

2005

## J. J. Abernathy v. John Mzik : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Viginus Dabney; Dabney and Dabney; Attorney for Appellee.

Reed R. Braithwaite; Ascoine, Heideman and McKay; Attorney for Appellant.

---

### Recommended Citation

Brief of Appellant, *Abernathy v. Mzik*, No. 20051101 (Utah Court of Appeals, 2005).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/6161](https://digitalcommons.law.byu.edu/byu_ca2/6161)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**IN THE COURT OF APPEALS  
OF THE STATE OF UTAH**

J.J. ABERNATHY,  Petitioner/Appellee,  vs.  JOHN MZIK,  Respondent/Appellant.	Appellate No. 20051101-CA  District Court No. 050500870
---	---

**APPELLANT'S BRIEF**

Appeal from the Judgment and Orders of the District Court  
of the Fifth Judicial District, State of Utah  
the Honorable James L. Shumate, Presiding.

Viginius Dabney  
DABNEY & DABNEY  
1060 South Main Street, Suite 2  
St. George, Utah 84770

Attorney for Petitioner and Appellee

Reed R. Braithwaite #8788  
ASCIONE, HEIDEMAN & McKAY  
50 East 100 South, Ste. 101  
St. George, Utah 84770

Attorney for Respondent and Appellant

**IN THE COURT OF APPEALS  
OF THE STATE OF UTAH**

---

J.J. ABERNATHY,

Petitioner/Appellee,

vs.

JOHN MZIK,

Respondent/Appellant.

---

Appellate No. 20051101-CA

District Court No. 050500870

---

**APPELLANT'S BRIEF**

---

Appeal from the Judgment and Orders of the District Court  
of the Fifth Judicial District, State of Utah  
the Honorable James L. Shumate, Presiding.

Viginus Dabney  
DABNEY & DABNEY  
1060 South Main Street, Suite 2  
St. George, Utah 84770

Reed R. Braithwaite #8788  
ASCIONE, HEIDEMAN & McKAY  
50 East 100 South, Ste. 101  
St. George, Utah 84770

Attorney for Petitioner and Appellee

Attorney for Respondent and Appellant

## TABLE OF CONTENTS

Table of Authorities.....	4
Jurisdiction Statement.....	5
Statement of Issues.....	5
Determinative Constitution Provisions, Statutes, Ordinances and Rules.....	6
Statement of the Case.....	6
Statement of Facts.....	6
Summary of the Arguments.....	12
Issue No. 1.....	13
Issue No. 2.....	18
Conclusion.....	20
Addendum.....	22

## TABLE OF AUTHORITIES

Utah Const. Art. 1, §1.....	6, 18
Utah Code Ann. §76-5-106.5.....	6, 13
Utah Code Ann. §77-3A-101.....	6
Utah Code Ann. §78-2a-3.....	5
Ellison v. Stam.....	12, 13, 15, 16
Gutierrez v. Medley.....	5, 14
Ross v. Schackel.....	6, 18
Ryan v. Gold Cross Servs., Inc.....	6, 18
State v. Lopez.....	13, 14

## JURISDICTION OF THE UTAH COURT OF APPEALS

Jurisdiction is proper in the Utah Court of Appeals pursuant to the transfer of jurisdiction by the Utah Supreme Court to the Utah Court of Appeals pursuant to Utah Code Ann. §78-2a-3.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

### ISSUE NO. 1

Did The Trial Court Properly Interpret “Emotional Distress” In Its Finding That The Respondent Engaged In A Course Of Conduct That Would Cause A Reasonable Person To Suffer Emotional Distress?

### STANDARD OF REVIEW

The proper interpretation and application of a statute is a question of law which we review for correctness, affording no deference to the district court’s legal conclusions. Gutierrez v. Medley, 972 P.2d 913, 914-15 (Utah 1998).

### STATEMENT OF GROUNDS

The trial court never allowed opening arguments, nor closing arguments in order to present and argue the issues.

### ISSUE NO. 2

Whether the Civil Stalking Junction is unconstitutional by being overly broad so as to limit a person’s right to free speech and criticism?

## STANDARD OF REVIEW

The challenge to the constitutionality of a statute presents a questions of law, which we review for correctness. Ross v. Schackel, 920 P.2d 1159, 1162 (Utah 1996).; Ryan v. Gold Cross Servs., Inc., 903 P.2d 423, 424 (Utah 1995).

## STATEMENT OF GROUNDS

The trial court never allowed opening arguments, nor closing arguments in order to present and argue the issues.

## DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES

Utah Const. Art. 1, §1  
Utah Code Ann. §76-5-106.5  
Utah Code Ann. §77-3A-101  
Utah Code Ann. §78-2a-3

## STATEMENT OF THE CASE

### 1. NATURE OF THE CASE

This appeal is from the entry of a Civil Stalking Injunction from the Fifth Judicial District in and for Washington County, State of Utah.

### 2. STATEMENT OF FACTS

A. This case involves a high school teacher, Mrs. Abernathy (R. 266, p. 8, 19 – p. 9, 10), and the parent of a student, John Mzik. On December 31, 2004, the Respondent and Mrs. Abernathy had a heated conversation regarding Mr. Mzik’s daughter’s grade for

the semester. (R. 266, p. 11, 4, - p. 19, 12). The trial court found that this conversation did not rise to the level of a civil stalking injunction. (R. 266, p. 140, 21-25).

B. On January 3, 2005, the Respondent and his wife met with Mrs. Abernathy and the high school principal, Mr. Facrel, in his office. (R. 266, p. 19, 15-22).

C. This meeting lasted approximately three hours. (R. 266, p. 19, 23-25).

D. During the meeting, Mr. Mzik brought up a possible violation of the student's confidentiality policy. (R. 266, p. 22, 13 – 21).

E. Mrs. Abernathy testified that at one point during the meeting Mr. Mzik pounded several times on Mr. Facrel's desk and waived his papers around. (R. 266, p. 23, 21-25).

F. Mrs. Mzik testified that she was the one who pounded on the desk and that she did it only once out of frustration because Mrs. Abernathy would not let her finish a complete sentence. (R. 266, p. 94, 11-25).

G. The principal, Mr. Facrel, testified that at some point during this meeting, Mr. Mzik tore a piece of paper out of a notebook, crumpled it up and threw it. (R. 266, p. 68, 3-5). Mr. Facrel testified that Mr. Mzik did not throw the papers towards Mrs. Abernathy. (R. 266, p. 68, 21-23). The principal characterized the Respondent's comments during the meeting as accusatory, uncomplimentary and quarrelsome. (R. 266, p. 69, 9-13). Mr. Facrel also testified that the meeting was the worst parent/teacher



meeting he had ever experienced and that it rated an 8 and a scale from 1 to 10 with 10 being the most argumentative. (R. 266, p. 67, 8-25).

