

2010

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

Utah Court of Appeals

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Michael Ridgway; Appellant, Pro Se.

Mark E Towner; Appellee, Pro Se .

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IN THE UTAH COURT OF APPEALS

Mark E. Towner
Petitioner and Appellee

Case 20100208-CA

v.

Michael Ridgway
Respondent and Appellant

BRIEF OF APPELLANT

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

Mark E. Towner
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Salt Lake City, UT 84105

Appellee, Pro Se

Michael Ridgway
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Tooele UT 84074

Appellant, Pro Se

**FILED
UTAH APPELLATE COURTS
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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78A-3-102(4) and § 78A-4-103.(j).

STATUTES OF CENTRAL IMPORTANCE

Utah Code Ann. § 76-5-106.5(2) (2006)

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 (2006)

See Addendum 2

Utah Code Ann. §76-1-302 (2006)

- (1) Except as otherwise provided, a prosecution for
 - (b) a misdemeanor other than negligent homicide shall be commenced within two years after it is committed;
- (4) A prosecution is commenced upon:
 - (a) the finding and filing of an indictment by a grand jury;
 - (b) the filing of a complaint or information; or
 - (c) the issuance of a citation.

Utah Code Ann. § 78A-2-223.

- (1) A trial court judge shall decide all matters submitted for final determination within two months of submission, unless circumstances causing the delay are beyond the judge's personal control.
- (2) The Judicial Council shall establish reporting procedures for all matters not decided within two months of final submission.

U.S. Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Emphasis added.

ISSUES PRESENTED AND STANDARDS OF REVIEW

ISSUE 1

Whether the District Court committed reversible error in taking subject matter jurisdiction of this case and in granting an injunction to Mr. Towner against Mr. Ridgway, when the petition which initiated the case was neither signed, notarized, verified, nor acknowledged, and which petition failed to meet several other particular requirements stated in Utah Code Annotated § 77-3a-101 (2006).

Standard of Review

“The proper interpretation and application of a statute is a question of law,” which is reviewed for correctness. Ellison v. Stam, 2006 UT App 150, ¶16, 136 P.3d 1242.

STATEMENT OF THE CASE

NATURE OF THE CASE

This case was appealed by Mr. Ridgway for the purpose of remedying numerous fatal errors that Mr. Michael Ridgway believes have been made in the course of the proceedings in this case by the District Court, and by Mr. Mark E. Towner and his wife Mrs. Carrie L. Towner; errors which led to the wrongful imposition of a civil stalking injunction against him, for more than three years. In the spirit of *coram nobis*, Mr. Ridgway seeks to have all proceedings in this case vacated and the case dismissed with prejudice, and since he was never guilty of stalking Mr. Towner, and since Mr. Towner never properly initiated this case, never stated a specific allegation of stalking that meets the statutory requirements for the same, never proved that Mr. Ridgway has ever engaged in stalking; and because the orders of the court, which have wrongfully burdened Mr. Ridgway with the extreme stigma of a stalking injunction, were entered in abject violation of the law, and wrongfully maintained by an abuse of the trial court's authority, abetted by the abuse of process of Mr. Towner and his wife, Mrs. Towner.

COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

Ex Parte Civil Stalking Injunction Signed by Judge Maughan and amended four days later by Judge Sandra Peuler

As of 2006, Utah Code Annotated § 77-3a-101 (2006) granted to any Utah citizen the ability to petition the Utah Courts for an anti-stalking injunction against any other person believed to have engaged in stalking against said citizen, so long as the accused's behavior meets the definition of stalking found in Utah Code Ann. § 76-5-106.5(2) (2006).

On May 8, 2006, Mr. Mark E. Towner, petitioned the Third District Court for an ex parte stalking injunction against Mr. Michael Ridgway. (R. 1-3.). On the same day, the case was assigned to Judge Sandra Peuler, (Id.), and the petition was reviewed by Judge Paul Maughan, who granted an injunction against Mr. Ridgway, acting in the place of Judge Peuler. (R. 19-21.)

