2006

Bryner v. Bryner : Reply Brief

Utah Court of Appeals

Roger Bryner; Pro Se.
Thomas J. Burns; Cohne, Rappaport & Segal; Kim Luhn; Attorneys for Appellee .

IN THE COURT OF APPEALS
SATE OF UTAH

ROGER BRYNER	)	
	)	REPLY BRIEF OF THE
Petitioner and Appellant	)	APPELLANT
	)	
vs.	)	
	)	Supreme Court No: 20060405
	)	
LANA BRYNER	)	Trial Court case 060903365
	)	
Respondent and Appeale.	)	Judge Lindberg
	)	

Other interested parties: Attorney Kim Luhn, who represented herself as the "Guardian ad Litem" in the stalking injunction hearing.

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(2) Table of Contents

(3) Table of Authorities

(9) Argument.

9.1 Respondent improperly asks for findings of fact from the Court of Appeals to replace the missing ones in the trial court record.

Respondent asks the Court of Appeals to make findings of fact and law which were neglected by the Trial Court on several issues including:

1) Dismissal without prejudice of the prior injunction.
2) Emails (not phone calls as Respondent argues in an effort to distract) send in violation of the no-contact order.
3) Violation of the stalking injunction by refusing to surrender the 'objectionable picture of Petitioner, [which] constitutes a significant problem and certainly something that could be considered as part of a "course of conduct" involving stalking." Amended Order, ¶3(b), R. 629.
4) In words taken from Respondent's own Brief "that Lana made an obscene gesture toward him when they were exchanging custody of the children" See Respondent's Brief on page 19 line 2 and section 9.5 of Appellant's Brief.
5) Any findings of fact whatsoever on the transfer of the case to Judge Lindberg and issue of recusal, all such findings are absent from the record in this case.

As there are not just inadequate findings, but no findings at all, findings by the Court of Appeals is clearly not allowed, as the Court of Appeals is not a court of first impression. See Willey v. Willey, 951 P.2d 226, 231

> However, the trial court in exercising its discretion must make the findings of fact explicit in support of its legal conclusions. Montoya v. Montoya, 696 P.2d 1193, 1194 (Utah 1985). This enables an appellate court to determine if the trial court has abused its discretion. **Without adequate findings of fact, there can be no meaningful appellate review. Willey, 866 P.2d at 551, 555;** Willey, 914 P.2d at 1151. The appellate court reviews such determinations for abuse of discretion, granting considerable deference to the trial court due to its familiarity with the facts and the evidence. See Paffel, 732 P.2d at 100; Owen, 579 P.2d at 913; see also Harding v. Harding, 26 Utah 2d 277, 280, 488 P.2d 308, 310 (1971).
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> If the appellate court determines that the findings of fact are insufficient to support the conclusion, the appellate court normally remands the matter to the trial court for further proceedings. See Watson v. Watson , 561 P.2d 1072 (Utah 1977) (reversing lower court and remanding matter for further proceedings). The trial court is still entrusted with the responsibility to make additional findings and, if necessary, to redetermine the award based upon its new findings because of its unique position to weigh the evidence. It is inappropriate in most instances for an appellate court to disregard the trial court ' s findings of fact and conclusions of law and to assume the task of weighing evidence and making its own findings of fact. The appellate court is entrusted with ensuring legal accuracy and uniformity and should defer to the trial court on factual matters. See Pena , 869 P.2d at 936; State v. Thurman , 846 P.2d 1256, 1266 (Utah 1993).
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> ...
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> The court of appeals again substituted its own judgment for the trial court ' s. Despite the trial court ' s considerable findings on the subject, the court of appeals rejected the trial court ' s findings and increased the award of attorney fees without any supporting findings of fact or even an explanation as to how it calculated the new figure. In doing so, the court of appeals did the very thing it criticized the trial court for doing--making a determination without supporting findings of fact based upon the evidence. Again, **without adequate findings, there can be no meaningful appellate review of the court of appeals ' determinations by this court**.

The Court of Appeals in following the request of Respondent, and make it's own findings of fact and law, would deny the due process that a Trial Court must offer

before making findings as well as denying the right of appeal. Furthermore it is clear that the 20 minute time limit (See R. 656, transcripts p. 4 l. 10) for each side significantly limited the amount of information which could be presented. The affidavit in support of the stalking injunction itself was over 120 pages, and would require only 5 seconds per page to address in the issues from each side, which is clearly not enough to even establish foundation for documents. In summary, It is clear that no findings on these issues exist in the Trial Court Record, and that should any finding of a single act qualifying as stalking be found that the outcome of the case would have resulted in the issuance of a stalking injunction, not dismissal.

9.2 Is the law set forth in Brown v. Glover, 2000 UT 89, 16 P.3d 540 at ¶24 still the correct law of Utah and the standard by which issues raised in Respondent's answer and responded to in this reply brief must be judged by the Court of Appeals?