H. Mr. Facrel stated that there were not any threats made during the meeting. (R. 266, p. 77, 1-4).

I. The Trial Court said the following in making its findings, “I do find specifically that in that encounter Mr. Mzik grabbed a sheet of paper off of Mr. Facrel’s desk, tore it out of whatever it was being held in, crumpled it and threw it. This is a physically threatening and violent action.” (R. 266, p.141, 4-9).

J. On January 10, 2005, the Respondent went to the high school to deliver a grievance letter to Mrs. Abernathy. The Respondent took his tape recorder with him to record the events. Mr. Mzik placed the recorder close to Mrs. Abernathy’s mouth and stated his name and time of day and that he was delivering a letter to Mrs. Abernathy. (R. 266, p. 24, 8 – p. 27, 5; p. 116, 4-16).

K. Mrs. Abernathy responded, “I’m not going to take it from you because you’ve threatened legal action already on two occasions, so I’m not going to accept this letter.” (R. 266, p. 27, 7 – 10; p. 117, 2-7).

L. Mr. Mzik held the recorder approximately one foot away from Mrs. Abernathy. (R. 266, p. 27, 11 – 21).

M. Mrs. Abernathy then asked the secretary to call Officer Hugey immediately. (R. 266, p. 28, 4 – 7).

N. The Court asked Mr. Mzik why he chose to hand-deliver the request rather than send it in the mail. Mr. Mzik responded, “I like dealing with people on a personal level face to face. It’s always been my way. Mr. Facrel had gotten rid of my confidence, you know, when he would not return my call and not tell me personally his decision. I wanted to see him and tell him that I have a problem with this and that I am going to the next level. I didn’t want to do it behind his back.” (R. 266, p. 120, 14-22).

O. The Trial Court viewed this as a misguided attempt and that it was a confrontational method rather than utilizing the postal service to deliver the mail. The Trial Court found this event to be the second circumstance that met the burden of proof for a Civil Stalking Injunction. (R. 266, p. 141, 10-23).

P. On May 26, 2005, Snow Canyon High School held its graduation. Mr. Mzik was there in attendance to see his daughter graduate. Because of the previous incidents with Mr. Mzik, the principal asked Mrs. Abernathy not to sit on the podium as usual. (R. 266, p. 39, 13 – p. 14, 7).

Q. Mrs. Abernathy chose to attend and she sat in the audience with her husband. (R. 266, p. 41, 17-25). At some point during the graduation ceremony, Mr. Mzik left his seat and walked around the arena. Mr. Mzik testified that he wanted to get a closer look at the band. (R. 266, p. 125, 11-25). While walking, Mr. Mzik walked by where Mr. and Mrs. Abernathy were seated. Mr. Mzik approached Mr. and Mrs. Abernathy and said, “You are the most disgusting excuse for a teacher,” to Mrs. Abernathy. (R. 266, p. 42, 1-

6; p. 82, 17-22). Mr. Mzik testified that he said, “You’re a disgrace to the teaching profession.” (R. 266, p. 127, 2-3). Mr. Abernathy jumped up out of his seat and pushed Mr. Mzik in the chest causing Mr. Mzik to step backwards three feet. (R. 266, p. 43, 7 - 13; p. 82, 22 – p. 83, 13; p. 127, 3-8). Mr. Mzik said to Mr. Abernathy, “Hey buddy, you want to go to jail? and Hey buddy, you want to fight?” (R. 266, p.43, 21-24; p. 83, 16-17). Mr. Mzik testified that he said, “If you hti me again I’ll call the police.” (R. 266, p. 127, 23-24). Mr. Abernathy did not approach Mr. Mzik any further and Mr. Mzik left. (R. 266, The Trial Court found that this incident was a third incident that met the burden of proof for a Civil Stalking Injunction. (R. 266, p. 141, 24 – p. 142, 5).

R. When Mrs. Abernathy was asked if she liked criticism, she replied, “I’ve been around a long time, and I can deal with valid criticism; but I can’t stomach lies and prevarication and distortion of truth.” (R. 266, p. 54, 3-6).

S. When Mrs. Abernathy was asked is she felt that lies, distortion of truth and unwarranted criticism as threats, she responded, “Well, I can tell you that I have been threatened by Mr. and Mrs. Mzik in their manners and in their behavior, the documents that they have filed. They’ve gone to the State Professional Practices. They’ve gone to the newspaper. They’ve gone to other teachers. They’ve gone to students. They’ve gone to parents. Those are threats. Their documentation is full of prevarication. I think in this case it is all inclusive. It shows something about the nature of these people, and I fear them.” (R. 266, p. 54, 7-21).

T. When Mrs. Abernathy was asked to name one threat of physical violence that any of the three people named in the petition have made, she responded, “I don’t think – I have not had any physical violence, but I’ve had the fear of physical violence. I’ve had the fear of harassment, of slander, defamation of character.” (R. 266, p. 54, 22-p.55, 2).

U. When Mrs. Abernathy was asked why she felt threatened personally if the Mzikis threatened legal action, she replied, “Because I feel that behavior is destructive. It doesn’t contribute to – you must understand that Mr. and Mrs. Mzik in this whole issue that’s taken place since December 30<sup>th</sup> and 31<sup>st</sup> to even now has been - - it has been a hardship, I believe. It has taken its toll on students in the Washington County School District, the administrators who have had to spend their resources and their energies on something that is frivolous. There needs to be a stop to this. It is a frivolous charge. Those charges against me are frivolous.” (R. 266, p. 58, 1-13).

V. When Mrs. Abernathy was asked if she filed the civil stalking injunction to mainly stop those frivolous charges, she stated, “To protect me physically, to stop the feelings that I feel when I see the Mzikis, the feeling of fear, emotional distress, the erratic behavior. I don’t want to have to be confronted with that. (R. 266, p. 58, 14-19).

W. The Civil Stalking Injunction was entered on October 28, 2005. (R. 233).

X. The Notice of Appeal was filed on November 28, 2005. (R. 252).

Y. An Objection to the Findings of Facts and Conclusions of Law was filed on November 28, 2005, after the Notice of Appeal was filed. (R. 256).