Four days later, Judge Peuler would stay a provision of Judge Maughan's injunction which barred Mr. Ridgway from attending any Republican meetings of any kind – under threat of arrest and prosecution for the crimes of stalking and the violation of a stalking injunction, both serious crimes under Utah law – so that Mr. Ridgway could attend the Utah Republican Party State Nominating convention, scheduled for the following day. (R. 36.) Mr. Ridgway was, at the time a delegate to said convention, and a Republican candidate for the US Senate. Republican candidates who fail to receive more than 40 percent of the convention vote are eliminated from contention. (R. 4.) The impossibility of

receiving that percentage of the vote when not present to deliver speeches, on an equal footing with one's opponents, cannot be overstated. (Id.)

Evidentiary Hearing Before Judge Denise Lindberg

On June 14, 2006, the evidentiary hearing requested by Mr. Ridgway (R. 59.) was held by the District Court, (R. 112.), during which Judge Denise Lindberg, acting in the place of Judge Peuler, rejected a motion by Mr. Ridgway to dissolve the injunction, instead, issuing an amended civil stalking injunction that she ruled was to remain in effect for no less than three years from the date of issuance. (R. 92.) The order was signed on July 7, 2010. (R. 94.) However, the alleged "Certificate of Service," (R. 95.) affirming that service of said order was effectuated on Mr. Ridgway, included in the record is clearly invalid, since, if taken at face value, it was completed and signed on June 27, 2006, twelve days before Judge Lindberg signed the injunction, meaning that it could not possibly be a truthful or accurate certification of service of said order to Mr. Ridgway. (Id.)

Further, the case file and the record contain no proof of receipt of service on the part of Mr. Ridgway. (See Record on Appeal from July 7, 2006 to the present.) Under Utah law, it never took effect.

Appeal to the Supreme Court and Its Order on Remand to the District Court

Believing that Judge Lindberg had failed to comply with the law in entering the order against Mr. Ridgway, Mr. Ridgway appealed said order to the Supreme Court, (R. 97-98.), which accepted the appeal and heard the case. (R. 116-126.)

On March 8, 2008, the Supreme Court rendered an opinion resolving some of the issues presented to it, but declining to make a final ruling on Mr. Ridgway's request to vacate the injunction then in force, this due to the failure of Judge Lindberg to enter official findings of fact in support of her order of July 7, 2006. (Id.)

Instead, the Supreme Court remanded the case to the District Court for an entry of findings on each element of the stalking statute. (R. 116-126; 117-138.)

The District Court's Defiance of the Supreme Court's Order

The District Court failed to respond to this order in the two months allowed under law.¹ And in the three years since the Order, not only has the District Court not met its obligation to comply with the Supreme Court's order, but it has taken the extreme action of dismissing the case and declaring the order of the Supreme Court to produce findings of no current effect, effectively exonerating itself from the order. (R. 320-322.)

On December 2, 2009, Mr. Ridgway appealed that final order as well as all previous orders of the District Court. (R. 361-362.) The Supreme Court then transmitted the matter to the Utah Court of Appeals. (R. 389-390.)

¹ Utah Code Ann. § 78A-2-223.

(1) A trial court judge shall decide all matters submitted for final determination within two months of submission, unless circumstances causing the delay are beyond the judge's personal control.

(2) The Judicial Council shall establish reporting procedures for all matters not decided within two months of final submission.

STATEMENT OF FACTS

Mr. Ridgway described in detail many of the events which preceded the initiation of this case by Mr. Towner, and the events that led up to his first appeal in his opening brief to the Supreme Court. In this brief, he will focus on the facts which are germane to the issue he is raising in this appeal.

On May 8, 2006, Mr. Towner submitted the document which was intended to bring this matter before the court, his so-called "Verified Petition for an ex Parte Injunction." See Addendum 1.

