thug's gun is an "affirmative representation" that one had no objection to being robbed, no matter how loud the protests at the moment of exchange. The allegation that Mr. Ridgway ever affirmatively waived his rights to appeal on the basis of legal insufficiency is ludicrous, and Mr. Ridgway feels no particular need to prove a negative.

Clearly, the authorities pointed to by Mr. Ridgway establish completely that no such waiver is possible. The Towners' claim is void on its face.

## IV. In an appeal attacking subject matter jurisdiction for legal insufficiency, a request for remand to the trial court is inappropriate.

### A. The Court must limit its review of the case to the facts which are before it in the record.

"A judgment is characterized as void and may be collaterally attacked at any time where the record itself furnished the facts which establish that the Court acted without jurisdiction." In re Marriage of Stefiniw, 253 Ill.App.3d 196, 625 N.E.2d 358 (1st Dist. 1993); Wabash Area Development, Inc. v. Ind. Com., 88 Ill.2d 392 (1981) ("compliance with the statutory requirements for the issuance of the writ must affirmatively appear in the record."). Emphasis Added. Therefore, the question of whether subject matter jurisdiction has existed in this case must be decided *solely* on the basis of whether the *record* supports a claim that Mr. Towner's compliance with the statute was sufficient to invoke jurisdiction.

The record on appeal is sufficient to establish the answer to the question this case presents, and a resolution of this essential question is rendered simple by the Towners' own admissions that the petition of record does *not* strictly comply with the requirements of § 77-3a-101, (Apl. Br. P. 16).

### B. The Towners' request for remand to the trial court is inappropriate and should be rejected.

In their Reply Brief, the Towners curiously strain at a gnat while swallowing a camel, with the "gnat," in this instance, being the non-issue of whether the Court should have

allowed the insertion of a signed copy of Mr. Towners' petition now that the case is on appeal.

In an apparent attempt to have the Court ignore the much more substantial defects of which Mr. Ridgway complains, the Towners spend an inordinate amount of time discussing the most trivial of the issues raised by Mr. Ridgway – the fact that Mr. Towner's petition bore no signature – an error characterized by the Towners as the failure of the District Court place into the official court file, a copy of Mr. Towner's petition for ex parte injunction that, unlike the one which has been extant in the record for five years, magically bears Mr. Towner's signature. The Towners believe that this *more correct* version of the petition should displace the petition of record,

The Court has already ruled that it cannot. See April 12th, 2011 order of the Court of Appeals, denying Mr. Towner's motion to supplement the record. Mr. Ridgway, of course, concurs in the Court's denial, since such an insertion at this stage of the appeal would be a violation of Court rules.

Undaunted, the Towners now request that if the absence of a signature is found to be material, that the Court of Appeals remand the case to the District Court for an evaluation of whether the allegedly "signed" version of Mr. Towner's petition should be inserted into the record. (R. 15-17.) The rules of the Court allow no such latitude when the record is sufficient to show that subject matter jurisdiction is missing, i.e., that the necessary statutory requirements were not met. Mr. Ridgway feels little need to respond to this request in the instant brief, as he views the compartmentalized micro-issue of a missing signature as little more than a distraction designed to divert attention away from the much

weightier errors that he complains of, errors which are the *real* grounds for his instant appeal. Even if the Court were to grant that "ministerial" or "clerical error" were to explain the absence of Mr. Towner's signature from his petition, the petition would continue to be wholly defective, statutory compliance would still be wholly lacking, and subject matter jurisdiction would still stand wholly negated.

## V. Mr. Ridgway's allegation of fatal non-compliance by Mr. Towner, made in his Opening Brief, stands uncontested. The Court should find that said errors were fatal to a presumption of subject matter jurisdiction by the District Court.

The Towners conspicuously fail to deal with the three fundamental indictments that Mr. Ridgway laid at their feet in his Opening Brief: that the initiating petition lacks authentication, that it lacks specification, and that it lacks corroboration. This silence is both understandable and telling. On inspection of the record, the omissions complained of are so evident as to be impossible of denial. That the omissions are substantive and fatal is also undeniable, and, so, it is not surprising that the Towners offer no theories of excusabity that might have rescued Mr. Towner's petition from a claim of legal insufficiency, with regard to the three elements of the statute which are not met by Mr. Towner's petition.

The Towners have failed to provide any evidence that the omissions alleged by Mr. Ridgway were not real, and no arguments suggesting that any of the statutory failures flagged by Mr. Ridgway were not substantive or material, (with the possible exception of the limited instance of his missing signature), i.e., that they were excusable.

Because the standard in this case is clearly strict compliance, the court must rule that said defects were material and find in favor of Mr. Ridgway's claim that subject matter jurisdiction was never invoked.