Z. On December 20, 2005, the Trial Court heard the Objection Motion on the Findings of Facts and Conclusions of Law and made an order. The Trial Court recognized that it did not have jurisdiction because the Notice of Appeal had been filed, but made a recommendation to be entered when the court resumes jurisdiction. (R. 260).

### SUMMARY OF ARGUMENTS

#### ISSUE NO. 1

The Trial Court used the wrong standard of emotional distress when it found that Mr. Mzik's action of crumpling up a piece of paper and throwing it not at the Petitioner, out of frustration and his choice to personally serve a letter with a recorder created the requisite level of emotional distress in the Petitioner to justify a civil stalking injunction. The Court in Ellison v. Stam found that even the level of emotional distress created in a victim of sexual assault seeing the perpetrator did not rise to the requisite level of emotional distress.

#### ISSUE NO. 2

The Trial Court deprived the Respondent of his constitutional rights of free speech when it found that the Respondent's actions of crumpling a piece of paper and throwing not in the direction of the Petitioner and personally serving a letter of grievance justified the entry of a civil stalking injunction.

## ARGUMENTS

### ISSUE NO. 1

Did The Trial Court Properly Interpret “Emotional Distress” In Its Finding That The Respondent Engaged In A Course Of Conduct That Would Cause A Reasonable Person To Suffer Emotional Distress And Should A Public Employee Have A Higher Standard?

The Utah Civil Stalking Injunctions Statute, Utah Code Ann. §76-5-106.5, does not in itself define “Stalking” per se. It refers to the Utah Criminal Stalking Statute for its definition, as follows: “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; . . . “ Utah Code Ann. §76-5-106.5(2) in relevant part.

In Ellison v. Stam, 549 Utah Adv. Rep. 24, 2006 (Utah App. 2006), the Court of Appeals states, “the burden is on the petitioner to show by a preponderance of the evidence that staling of the petitioner by the respondent has occurred. . . 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.” Id.

“Emotion Distress” has been further defined by State v. Lopez, 935 P.2d, 1259, 64 (Ut. Ct. App. 1997) as, “emotional distress results from conduct that is outrageous and intolerable in that it offends the generally accepted standards of decency and morality.”

The proper interpretation and application of a statute is a question of law which we review for correctness, affording no deference to the district court's legal conclusions.

Gutierrez v. Medley, 972 P.2d 913, 914-15 (Utah 1998).

The Trial Court never articulated its standard for "emotional distress," but did find that in reference to the first instance: "I do find specifically that in that encounter Mr. Mzik grabbed a sheet of paper off of Mr. Facrel's desk, tore it out of whatever it was being held in, crumpled it and threw it. This is a physically threatening and violent action." (R. 266, p.141, 4-9).

In reference to the second instance: the Trial Court viewed this as a misguided attempt and that it was a confrontational method rather than utilizing the postal service to deliver the mail. The Trial Court found this event to be the second circumstance that met the burden of proof for a Civil Stalking Injunction. (R. 266, p. 141, 10-23).

In reference to the third instance: the Trial Court found that this incident was a third incident that met the burden of proof for a Civil Stalking Injunction. (R. 266, p. 141, 24 – p. 142, 5).

In not stating its standard it is difficult to determine what standard the court should have used. The standard the court should have used is the standard articulated in State v. Lopez, as conduct that is outrageous and intolerable in that it offends the generally accepted standards of decency and morality.

It does not appear that the Trial Court used this standard because it found that Mr. Mzik tearing a piece of paper out of a binder, crumpling it up and then throwing it offends the generally accepted standard of decency and morality. In addition, Mr. Facrel testified that Mr. Mzik did not throw the papers towards Mrs. Abernathy. (R. 266, p. 68, 21-23). He also testified that there were not any threats made during the meeting. (R. 266, p. 77, 1-4).

In marshalling the evidence, Mr. Facrel did testify that the meeting was the worst parent/teacher meeting he had ever experienced and that it rated an 8 and a scale from 1 to 10 with 10 being the most argumentative. (R. 266, p. 67, 8-25). He also stated that the Respondent's comments during the meeting were accusatory, uncomplimentary and quarrelsome. (R. 266, p. 69, 9-13).

Just because a frustrated person during an argumentative meeting, crumples up a piece of paper and throws it not in a direction towards the Petitioner, does not mean that conduct is outrageous and intolerable in that it offends the generally accepted standards of decency and morality.

In Ellison v. Stam, the Respondent, Stam, sexually assaulted the Petitioner, Ellison. After the assault, on eight different occasions, the Respondent would glare at the Petitioner while she was working at a cash register, standing outside her dormitory, walking in her dormitory, attending a campus activity, attending bingo night, attending club competition night, attending a basketball game, and attending the fall ball. Id. The



Petitioner had subjective reasons to be frightened of the Respondent, but the Court held, “Although the court finds that the conduct of Stam on August 25, 2004 in the park was outrageous and intolerable, in that it offends the generally accepted standards of decency and morality, the court cannot find that Stam’s behavior in any of the eight incidents rose to the level of ‘outrageous and intolerable.’ While his presence on those occasions may have caused Ellison to be anxious, scared, or to suffer a panic attack, and may have been insensitive, ungentlemanly, and inconsiderate, given Stam’s outrageous and intolerable conduct in the part, it was not outrageous and intolerable during the eight incidents because his presence and conduct on those occasions did not offend generally accepted standards of decency and morality.” Id.

In comparing the decision in the Ellison v. Stam case versus this case, it is difficult to find that Mr. Mzik did anything in crumpling up a piece of paper and throwing it not in the direction of the Petitioner, that this behavior offends generally accepted standard of decency and morality. When one compares the level of emotional distress a rape victim feels when seeing the perpetrator to the level of emotional distress Mrs. Abernathy felt in participating in a meeting where Mr. Mzik threw a piece of paper out of frustration, the court could not have applied the correct standard of “emotional distress” in determining that this incident rose to the level of emotional distress sufficient for the placement of a civil stalking injunction.

In regards to the second incident, the same logic and the same standard applies. When Mr. Mzik placed a recorder close the Mrs. Abernathy in trying to serve a letter of grievance upon her does not cause a normal person more emotional distress than the level of emotional distress caused to the Petitioner in the Stam case. People are served in person everyday by process servers and they are not considered to be suffering unreasonable amounts of emotional distress because someone served a paper upon them. Mr. Mzik was following the school guidelines and chose to personally serve the letter rather than mail it. Mr. Mzik was within his legal rights and did not cause Mrs. Abernathy enough emotional distress, to merit a finding that this incident rose to the level of a civil stalking injunction.