However, in violation of Utah Code Annotated § 77-3a-101 (2006), Mr. Towner failed to submit a *verified* petition in that

- a) He did not sign his initial petition for relief. (R. 3.)
- b) He did not have his petition notarized or authenticated by including a statement placing himself under criminal penalties. (Id.)
- c) He did not include two or more specific allegations of stalking (Id.)
- d) He did not attach corroboration of his allegations of stalking to his petition. (Id.)

On the same day, May 8, 2006, Kathie Campbell, the Court Clerk who received Mr. Towner's petition failed to notice

- a) The absence of a signature. (Id.)
- b) The lack of verification. (Id.)

Ms. Campbell then

- a) Failed to notify Mr. Towner of the insufficiency of his petition (Id.) and, instead,
- b) Entered the case in spite of the petition's fatal defects, (Id.) rather than
 - i) Requiring Mr. Towner to correct the defects, or to withdraw his petition, or to have it stricken for lack of a verified signature. (See Rule 11(a) Utah Rules of Civil Procedure.)

On the same day, May 8, 2006, Judge Maughan, acting as a substitute judge for the assigned judge, Judge Peuler, on being improperly presented with Mr. Towner's petition, failed to properly review the petition to ensure that

- a) The petition was signed and verified (R. 19-23.)
- b) The petition met all of the other requirements of the law found in Utah Code Annotated § 77-3a-101 (2006) for the granting of an ex parte stalking injunction, specifically (Id.)
 - i) The requirement that the petition contain two or more specific allegations of stalking, including dates, events and the specific conduct that met the three-part test for stalking found in Utah Code Ann. § 76-5-106.5(2) (2006). (Id.)
 - ii) The requirement that the petition be accompanied by corroborating evidence in support of the specific allegations that should have, but did not, figure in the petition itself. (Id.)

On the same day, May 8, 2006, in reviewing said petition, Judge Maughan failed to exclude from consideration descriptions of conduct on the part of Mr. Ridgway where the only alleged conduct was that Mr. Ridgway made "comments" about Mr. and Mrs. Towner's political performance "as party officers" in the context of public proceedings at various unspecified "Republican events," i.e., in unenumerated meetings of the Utah Republican Party or of the Salt Lake County Republican Party, said "comments" being made exclusively in political settings, and said class of conduct being completely protected, by the First Amendment of the United States Constitution, from civil or criminal prosecution. See Snyder v. Phelps, US Supreme Court, (2011), the syllabus of which is attached as Addendum 3.

On the same day, May 8, 2006, rather than deny Mr. Towner's petition for reasons of legal insufficiency, this on the ground of one or more of the above cited defects in his petition, Judge Maughan granted an ex parte injunction against the Appellant, though clearly the Court completely lacked, and still lacks presently, subject matter jurisdiction over the case. (R. 19-23.)

Exacerbating his error, Judge Maughan included a prohibition against Mr. Ridgway's attendance at a class of events, i.e., "Republican events," in an extremely severe and overreaching (read: unconstitutional) limitation of Mr. Ridgway rights to participate freely in the political process in Utah, especially within the confines of the political party with which he has officially affiliated, this, rather than simply limit Mr. Ridgway's presence at specific, narrowly defined, enumerated locations, as allowed by Utah Code Annotated

§ 77-3a-101 (2006). See unpublished Snyder v. Phelps, 2011, US Supreme Court.

(R. 19-23.)

In a second overreaching imposition, Judge Maughan also banned Mr. Ridgway from the entire campus of the University of Utah, though Mr. Towner did not work at and was not a student at the University of Utah. (Id.)

SUMMARY OF ARGUMENT

The Court lacked subject matter jurisdiction over this case due to Mr. Towner's multiple failures to conform to the requirements of the statute defining when a citizen may petition the court for a civil stalking injunction against another. Said failures are manifest and irremediable. The Court should acknowledge that it never had subject matter jurisdiction over this case, should vacate all orders, rulings, and injunctions, entered to date, and should dismiss the case with prejudice.