## VI. The wrongful imposition of a civil stalking injunction does great harm to the one against whom it runs, even after the injunction expires. In order to avoid permanent substantial injustice in this case, the Court has a duty to vacate any injunctions obtained without a legally sufficient finding of criminal behavior on the part of the defendant.

The Towners demand that the civil stalking injunctions, though now expired, and in spite of a clear showing of substantial non-compliance on the part of Mr. Towner, be left standing as part of Mr. Ridgway's permanent "civil record" (which, because the accusation is stalking, amounts to a *criminal record*, for all intents and purposes, in the public eye) for their protection and for the potential protection of others. (Aple. Br. at 8.) The Court has afforded no shortage of protections to the Towners in the five years this case has run at the expense of protections it should have afforded to Mr. Ridgway. The same cannot be said of its treatment of Mr. Ridgway.

The improper imposition of the Court's injunctions, sought as instruments of political retaliation, (R. 4-9.), has done great harm to Mr. Ridgway in ways that go far beyond the wrongful damage obviously done to his reputation. See "*Deseret News* article, "Is Candidate a Stalker." (R. 32-34.)

Mr. Towner and his allies in the Utah Republican Party have successfully relied upon these improperly obtained stalking injunctions, during the three years that they were in force, to have Mr. Ridgway repeatedly harassed, charged, arrested, incarcerated, and in

one instance, fully prosecuted – though in every instance Mr. Ridgway would be officially exonerated of the false criminal accusations made against him by said means. See exhibits, which figure in the record at R. 114-115, which were attached to an improperly submitted ex parte letter from the Towners to Judge Lindberg, demanding that Mr. Ridgway be convicted by her "of a felony."[3] As much as the Towners would like the public to believe it to be so, Mr. Ridgway is not and never has been, a criminal, much less a stalker.

It should not be difficult for the Court to imagine, hypothetically speaking, that such persistent and very public allegations of criminal behavior against Mr. Ridgway also have been deleterious to his ability to keep employment and to adequately provide for himself, his wife, and his children, as is evidenced by Mr. Ridgway's filings of motions of impecuniosity in this and other cases involving his rights to participate in the political process in Utah. (As, for example, R. 363-368.)

That the imposition of this stalking injunction has done great harm to Mr. Ridgway, in ways which he cannot *possibly* detail here, is a decided understatement. If for no other reasons than the to uphold the interests of justice, and to properly fulfill the moral duty which is incumbent upon the court, the injunctions against Mr. Ridgway must be vacated.[4]

---

[3] In this letter to Judge Lindberg, Mr. Towner wrote: "Carrie and I respectfully request that you issue a bench warrant to bring Mr. Ridgway into your court … and finds him in contempt of the order and pronounce a harsh judgment of a felony."

[4] For example, in Utah, and in many other states, the imposition of a civil stalking injunction takes away a respondent's right to carry a firearm, thus quashing a right

## VII. A finding condoning Mr. Towner's non-compliance with the requirements of Utah's civil stalking statute would be highly adverse to the public interest.

It is strongly in the interest of public policy that the triggering terms of Utah's civil stalking statute be strictly enforced in the instant case, because of the harmful and far-reaching implications should the Court affirm the District Court's failure to enforce the statute.

The stalking statute in the instant case, which allows a petitioner to limit the rights of a defendant by means of ex parte proceedings, is an exception to constitutional principle that no citizen who is accused of criminal activity may be deprived of his rights without the benefit of "confrontation" by a witness who is reachable by penalties of perjury, see U.S. Const. amend. VI, just as the Governmental Immunities Act, at issue in *Gurule v. Salt Lake County*, *above*, is an exception to the principle of sovereign immunity, since it allows, in particular instances, a citizen to sue the government. See Heideman v. Washington City, 2007 UT App 11, ¶ 12-14 (a case citing Gurule that is perfectly on point).

These types of statutes are enabling statutes, without which the court could not take jurisdiction over the case. See Johnson v. Johnson, 2010 UT 20080274, ¶ 9-12 (where the court, despite being unwilling to make every case where the court's competence is at

---

vouchsafed in the Second Amendment of the United States Constitution. Such an injunction also obviously impinges on his First Amendment rights as well, (and has the obvious effect of creating a presumption of criminality against him the in the public mind). The Court has an obligation to ensure that such rights as these are not taken in circumstances where due process is wrongfully withheld from the accused.

issue a matter of subject matter jurisdiction, was still clear that enabling statutes must be complied with).

Since Utah law allows a citizen to obtain an *ex parte* civil stalking injunction against a defendant, who must, absent a show of probable cause, supported by oath or affirmation, be presumed *innocent*, it is self-evidently imperative that the Court uphold said defendant's rights of due process in every possible way.