In regards to the third incident, the Respondent admitted that this was not the best thing to do this incident could have been found to rise to the level of a civil stalking injunction, but under the Civil Stalking Injunction Statute, it takes two or more incidents to be considered stalking. At best, the trial court could have found one incident within its proper discretion.

In addition to the emotional distress standard, Mrs. Abernathy was a public employee in a position where criticism and some contention between parents and teachers would be expected. There should be a higher standard for emotional distress for a public employee than a private citizen.

## ISSUE NO. 2

Whether The Civil Stalking Junction Is Unconstitutional By Being Overly Broad So As To Limit A Person's Right To Free Speech And Criticism?

The Utah Constitution grants a person the right of free speech and even the right to express criticism. It states, "All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right." Utah Const. Art. 1 §1.

The challenge to the constitutionality of a statute presents a question of law, which we review for correctness. Ross v. Schackel, 920 P.2d 1159, 1162 (Utah 1996).; Ryan v. Gold Cross Servs., Inc., 903 P.2d 423, 424 (Utah 1995).

Mr. Mzik did nothing to abuse his right of free speech in crumpling up a piece of paper and throwing it not towards the Petitioner and in personally serving a letter of grievance with a microphone.

Essentially the Civil Stalking Injunction as it was applied in this case took away Mr. Mzik's right of free speech, right to petition for redress of grievances, and his right to protect against wrongs.

When Mrs. Abernathy was asked if she liked criticism, she replied, "I've been around a long time, and I can deal with valid criticism; but I can't stomach lies and prevarication and distortion of truth." (R. 266, p. 54, 3-6).

When Mrs. Abernathy was asked if she felt that lies, distortion of truth and unwarranted criticism as threats, she responded, “Well, I can tell you that I have been threatened by Mr. and Mrs. Mzik in their manners and in their behavior, the documents that they have filed. They’ve gone to the State Professional Practices. They’ve gone to the newspaper. They’ve gone to other teachers. They’ve gone to students. They’ve gone to parents. Those are threats. Their documentation is full of prevarication. I think in this case it is all inclusive. It shows something about the nature of these people, and I fear them.” (R. 266, p. 54, 7-21).

When Mrs. Abernathy was asked to name one threat of physical violence that any of the three people named in the petition have made, she responded, “I don’t think – I have not had any physical violence, but I’ve had the fear of physical violence. I’ve had the fear of harassment, of slander, defamation of character.” (R. 266, p. 54, 22- p.55, 2).

When Mrs. Abernathy was asked why she felt threatened personally if the Mzik's threatened legal action, she replied, “Because I feel that behavior is destructive. It doesn’t contribute to – you must understand that Mr. and Mrs. Mzik in this whole issue that’s taken place since December 30<sup>th</sup> and 31<sup>st</sup> to even now has been - - it has been a hardship, I believe. It has taken its toll on students in the Washington County School District, the administrators who have had to spend their resources and their energies on something that is frivolous. There needs to be a stop to this. It is a frivolous charge. Those charges against me are frivolous.” (R. 266, p. 58, 1-13).

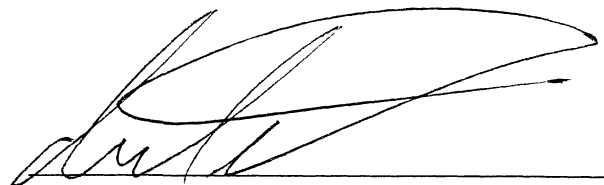
When Mrs. Abernathy was asked if she filed the civil stalking injunction to mainly stop those frivolous charges, she stated, “To protect me physically, to stop the feelings that I feel when I see the Mziks, the feeling of fear, emotional distress, the erratic behavior. I don’t want to have to be confronted with that. (R. 266, p. 58, 14-19).

It is clear that the abuse of a person’s constitutional right was Mrs. Abernathy abusing the Civil Stalking Injunction Statute to take away Mr. Mzik’s right to redress his grievances. Mr. Mzik was following school procedure and policy when he personally served his letter. Mr. Mzik expressed his frustration by crumpling up a piece of paper and throwing it not towards Mrs. Abernathy. The Civil Stalking Injunction Statute should not be used to limit someone’s constitutional rights, unless that person abuses those rights. Mr. Mzik’s actions did not constitute an abuse of those rights.

### CONCLUSION

For these reasons, the Trial Court’s decision should be reversed and Mr. Mzik should not have a civil stalking injunction against him.

DATED this 14 day of July, 2006.

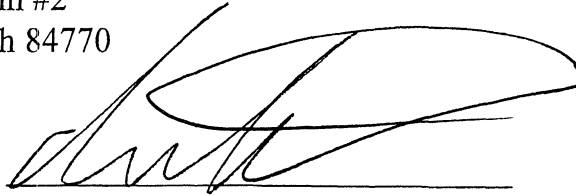
A handwritten signature in black ink, appearing to read 'Reed R. Braithwaite', written over a horizontal line.

Reed R. Braithwaite  
Attorneys for Respondent/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of July 2006, I caused to be hand-delivered, a true and correct copy of the foregoing APPELLANT'S BRIEF, to the following:

Virginius Dabney  
Dabney & Dabney  
1060 South Main #2  
St. George, Utah 84770

A handwritten signature in black ink, appearing to read 'V. Dabney', written over a horizontal line.

## ADDENDUM

Findings of Fact, Conclusions of Law and Order in re Civil Stalking Injunction

1  
2  
3 **FIFTH JUDICIAL DISTRICT COURT**  
4 **WASHINGTON COUNTY, STATE OF UTAH**

5 J. J. ABERNATHY,

6  
7 Petitioner,

8 -vs-

9 JOHN MZIK,

10  
11 Respondent.