ARGUMENT

I. The Court erred in taking subject matter jurisdiction of this case, given the multiple fatal defects in Mr. Towner's initial filing, his “Verified Petition for Ex Parte Injunction.”

A. The District Court erred in granting an ex parte stalking injunction in the absence of a properly verified petition requesting such an injunction.

A quick glance at the final page of the foundational document for the case of Towner v. Ridgway, which Mr. Towner captioned “Verified Petition for Ex Parte Stalking

Injunction,” (R. 1-3.), and filed with the District Court on May 8, 2006, (Id.), is all that is necessary to discover that Mr. Towner’s petition was not verified at all. Utah Code Ann. § 77-3a-101(2) clearly requires that a verified petition be filed with the Court before any stalking injunction may issue, and Utah law establishes only two mechanisms for verifying such a petition, when not filed electronically. Option 1) “An affidavit to be used before any court, judge, or officer of this state may be taken before any judge, the clerk of any court, any justice court judge, or any notary public in this state.” See Utah law, § 78B-5-701. Option 2) “[A]n individual may, with like force and effect, provide an unsworn written declaration, subscribed and dated under penalty of this section, in substantially the following form: “I declare (or certify, verify, or state) under criminal penalty of the State of Utah that the foregoing is true and correct. | Executed on (date). | (Signature)”. See Utah law, § 78B-5-705.

Though Mr. Towner captioned his pleading “Verified Petition for Ex Parte Injunction,” (R. 1-3.), he clearly erred in so doing, since his petition contained neither a notarized signature, per § 78B-5-701, nor an acknowledged signature, per § 78B-5-705. In fact, it contains no signature at all, this in violation of Rule 11(a) of the Utah Rules of Civil Procedure which reads:

“(a)(1) Every pleading, written motion, and other paper shall be signed by at least one attorney of record, or, if the party is not represented, by the party.

(a)(2) A person may sign a paper using any form of signature recognized by law as binding. Unless required by statute, a paper need not be accompanied by affidavit or

have a notarized, verified or acknowledged signature. If a rule requires an affidavit or a notarized, verified or acknowledged signature, the person may submit a declaration pursuant to Utah Code Section 78B-5-705. If a statute requires an affidavit or a notarized, verified or acknowledged signature and the party electronically files the paper, the signature shall be notarized pursuant to Utah Code Section 46-1-16.

“(a)(3) An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.”

No doubt, Mr. Towner will question why Mr. Ridgway has not brought this fact to his and the Court's attention at an earlier stage in the proceedings. Mr. Ridgway would respond to such a query by pointing out that he just became aware of this defect in the petition in the last days before filing his Opening Brief for his case on appeal, while at the Matheson Courthouse, reviewing the record on appeal (the case file). Mr. Ridgway's shock at this discovery could not be overstated, given all that he has been through in his life as a result of this one defective, dishonest filing, a filing which was not flagged as deficient at any stage of the process by those who should have rejected it, such figures to include the court clerk who accepted this so-called verified petition with no sign of verification, the substitute judge, Paul Maughan, (R. 19-23.), who signed the order issuing the first ex parte injunction in response to this unverified petition, the assigned judge, Judge Peuler, who amended Judge Maughan's order, premised on the foundation of an unverified petition, and even the attorneys at the firm of Snell and Wilmer, who never, in their tenure as

Mr. Ridgway's counsel, ever seemed to have noticed this fundamental and fatal defect.

While the Utah Rules of Civil Procedure do give allowances to a filing party to correct such glaring oversights, the obvious premise in such a rule is that no action shall be premised upon said pleading until the missing verification is supplied.

In Bentz v. Judd, 714 N.E.2d 203 (1999), a case where the lower court had dismissed a demand that the court grant an order requiring that a recount be held in an election where the Plaintiff was declared the loser, and where the Defendant had moved for dismissal of the case on the ground of the failure of the petitioner to properly verify his petition before submitting it to the court, 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.Ct.App.1990).”