The enabling elements in § 77-3a-101 support the Constitutional requirements of due process for defendants in three important ways. 1) The accusation that the defendant is a stalker must be made by means of a written, signed, and verified petition. This places the accuser within the reach of criminal penalties if it can be shown that he has abused process in bringing such allegations to the Court. See Bentz. 2) The accusations of stalking must be made with particularity, so that the Court, both at the ex parte stage, and later in the evidentiary hearing, may ascertain whether the allegations made reach the criminal definition of stalking established in § 76.5.106.5; and so as to provide the defendant with such exhaustive specificity regarding the allegations made against him as to give him adequate opportunity to prepare and present a vigorous defense during the evidentiary hearing to which he is entitled under the statute. 3) There must be substantial evidence in support of the allegations, a mandate which is clearly essential given the *ex parte* nature of the proceedings that initiate a stalking case, and which may trigger the issuance of an *ex parte* injunction, abridging defendant's Constitutional rights, freedom of movement, etc. – e.g., the fact that the defendant, at this stage of the proceedings effectively has no rights of confrontation of the witness(es) who stand against him, not to

mention the defendant's right to be able to effectively prepare to confront such witness(es), or rebut such evidence at hearing.

Clearly, the application of anything less than a strict compliance standard, with respect to the enabling elements of § 77-3a-101, would substantially derogate the due process rights of defendants which must be maintained at all cost by the Court, which *alone* bears the responsibility of vouchsafing those rights.

A ruling of the appellate court condoning the trial court's abrogation of its duty to uphold the rights of the defendant would set a precedent which would substantially undermine defendants' rights of due process in future settings. For this reason, it is imperative that the Court answer the question of whether Mr. Towner's compliance with the enabling elements of the statute was sufficient to invoke the subject matter jurisdiction of the Court using nothing less than a *strict-compliance* standard.

In matters of search warrants, the US Constitution draws a bright line:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(U.S. Const. amend. IV.) Were the government, law enforcement agencies, or even members of the political class given broad powers to harass, by means of such searches and seizures, law abiding citizens who are not suspected of true criminal activity, "the right of the people to be secure" would be undermined.

This principle has direct application here because search warrants, like stalking injunctions, are obtained ex parte.

The state's interest in issuing preliminary civil stalking injunctions on an ex parte basis is obvious, given the potential risks to the *truly* endangered should they be left legally unprotected during the initial pendency of a request for such an injunction.

But because of the innumerable and, as yet, uncorrected, errors that have been committed by the District Court to date, the case of Towner v. Ridgway has already established the regrettable precedent that members of the political class may, with impunity, use court-rendered stalking injunctions as instruments of political retaliation against innocent citizens.

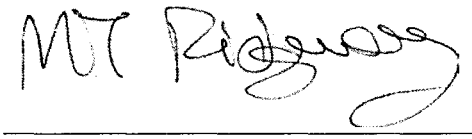
How much more outrageous if the Court should set the precedent that such instruments of harassment and defamation, even incarceration and conviction, may be obtained, for days or weeks, without so much as a single word of sworn testimony being entered into the record, without so much as a single specific allegation of criminal activity being proffered, and without a single morsel of corroborating evidence being lodged in support of said unsworn, and wholly non-specific, allegations that the respondent is a stalker?

The travesty of such an outcome could only be exceeded by the grim reality that a false complainant in such a case would be wholly protected from prosecution, because said complainant never was obliged, by precedents set by the Court, to place himself under penalties of perjury when siccing the Courts and the police on such a hapless, but wholly innocent, target for revenge.

## CONCLUSION

There is no ambiguity in Utah Code Ann. § 77-3a-101's command that a petition filed with the District Court for an ex parte stalking injunction be verified, or that it contain specific allegations of stalking and corroborating evidence of those allegations, per the statute that defines stalking. Therefore, the Towners actions in initiating this case should be measured against a standard of strict compliance. By the Towners' own admission, they did not strictly comply with the requirement to file a verified petition. And the face of the petition also shows that their petition lacked the support of alleging specific events and dates of the actions constituting the alleged stalking. On that basis, the Court should declare that the District Court never had subject matter jurisdiction over the case, and that, consequently, all proceedings in the case, and especially the injunctions which have issued, are vacated.

Dated this 11th day of August, 2011.

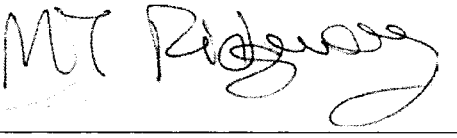


Michael Ridgway
Appellant and Respondent, Pro Se

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of August, 2011, I mailed two correct copies of the foregoing, to the Appellee, Mark Towner, at the following address:

Mark Towner
1331 S Green St
Salt Lake City UT 84105-2116



Michael Ridgway
Appellant and Respondent, Pro Se