2007-05-05  
12 *JS*  
13 **FINDINGS OF FACT, CONCLUSIONS**

14 **OF LAW and ORDER IN RE**

15 **CIVIL STALKING**

16 **INJUNCTION**

17 Case No. 050500870

18 Judge: Hon. James L. Shumate

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000  
1001  
1002  
1003  
1004  
1005  
1006  
1007  
1008  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059  
1060  
1061  
1062  
1063  
1064  
1065  
1066  
1067  
1068  
1069  
1070  
1071  
1072  
1073  
1074  
1075  
1076  
1077  
1078  
1079  
1080  
1081  
1082  
1083  
1084  
1085  
1086  
1087  
1088  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1120  
1121  
1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178  
1179  
1180  
1181  
1182  
1183  
1184  
1185  
1186  
1187  
1188  
1189  
1190  
1191  
1192  
1193  
1194  
1195  
1196  
1197  
1198  
1199  
1200  
1201  
1202  
1203  
1204  
1205  
1206  
1207  
1208  
1209  
1210  
1211  
1212  
1213  
1214  
1215  
1216  
1217  
1218  
1219  
1220  
1221  
1222  
1223  
1224  
1225  
1226  
1227  
1228  
1229  
1230  
1231  
1232  
1233  
1234  
1235  
1236  
1237  
1238  
1239  
1240  
1241  
1242  
1243  
1244  
1245  
1246  
1247  
1248  
1249  
1250  
1251  
1252  
1253  
1254  
1255  
1256  
1257  
1258  
1259  
1260  
1261  
1262  
1263  
1264  
1265  
1266  
1267  
1268  
1269  
1270  
1271  
1272  
1273  
1274  
1275  
1276  
1277  
1278  
1279  
1280  
1281  
1282  
1283  
1284  
1285  
1286  
1287  
1288  
1289  
1290  
1291  
1292  
1293  
1294  
1295  
1296  
1297  
1298  
1299  
1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1320  
1321  
1322  
1323  
1324  
1325  
1326  
1327  
1328  
1329  
1330  
1331  
1332  
1333  
1334  
1335  
1336  
1337  
1338  
1339  
1340  
1341  
1342  
1343  
1344  
1345  
1346  
1347  
1348  
1349  
1350  
1351  
1352  
1353  
1354  
1355  
1356  
1357  
1358  
1359  
1360  
1361  
1362  
1363  
1364  
1365  
1366  
1367  
1368  
1369  
1370  
1371  
1372  
1373  
1374  
1375  
1376  
1377  
1378  
1379  
1380  
1381  
1382  
1383  
1384  
1385  
1386  
1387  
1388  
1389  
1390  
1391  
1392  
1393  
1394  
1395  
1396  
1397  
1398  
1399  
1400  
1401  
1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409  
1410  
1411  
1412  
1413  
1414  
1415  
1416  
1417  
1418  
1419  
1420  
1421  
1422  
1423  
1424  
1425  
1426  
1427  
1428  
1429  
1430  
1431  
1432  
1433  
1434  
1435  
1436  
1437  
1438  
1439  
1440  
1441  
1442  
1443  
1444  
1445  
1446  
1447  
1448  
1449  
1450  
1451  
1452  
1453  
1454  
1455  
1456  
1457  
1458  
1459  
1460  
1461  
1462  
1463  
1464  
1465  
1466  
1467  
1468  
1469  
1470  
1471  
1472  
1473  
1474  
1475  
1476  
1477  
1478  
1479  
1480  
1481  
1482  
1483  
1484  
1485  
1486  
1487  
1488  
1489  
1490  
1491  
1492  
1493  
1494  
1495  
1496  
1497  
1498  
1499  
1500  
1501  
1502  
1503  
1504  
1505  
1506  
1507  
1508  
1509  
1510  
1511  
1512  
1513  
1514  
1515  
1516  
1517  
1518  
1519  
1520  
1521  
1522  
1523  
1524  
1525  
1526  
1527  
1528  
1529  
1530  
1531  
1532  
1533  
1534  
1535  
1536  
1537  
1538  
1539  
1540  
1541  
1542  
1543  
1544  
1545  
1546  
1547  
1548  
1549  
1550  
1551  
1552  
1553  
1554  
1555  
1556  
1557  
1558  
1559  
1560  
1561  
1562  
1563  
1564  
1565  
1566  
1567  
1568  
1569  
1570  
1571  
1572  
1573  
1574  
1575  
1576  
1577  
1578  
1579  
1580  
1581  
1582  
1583  
1584  
1585  
1586  
1587  
1588  
1589  
1590  
1591  
1592  
1593  
1594  
1595  
1596  
1597  
1598  
1599  
1600  
1601  
1602  
1603  
1604  
1605  
1606  
1607  
1608  
1609  
1610  
1611  
1612  
1613  
1614  
1615  
1616  
1617  
1618  
1619  
1620  
1621  
1622  
1623  
1624  
1625  
1626  
1627  
1628  
1629  
1630  
1631  
1632  
1633  
1634  
1635  
1636  
1637  
1638  
1639  
1640  
1641  
1642  
1643  
1644  
1645  
1646  
1647  
1648  
1649  
1650  
1651  
1652  
1653  
1654  
1655  
1656  
1657  
1658  
1659  
1660  
1661  
1662  
1663  
1664  
1665  
1666  
1667  
1668  
1669  
1670  
1671  
1672  
1673  
1674  
1675  
1676  
1677  
1678  
1679  
1680  
1681  
1682  
1683  
1684  
1685  
1686  
1687  
1688  
1689  
1690  
1691  
1692  
1693  
1694  
1695  
1696  
1697  
1698  
1699  
1700  
1701  
1702  
1703  
1704  
1705  
1706  
1707  
1708  
1709  
1710  
1711  
1712  
1713  
1714  
1715  
1716  
1717  
1718  
1719  
1720  
1721  
1722  
1723  
1724  
1725  
1726  
1727  
1728  
1729  
1730  
1731  
1732  
1733  
1734  
1735  
1736  
1737  
1738  
1739  
1740  
1741  
1742  
1743  
1744  
1745  
1746  
1747  
1748  
1749  
1750  
1751  
1752  
1753  
1754  
1755  
1756  
1757  
1758  
1759  
1760  
1761  
1762  
1763  
1764  
1765  
1766  
1767  
1768  
1769  
1770  
1771  
1772  
1773  
1774  
1775  
1776  
1777  
1778  
1779  
1780  
1781  
1782  
1783  
1784  
1785  
1786  
1787  
1788  
1789  
1790  
1791  
1792  
1793  
1794  
1795  
1796  
1797  
1798  
1799  
1800  
1801  
1802  
1803  
1804  
1805  
1806  
1807  
1808  
1809  
1810  
1811  
1812  
1813  
1814  
1815  
1816  
1817  
1818  
1819  
1820  
1821  
1822  
1823  
1824  
1825  
1826  
1827  
1828  
1829  
1830  
1831  
1832  
1833  
1834  
1835  
1836  
1837  
1838  
1839  
1840  
1841  
1842  
1843  
1844  
1845  
1846  
1847  
1848  
1849  
1850  
1851  
1852  
1853  
1854  
1855  
1856  
1857  
1858  
1859  
1860  
1861  
1862  
1863  
1864  
1865  
1866  
1867  
1868  
1869  
1870  
1871  
1872  
1873  
1874  
1875  
1876  
1877  
1878  
1879  
1880  
1881  
1882  
1883  
1884  
1885  
1886  
1887  
1888  
1889  
1890  
1891  
1892  
1893  
1894  
1895  
1896  
1897  
1898  
1899  
1900  
1901  
1902  
1903  
1904  
1905  
1906  
1907  
1908  
1909  
1910  
1911  
1912  
1913  
1914  
1915  
1916  
1917  
1918  
1919  
1920  
1921  
1922  
1923  
1924  
1925  
1926  
1927  
1928  
1929  
1930  
1931  
1932  
1933  
1934  
1935  
1936  
1937  
1938  
1939  
1940  
1941  
1942  
1943  
1944  
1945  
1946  
1947  
1948  
1949  
1950  
1951  
1952  
1953  
1954  
1955  
1956  
1957  
1958  
1959  
1960  
1961  
1962  
1963  
1964  
1965  
1966  
1967  
1968  
1969  
1970  
1971  
1972  
1973  
1974  
1975  
1976  
1977  
1978  
1979  
1980  
1981  
1982  
1983  
1984  
1985  
1986  
1987  
1988  
1989  
1990  
1991  
1992  
1993  
1994  
1995  
1996  
1997  
1998  
1999  
2000  
2001  
2002  
2003  
2004  
2005  
2006  
2007  
2008  
2009  
2010  
2011  
2012  
2013  
2014  
2015  
2016  
2017  
2018  
2019  
2020  
2021  
2022  
2023  
2024  
2025  
2026  
2027  
2028  
2029  
2030  
2031  
2032  
2033  
2034  
2035  
2036  
2037  
2038  
2039  
2040  
2041  
2042  
2043  
2044  
2045  
2046  
2047  
2048  
2049  
2050  
2051  
2052  
2053  
2054  
2055  
2056  
2057  
2058  
2059  
2060  
2061  
2062  
2063  
2064  
2065  
2066  
2067  
2068  
2069  
2070  
2071  
2072  
2073  
2074  
2075  
2076  
2077  
2078  
2079  
2080  
2081  
2082  
2083  
2084  
2085  
2086  
2087  
2088  
2089  
2090  
2091  
2092  
2093  
2094  
2095  
2096  
2097  
2098  
2099  
2100  
2101  
2102  
2103  
2104  
2105  
2106  
2107  
2108  
2109  
2110  
2111  
2112  
2113  
2114  
2115  
2116  
2117  
2118  
2119  
2120  
2121  
2122  
2123  
2124  
2125  
2126  
2127  
2128  
2129  
2130  
2131  
2132  
2133  
2134  
2135  
2136  
2137  
2138  
2139  
2140  
2141  
2142  
2143  
2144  
2145  
2146  
2147  
2148  
2149  
2150  
2151  
2152  
2153  
2154  
2155  
2156  
2157  
2158  
215