Absent said compliance in this case, and given the impossibility of correcting said fatal defect at this stage, nearly five years after its submission, and nearly two years after the final injunction would have been deemed, had it ever been valid, to have expired, the Court must acknowledge that all actions taken from the initiation of this case to the present, in the absence of a verified petition, are necessarily and irremediably *null and*

void, and it must vacate all actions of the court in this case, including the injunctions which have wrongfully entered in this case.

CONCLUSION

Based on the foregoing, Mr. Ridgway respectfully requests that the Court:

- I. DECLARE that Mr. Mark E. Towner's "Verified Petition for Ex Parte Injunction" filed on May 8, 2006, for the purpose of obtaining a civil stalking injunction against Mr. Michael Ridgway, was defective:
 - A. Because his petition manifestly was not verified, as Mr. Towner averred, and as required by Utah Code Ann. § 77-3a-101(2), in that it was not signed, and lacked either an officially witnessed signature (notarization), see Utah Code Ann. § 78B-5-701, or an acknowledged signature, see section Utah Code Ann. § 78B-5-705, which requires the inclusion of words to the effect that the petitioner affirms the statements therein to be true, and that they are asserted "under penalty of perjury"; and/or
 - B. Because his petition manifestly contained no allegations that met the requirement in § 77-3a-101.(4)(c) that the petitioner must identify "specific events and dates of the actions constituting the alleged stalking"; and/or
 - C. Because his petition manifestly contained no "corroborating evidence of stalking," which met the definition of stalking established by Utah law

section 76-5-106.5(2), and as interpreted by controlling court precedents;
and

- II. STRIKE said petition on the ground of said fatal defects; and
- III. DECLARE that it was error for the District Court to grant an ex parte injunction against Mr. Ridgway, and subsequently, a civil stalking injunction, when no properly verified petition for an ex parte injunction was ever before the Court, and/or when said defective petition failed to include the required supports, establishing at least probable cause for the issuance of an ex parte stalking injunction against Mr. Ridgway; and
- IV. REVERSE the May 8, 2006 ruling of the District Court granting an ex parte injunction against Mr. Ridgway, and
- V. REVERSE the May 12, 2006 ruling of the District Court denying Mr. Ridgway's motion to dissolve the ex parte injunction; and
- VI. REVERSE the July 7, 2006 ruling of the District Court which entered a civil stalking injunction against Mr. Ridgway which was to continue "for no less than three years"; and
- VII. DECLARE VOID and/or VACATE all injunctions entered in the course of this case, in consequence of the Court's ruling to STRIKE the ex parte stalking injunctions; and
- VIII. VACATE the ruling of the District Court denying sanctions for abuse of process by Mr. Towner against Mr. Ridgway; and

- IX. ORDER the District Court to grant a hearing to Mr. Ridgway in which to present a motion for, and evidence in support of a motion for sanctions against Mr. Towner and Mrs. Towner for their apparent abuse of process in the five-years course of this case.
- X. NOTIFY the Supreme Court that Mr. Ridgway's pending appeal before the Supreme Court (Case Number 20060677-CA) may be dismissed because the Court of Appeals has resolved the matter to the satisfaction of Mr. Ridgway, who was the Appellant in that case.
- X1. ORDER the District Court to do due diligence in locating, contacting and making full refunds, with appropriate interest, to any and all persons or firms who have made any payments, purchases, or otherwise paid fees to the Court, in relation to any of the three above cited cases.

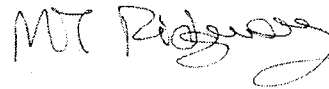
Additionally, Mr. Ridgway requests that the court make the following rulings IN THE PUBLIC INTEREST:

- XI. DECLARE that it was error for the District Court, in its ruling made by minute entry on October 2, 2009, in response to Mr. Ridgway's motion of July 29, 2009, to split his motion to vacate (all injunctions) and dismiss (the case with prejudice), into two motions, granting only the motion to dismiss the case, while declaring moot the motion to vacate, an outcome clearly not requested by Mr. Ridgway, the prevailing party with regard to said motion; and (R. 320-322.)

- XII. DECLARE that it was error for the District Court to rule that the expiration of a stalking injunction, pursuant to Utah Code Ann. 77-3a-101, automatically moots all pending motions and orders, including the motions and other items submitted by Mr. Ridgway at about that time, and the pending order on remand of the Supreme Court to the District Court commanding it to submit factual findings on all elements of the stalking statute to make possible final review in Mr. Ridgway's appeal, filed more than four years ago, now. (Id.)
- XIII. DECLARE that it was error for the District Court to rule that the civil stalking injunction would remain in force for no "less than three years" from the date of issuance (July 7, 2006) of the amended civil stalking injunction, when Utah law mandates that civil stalking injunctions expire three years from the date of the return of an affidavit of service of the ex parte injunction on the Respondent, which date would have been May 15, 2009, not July 7, 2009, or June 26, 2009, as ruled by the District Court.
- XIV. DECLARE that it was error for the District Court to rule that a certificate of mailing without proof of return of service was sufficient to meet the statutory requirement for making effective a modified civil stalking injunction, pursuant to Utah Code Ann § 77-3a-101(11)(b); and
- XV. STRIKE the certificate of service on the ground that it could not possibly be true that an order signed on July 7, 2006, was served by mail on June 26, 2006, as averred by the District Court; and

- XVI. DECLARE that the civil stalking injunction entered on July 7, 2006 never became effective as proper service was never effectuated and proof of service was never obtained by the District Court; and
- XVII. DECLARE that it was error for the District Court to deem all other issues moot, specifically the motion to vacate and the need and obligation of the District Court to submit findings to the Supreme Court.

Dated this 10th day of March, 2011



Michael Ridgway, Litigant, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2011, I mailed a true and correct copy of the foregoing documents, by first-class regular mail, postage prepaid, to the Respondent and Appellee, Mark E Towner, at the following address:

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



Michael Ridgway, Litigant, Pro Se

ADDENDUM

Addendum A

FILED
DISTRICT COURT

06 MAY -8 AM 11: 01

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY,

Name: Mark E. Towner
Address: 1331 Green Street
Salt Lake City, UTAH 84105
Telephone: 801-502-9134 (home) 801-502-9134 (work)

FILED DISTRICT COURT
Third Judicial District

MAY 08 2006

SALT LAKE COUNTY

By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH

Mark E Towner,
Petitioner,

vs.

Michael Ridgway,
Respondent.

*** VERIFIED PETITION FOR CIVIL
* STALKING INJUNCTION**

Case No. 06090755JSK

Judge: JUDGE SANDRA PEULER

The Petitioner alleges against the Respondent and states as follows:

1. Petitioner is a victim of stalking.
2. Petitioner believes that the Respondent is the stalker.
3. The specific acts supporting this allegation are as follows:

Virtually every Republican Event. Mr Ridgway will make comments to myself or my wife about past incidents where as officers in the party we ruled against him on numerous issues. I would say there has been 10-15 incidents since 2002

4. The acts described above are corroborated by the evidence attached to this petition. (Attach affidavits of witnesses, letters from the Respondent, transcripts of conversations, a police report, or any other evidence which tends to support the allegations.)

Verified Petition for Civil Stalking Injunction



05/08/2006

Verified Petition for Civil Stalki

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RIDGEWAY, MICHAEL

Note: If any court order has been issued concerning the conduct described in paragraph 3, please attach a copy of the order.