1 strictly prohibited in Petitioner's AP English Class; and after investigation, including  
2 telephone calls and personal visits by Principal Fackrell with several students which  
3 eventually proved out to be the case.

4 5. That Respondent's daughter, Kathryn Mzik, was one of those students, and  
5 on December 30, 2004, her "A-" (92%) grade was submitted as an "I" (Incomplete), and on  
6 January 4, 2005, was finally recorded as an "A-".

7 6. That on December 31, 2004 Respondent and his wife participated in a  
8 telephone conversation regarding their daughter's grade in Petitioner's AP English class,  
9 which became a heated conversation with acrimonious, accusatory statements and  
10 questions, including raised voices by Respondent and his wife.

11 7. That this telephone call was very upsetting to the Petitioner and she testified  
12 that Respondent and his wife threatened legal action if their daughter's grade wasn't  
13 changed to an "A".

14 8. That Respondent's wife said to the Petitioner that Petitioner was  
15 unprofessional and reminded her several times that they had engaged an attorney, and  
16 were going to subpoena all of the documentation on grades in Petitioner's AP English  
17 Class.

18 9. That although there was some level of hostility present during this telephone  
19 call, there was not enough to satisfy the burden of proof for a Civil Stalking Injunction.

20 10. That on January 3, 2005, Respondent and his wife met with Petitioner and  
21 Snow Canyon High School Principal, Mr. Brent Fackrell, in his office for approximately three  
22 (3) hours, again, regarding Respondent's daughter's grade in Petitioner's AP English Class.

23 11. That during that meeting, voices of Respondent and his wife were raised and  
24 concerns by them expressed about their daughter's grade; and Respondent's wife testified  
25 that she became so upset that she pounded her fist on the principal's desk several times  
26 during that meeting.

27 12. That Respondent's wife also testified that during that meeting, she accused  
28 Petitioner of being mentally unstable.

1           13. That Respondent raised his voice several times during this meeting, and at  
2 one point became so upset that he stood up, walked around principal Fackrell's desk,  
3 grabbed a sheet of paper off of his desk, tore it out of whatever it was being held in,  
4 crumpled it and threw it.

5           14. That Principal Fackrell's description of this incident was most telling, and was  
6 given in very distinct terms; and that he characterized the Respondent and his wife's  
7 comments as being accusatory, uncomplimentary and quarrelsome, rating the environment  
8 as being an "8" on a scale of "0" to "10".

9           15. That Respondent did not deny that the incident occurred, instead testifying  
10 that he could not recall it happening. In any event, Respondent either did not remember or  
11 chose not to remember, and Principal Fackrell's testimony of the event is considered to be  
12 more credible than Respondent's.

13           16. That Principal Fackrell was the most credible witness concerning this incident  
14 because he was the one with the least involvement, was retired and had the least  
15 motivation to shade the truth one way or the other.

16           17. That the meeting became so intense, due to the Respondent and his wife's  
17 combined and unrelenting pressure to force Petitioner to change their daughter's grade,  
18 that Petitioner by the time the meeting was over concluded that Respondent and his wife, in  
19 her words, "... were out to get me."

20           18. That Petitioner testified that Respondent and his wife again threatened legal  
21 action if their daughter's grade wasn't changed to an "A". She also stated that Respondent  
22 and his wife repeatedly questioned her abilities as a teacher.

23           19. That Petitioner testified that she felt threatened by Respondent and his wife,  
24 and thought that they would do anything to discredit her integrity.