5. The current address of the Respondent is: 317 N 'K' ST B, Salt Lake City, UTAH
84105

Petitioner requests an ex parte stalking injunction which would include the following:

1. Enjoin the Respondent from stalking the Petitioner.
2. Enjoin the Respondent from coming near the following addresses frequented by Petitioner:

Residence: *1331 Green Street*

Work: *1331 Green Street*

School: *U of U*

Other: *Republican Events*

3. Restrain the Respondent from contacting Petitioner either directly or indirectly, through any form of communication including written, oral, electronic, and restrain the Respondent from contacting the following persons:

Carrie Lynn Towner

Leslie Ann Towner

Andrea E Heid

Krystal E Hoke

Camille L Ala

Carlene Boden

Addendum B

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 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.
 - (a) A hearing requested by the respondent shall be held within ten 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 ten 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 ten 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 ten 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's fees.
- (17) This chapter does not apply to protective orders or ex parte protective orders issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, or to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation.

Enacted by Chapter 276, 2001 General Session

Emphasis Added.

Addendum C

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SNYDER *v.* PHELPS ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 09–751. Argued October 6, 2010—Decided March 2, 2011.

For the past 20 years, the congregation of the Westboro Baptist Church has picketed military funerals to communicate its belief that God hates the United States for its tolerance of homosexuality, particularly in America's military. The church's picketing has also condemned the Catholic Church for scandals involving its clergy. Fred Phelps, who founded the church, and six Westboro Baptist parishioners (all relatives of Phelps) traveled to Maryland to picket the funeral of Marine Lance Corporal Matthew Snyder, who was killed in Iraq in the line of duty. The picketing took place on public land approximately 1,000 feet from the church where the funeral was held, in accordance with guidance from local law enforcement officers. The picketers peacefully displayed their signs—stating, *e.g.*, “Thank God for Dead Soldiers,” “Fags Doom Nations,” “America is Doomed,” “Priests Rape Boys,” and “You’re Going to Hell”—for about 30 minutes before the funeral began. Matthew Snyder's father (Snyder), petitioner here, saw the tops of the picketers' signs when driving to the funeral, but did not learn what was written on the signs until watching a news broadcast later that night.

Snyder filed a diversity action against Phelps, his daughters—who participated in the picketing—and the church (collectively Westboro) alleging, as relevant here, state tort claims of intentional infliction of emotional distress, intrusion upon seclusion, and civil conspiracy. A jury held Westboro liable for millions of dollars in compensatory and punitive damages. Westboro challenged the verdict as grossly excessive and sought judgment as a matter of law on the ground that the First Amendment fully protected its speech. The District Court reduced the punitive damages award, but left the verdict otherwise intact. The Fourth Circuit reversed, concluding that Westboro's state-

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ments were entitled to First Amendment protection because those statements were on matters of public concern, were not provably false, and were expressed solely through hyperbolic rhetoric.

Held: The First Amendment shields Westboro from tort liability for its picketing in this case. Pp. 5–15.

(a) The Free Speech Clause of the First Amendment can serve as a defense in state tort suits, including suits for intentional infliction of emotional distress. *Hustler Magazine, Inc. v. Falwell*, 485 U. S. 46, 50–51. Whether the First Amendment prohibits holding Westboro liable for its speech in this case turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case. “[S]peech on public issues occupies the ‘highest rung of the hierarchy of First Amendment values’ and is entitled to special protection.” *Connick v. Myers*, 461 U. S. 138, 145. Although the boundaries of what constitutes speech on matters of public concern are not well defined, this Court has said that speech is of public concern when it can “be fairly considered as relating to any matter of political, social, or other concern to the community,” *id.*, at 146, or when it “is a subject of general interest and of value and concern to the public,” *San Diego v. Roe*, 543 U. S. 77, 83–84. A statement’s arguably “inappropriate or controversial character . . . is irrelevant to the question whether it deals with a matter of public concern.” *Rankin v. McPherson*, 483 U. S. 378, 387. Pp. 5–7.

To determine whether speech is of public or private concern, this Court must independently examine the “‘content, form, and context,’” of the speech “‘as revealed by the whole record.’” *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U. S. 749, 761. In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all aspects of the speech. Pp. 7–8.

The “content” of Westboro’s signs plainly relates to public, rather than private, matters. The placards highlighted issues of public import—the political and moral conduct of the United States and its citizens, the fate of the Nation, homosexuality in the military, and scandals involving the Catholic clergy—and Westboro conveyed its views on those issues in a manner designed to reach as broad a public audience as possible. Even if a few of the signs were viewed as containing messages related to a particular individual, that would not change the fact that the dominant theme of Westboro’s demonstration spoke to broader public issues. P. 8.

The “context” of the speech—its connection with Matthew Snyder’s funeral—cannot by itself transform the nature of Westboro’s speech. The signs reflected Westboro’s condemnation of much in modern society, and it cannot be argued that Westboro’s use of speech on public issues was in any way contrived to insulate a personal attack on

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Snyder from liability. Westboro had been actively engaged in speaking on the subjects addressed in its picketing long before it became aware of Matthew Snyder, and there can be no serious claim that the picketing did not represent Westboro's honestly held beliefs on public issues. Westboro may have chosen the picket location to increase publicity for its views, and its speech may have been particularly hurtful to Snyder. That does not mean that its speech should be afforded less than full First Amendment protection under the circumstances of this case. Pp. 8–10.

That said, “[e]ven protected speech is not equally permissible in all places and at all times.” *Frisby v. Schultz*, 487 U. S. 474, 479. Westboro's choice of where and when to conduct its picketing is not beyond the Government's regulatory reach—it is “subject to reasonable time, place, or manner restrictions.” *Clark v. Community for Creative Non-Violence*, 468 U. S. 288, 293. The facts here are quite different, however, both with respect to the activity being regulated and the means of restricting those activities, from the few limited situations where the Court has concluded that the location of targeted picketing can be properly regulated under provisions deemed content neutral. *Frisby*, *supra*, at 477; *Madsen v. Women's Health Center, Inc.*, 512 U. S. 753, 768, distinguished. Maryland now has a law restricting funeral picketing but that law was not in effect at the time of these events, so this Court has no occasion to consider whether that law is a “reasonable time, place, or manner restriction” under the standards announced by this Court. *Clark*, *supra*, at 293. Pp. 10–12.

The “special protection” afforded to what Westboro said, in the whole context of how and where it chose to say it, cannot be overcome by a jury finding that the picketing was “outrageous” for purposes of applying the state law tort of intentional infliction of emotional distress. That would pose too great a danger that the jury would punish Westboro for its views on matters of public concern. For all these reasons, the jury verdict imposing tort liability on Westboro for intentional infliction of emotional distress must be set aside. Pp. 12–13.

(b) Snyder also may not recover for the tort of intrusion upon seclusion. He argues that he was a member of a captive audience at his son's funeral, but the captive audience doctrine—which has been applied sparingly, see *Rowan v. Post Office Dept.*, 397 U. S. 728, 736–738; *Frisby*, *supra*, at 484–485—should not be expanded to the circumstances here. Westboro stayed well away from the memorial service, Snyder could see no more than the tops of the picketers' signs, and there is no indication that the picketing interfered with the funeral service itself. Pp. 13–14.

(c) Because the First Amendment bars Snyder from recovery for in-

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tentional infliction of emotional distress or intrusion upon seclusion—the allegedly unlawful activity Westboro conspired to accomplish—Snyder also cannot recover for civil conspiracy based on those torts. P. 14.

(d) Westboro addressed matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials. It did not disrupt Mathew Snyder's funeral, and its choice to picket at that time and place did not alter the nature of its speech. Because this Nation has chosen to protect even hurtful speech on public issues to ensure that public debate is not stifled, Westboro must be shielded from tort liability for its picketing in this case. Pp. 14–15.

580 F. 3d 206, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. BREYER, J., filed a concurring opinion. ALITO, J., filed a dissenting opinion.