25           20. That this incident was the first act sufficient to cause a reasonable man or  
26 woman to experience fear for his or her physical and/or emotional health; and that this  
27 incident constituted a "hostile circumstance" for purposes of meeting the burden of proof for  
28 a Civil Stalking Injunction.

1        21. That this incident was a physically threatening and violent action, was  
2 intended to impose emotional harm on Petitioner, and was sufficient to meet the burden of  
3 proof for a Civil Stalking Injunction.

4        22. That on January 10, 2005, Respondent, in a misguided attempt to deliver a  
5 grievance letter which could have been easily done by certified mail, took his tape recorder  
6 along to Snow Canyon High School and tried to deliver the letter personally to Petitioner

7        23. That in doing so, Respondent chose a confrontational method rather than the  
8 cold, "U.S. Mail delivers it" method of communicating a grievance under the Washington  
9 County School Board Rules.

10       24. That in doing so, Respondent thrust the tape recorder in Petitioner's face, but  
11 she declined to accept the attempted service of the letter upon her or respond to  
12 Respondent's physical presence, and asked the office staff to call the police. She further  
13 testified that she felt that her privacy and work environment had been "invaded."

14       25. That Respondent also attempted to get Snow Canyon High School office staff  
15 and another teacher, Robert Lancaster, as well as Principal Brent Fackrell when he entered  
16 the Snow Canyon High School office, and even later thrust the tape recorder at Police  
17 Officer Craig Hugie, in an effort to record statements on his tape recorder.

18       26. That Principal Fackrell, Officer Hugie and Respondent met in Principal  
19 Fackrell's private office, and Respondent said on two occasions while in Principal Fackrell's  
20 office that he was going to go to Court if his daughter's grade was not changed.

21       27. That these efforts to record statements by Petitioner and others was done  
22 without their prior knowledge or consent, and was intentionally done in an offensive,  
23 accusatory, confrontational and threatening manner, which caused Petitioner and others to  
24 fear for their personal privacy and safety. It also had the effect of imposing emotional harm  
25 on them as well.

26       28. That Respondent testified that he had been a Claims Adjuster for an  
27 insurance company many years before, and used a tape recorder to record witness'  
28 statements and others in his job. He further indicated that he found it helpful to record

1 statements and that he was familiar with how to use one.

2 29. That Respondent could have confirmed delivery of the letter by registered/  
3 return receipt requested mail, but chose instead to use his tape recorder to do so, which  
4 was significantly different and more personal than delivery by mail would have been.

5 30. That Respondent failed to meaningfully address or offer any reasonable  
6 explanation of why he felt it was necessary for him to confront Principal Fackrell, Snow  
7 Canyon High School office staff, Teacher Robert Lancaster and Police Officer Hugie, in  
8 addition to the Petitioner, with his tape recorder.

9 31. That Respondent chose to tape record the delivery of the letter and confront  
10 others at the Snow Canyon High School offices was clearly more confrontational and  
11 intimidating than other means available to him. These actions by Respondent verbally  
12 provoked the incident.

13 32. That most telling was Respondent's reference in his testimony to his tape  
14 recorder as his "weapon", a term which rather accurately described how he viewed his use  
15 of his tape recorder at the time of the incident.

16 33. That this incident was the second act sufficient to cause a reasonable man or  
17 woman to experience fear for his or her physical safety and was intended to impose  
18 emotional harm on Petitioner, and was sufficient to meet the burden of proof for a Civil  
19 Stalking Injunction.

20 34. That on May 26, 2005, Snow Canyon High School graduation was held at the  
21 Dixie State College Burns Arena, and Respondent's daughter, Kathryn Mzik, was one of the  
22 Senior students who was to receive her graduation diploma that day.

23 35. That because of concern by Principal Fackrell of Snow Canyon High School  
24 and, Max Rose, Superintendent of the Washington County School District, Petitioner was  
25 told not to lead the teachers onto the graduation podium or sit on the podium with the other  
26 teachers, and was given permission - if she so chose - not to attend graduation ceremonies  
27 at all, because of concern that Respondent would provoke, if given the chance, an  
28 unpleasant or public display during the graduation, which might prove to be embarrassing,

1 confrontational or threatening, physically, emotionally or both, in such a way as to detract  
2 from the program and ceremony.

3 36. That additional security had been arranged for the graduation because of this  
4 concern.

5 37. That Petitioner agreed not to lead the teachers onto the podium or sit on the  
6 podium with her fellow teachers, but, because a number of her students were graduating  
7 that day, decided to attend but chose a seat that was as far away as possible from the  
8 podium so she and her husband would not be readily observed or easy to locate.

9 38. That at approximately 6:00 p.m. that evening, Respondent left his seat when  
10 his daughter received her diploma and sought out Petitioner and her husband, by locating  
11 them on the back row of the Burns Arena in seats that were between 200 and 300 feet from  
12 the graduation podium.

13 39. That Respondent upon spotting Petitioner and her husband, still went up to  
14 them, and for reasons that he could not explain or was not willing to explain, verbally  
15 provoked a hostile confrontation with Petitioner and her husband.

16 40. That Respondent moved toward Petitioner and when he was within one foot of  
17 her said in a loud, accusatory and intimidating manner, "You are the most disgusting excuse  
18 for a teacher." These actions and statements by the Respondent provoked the subsequent  
19 actions and statements by Petitioner and her husband, all of which were justifiable in light of  
20 Respondent's stalking behavior.

21 41. That shortly before Respondent confronted Petitioner and her husband,  
22 Petitioner's husband testified that he observed Respondent's eyes darting as if he was  
23 clearly looking for someone.

24 42. That the Respondent's actions and statement were the third time Respondent  
25 threatened, intimidated and reasonably caused a fear of potential harm to Petitioner.

26 43. That Petitioner's husband told Respondent to get away from his wife, and  
27 when Respondent continued to move toward them, responded physically in order to insure  
28 a separation between him and his wife, the Petitioner, and Respondent, by pushing him

1 away with open hands and in a way to protect his wife. Although it was not a particularly  
2 gentle push, it was sufficient to push Respondent back a couple of feet. Thereafter,  
3 Petitioner's husband made a fist with both hands in a way to protect his wife and make it  
4 clear that he was willing to defend his wife if it was necessary.

5 44. That Respondent, once he had regained his balance, moved slightly forward  
6 and asked Petitioner's husband, "Do you want to attack me?" and "Hey buddy, do you want  
7 to go to jail?" Petitioner's husband, in response, said "Leave my wife alone:" and told him to  
8 "Get away from us."

9 45. That the incident at the Burns Arena caused Petitioner to fear emotionally and  
10 physically to a degree that she sought medical attention later that same day at the IHC  
11 Medical Clinic in St George, Utah where she was diagnosed as having elevated blood  
12 pressure readings and trauma.

13 46. That the incident was a physically threatening provocation intended to impose  
14 physical as well as emotional harm to Petitioner and her husband, and was sufficient to  
15 meet the burden of proof for a Civil Stalking Injunction.

16 47. That Respondent and his wife filed a Grade Disparity/Discrimination  
17 Complaint on the basis of religion with the Washington County School District, which the  
18 Superintendent found was without merit. Specifically, in his letter dated June 10, 2005,  
19 Superintendent Max Rose wrote, "It is my judgment that no substantive evidence exists to  
20 support the claim of religious discrimination." No timely appeal was taken from that  
21 Decision.

22 48. That Respondent also filed a "Notification of Alleged Educator Misconduct"  
23 on July 19, 2005 with the Utah with the Utah Professional Practices Act Commission which  
24 after investigating the Complaint concluded that the Washington County School District had  
25 "... handled the situation adequately and that no further licensing action was warranted."  
26 No timely appeal was taken from that Decision.

#### 27 CONCLUSIONS OF LAW

28 1. That the actions and statements made by the Respondent on January 3, 2005,

1 January 10, 2005 and May 26, 2005 were threateneing, intimidating and offensive to the  
2 Petitioner and others, and were intended to and did result in physical and emotional harm to  
3 Petitioner.

4 2. That these actions and statements by Respondent on all three occasions were  
5 sufficient to meet the burden of proof for a Civil Stalking Injunction for the reason that each  
6 constituted prohibited conduct found in the Utah Civil Stalking Injunction Statute.

7 3. That a Civil Stalking Injunction should be entered against Respondent.

8 ORDER

9 re

10 CIVIL STALKING INJUNCTION

11  
12 BASED UPON the testimony of the parties, representations and argument of  
13 counsel, and the Court's review the pleadings herein, and having determined that there is  
14 reason to believe that an offense of Stalking has occurred, and that the Respondent is the  
15 Stalker, and good cause appearing therefore, it is hereby

16 Ordered, as follows:

17 1. That the Respondent is enjoined from stalking the Petitioner or any member of  
18 her immediate family, as more fully set forth herein.

19 2. That "Stalking" for the purposes of this Injunction is defined in Utah Code  
20 Annotated, Section 77-3a-106.5, as follows: As used in this section:

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

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

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

1 (2) A person is guilty of stalking who:

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

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

5 (ii) to suffer emotional distress to himself or a members of his immediate  
6 family;

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

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

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

12 ©) whose conduct:

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

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

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

21 3. That Respondent is enjoined from going within 50 yards of the Petitioner's home  
22 in Bloomington located at 3553 Sugar Leo Road, St. George, Utah.

23 4. That Respondent is enjoined from going within 50 yards of the Petitioner's  
24 regular places of worship, the LDS Bloomington Stake Center, located at 200 West Brigham  
25 Road, St. George, Utah; the LDS Chapel located at 3371 Mulberry Drive, St. George, Utah;  
26 and the LDS Chapel located at 3519 Manzanita Road, St. George, Road.

27 5. That Respondent is enjoined from going within 50 yards of Petitioner when she is  
28 at Snow Canyon High School located at 1385 North Lava Flow Drive, St. George, Utah



1 where Petitioner teaches.

2 6. That the Respondent is enjoined from going within 50 yards of the Petitioner  
3 while attending private performances, practices or events of any kind associated with the  
4 Southwest Symphony where Petitioner regularly performs as a member of the orchestra.

5 7. That Respondent is enjoined from going within 50 yards of the following-described  
6 areas of the Dixie Regional Medical Center located at 1380 East Medical Center  
7 Drive, St. George, Utah, or alternative location should Petitioner's volunteer services be  
8 needed at some other venue, subject, however, to Petitioner's providing Respondent and  
9 their counsel written notice at least seven (7) days before the change occurs; between the  
10 hours of 6:00 p.m. and 10:00 p.m. on Tuesdays: any area where Petitioner performs  
11 volunteer counselor services for family and friends of individuals who suffer from mental  
12 illness. However, the provisions of this CIVIL STALKING INJUNCTION shall not prohibit  
13 Respondent from seeking emergency or urgent medical care at the Dixie Regional Medical  
14 Center.

15 8. That the Respondent is enjoined from contacting the Petitioner or any  
16 member of her immediate family, directly or indirectly, through any form of communication  
17 including written, oral, visual or electronic means; subject to occasions where Respondent  
18 happens to knowingly be in the vicinity where Petitioner or any member of her immediate  
19 family is, in which case, Respondent shall immediately extricate himself from contact with  
20 Petitioner and/or members of her immediate family.


21 9. That Respondent is admonished that this is an official Court Order; that the Court  
22 may find him in contempt if he disobeys any of the provisions of the Order; and that he may  
23 be arrested and prosecuted for the crime of Stalking and any other crime he commits if he  
24 disobeys any of the provisions of this Order.

25 10. That the provisions of all prior injunctions in Case No. 050500870 are vacated  
26 and replaced by the provisions of this CIVIL STALKING INJUNCTION.

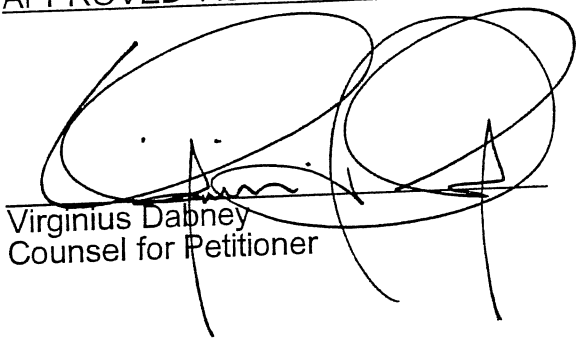
27 11. That the provisions of this CIVIL STALKING INJUNCTION shall remain in effect  
28 for three years, or until further Order of the Court.

1 Dated this 27 day October, 2005.

FIFTH DISTRICT COURT

2  
3  
4   
District Court Judge

5  
6 APPROVED AS TO FORM:

7   
8  
9  
10 Virginius Dabney  
Counsel for Petitioner

11  
12  
13 \_\_\_\_\_  
14 Reed R Braithwaite  
Counsel for Respondent  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28