The question is an issue of law, to which no deference is given to any Court upon review. The standard of law announced in in Brown v. Glover, 2000 UT 89, 16 P.3d 540, 546 at ¶24 speaks for itself:

> ¶24 However, fairness to the respondent is not a concern if it is the respondent who first raises an issue in the opposing brief. In fact, our appellate rules expressly direct an appellant to "answer[] any new matter set forth in the opposing brief." Utah R. App. P. 24(c). Therefore, if an appellant responds in the reply brief to a new issue raised by the appellee in its opposing brief, the issue is not waived. This is also generally the rule with other courts that have considered this issue. See, e.g., Pachla v. Saunders Sys., Inc., 899 F.2d 496, 502 (6th Cir. 1990) (holding that issue first raised in appellee's brief and then answered in appellant's reply brief was properly raised for review); North v. Madison Area Ass'n for Retarded Citizens-Developmental Ctrs. Corp., 844 F.2d 401, 405 n.6 (7th Cir. 1988) (holding that arguments first raised in appellant's reply

brief were in answer to those raised in appellee's brief, and therefore refusing to strike those arguments); E.E.O.C. v. Union Bank, 408 F.2d 867, 868 (9th Cir. 1968) (noting that appellant had option to answer new issue raised in appellee's response brief in reply brief); Carman v. Alvord, 644 P.2d 192, 195 (Cal. 1982) (ruling on issue raised for first time in responsive brief and then addressed in plaintiff's reply brief); Oliveira v. Amoco Oil Co., 726 N.E.2d 51, 56 (Ill. App. Ct. 2000) (refusing to strike arguments of appellant's reply brief that were in response to arguments first raised in appellee's brief); Rome v. Commonwealth Edison Co., 401 N.E.2d 1032, 1034-35 (Ill. App. Ct. 1980) (noting that issue first addressed in appellee's brief and then answered by appellant in reply brief was not waived, but would have been if not responded to in reply brief); City of Wichita v. McDonald's Corp., 971 P.2d 1189, 1200 (Kan. 1999) (holding that reply brief is appropriate forum to rebut new material raised in appellee's brief); Brashear v. Baker Packers, 883 P.2d 1278, 1280 (N.M. 1994) (holding that "if 'an appellee raises an argument not addressed by the appellant in its opening brief, the appellant may reply'" (citation omitted)); Newsome v. North Carolina State Bd. of Elections, 415 S.E.2d 201, 203-04 (N.C. Ct. App. 1992) (denying appellees' motion to dismiss appellants' reply brief because new issues addressed in appellants' reply brief were in response to issues raised in appellees' briefs); The Doctors' Co. v. The Ins. Corp. of Am., 864 P.2d 1018, 1028 (Wyo. 1993) (holding issue first addressed in appellant's reply brief was not waived because it was in response to argument first presented in appellee's brief); see also 5 Am. Jur. 2d Appellate Review § 559 ("Should the appellee raise an argument in his or her brief that the appellant did not address in his or her opening brief, however, the appellant may reply."); 4 C.J.S. Appeal and Error § 619 ("A point, even though not raised in the original brief, may nevertheless be considered when made in the reply brief in answer to respondent's argument."); 2A Federal Procedure, Lawyer's Edition § 3:640, at 307-08 (1994) (stating that "where an appellee raises an argument not addressed by the appellant in its opening brief, the appellant may reply"); 20A James Wm. Moore, Moore's Federal Practice § 328.22 (Matthew Bender 3d ed. 2000) (stating that "appellant may respond to arguments raised for the first time in the appellee's brief").

Respondent and Appealee did not respond to any of the questions raised by Petitioner and Appellant in his brief, which are outlined below:

9.1 Does the Court of Appeals have to follow it's own precedent in Ellison v. Stam, 136 P.3d 1242, 2006 UT App 150, 2006 Utah App. LEXIS 148, 549 Utah Adv. 24 (2006)? This issue was not raised in the Trial Court, as it is only an issue on appeal having to do with the constitutionality of unpublished opinions being used to intentional discriminate against males by the Court of Appeals.

9.2 Did the Court abuse it's discretion by making an implied finding that case #050916389 was dismissed with, rather than without prejudice?

9.3 Did the Court make an error of law in finding that Petitioners Petitioner's Rule 12(b)(6) Motion to Dismiss Respondent's Motion to Dissolve under 77-3A-101(13) was frivolous?

9.4 Can the Court proceed to transfer and dismiss a case without an order disposing of an affidavit of bias and motion to recuse?

9.5 Does Flipping off a father in the presence of his children rise to the level of stalking? Must the Court enter findings on this issue?

9.6 Does respondents contact with Petitioner in clear violation of a no-contact order constitute criminal stalking? Must the Court enter findings on this issue?

9.7 Does the finding of the Court that a stalking injunction under §77-3a-l0l does not allow intentional infliction, rule 56 motions, or anything outside of the limited scope of the stalking injunction fly in the face of

the Court's use of a Guardian ad Litem and consideration of custody issues and of "civility"?

9.8 Did the Court abuse it's discretion by finding that "Both parties are clearly combative and highly inappropriate in their dealings with each other."?

Respondent made no argument in the "harmless error" section of their argument stating why the undisputed errors and failure to enter findings in regards to dismissal without prejudice of the prior injunction, emails (not phone calls as Respondent argues) and in words taken from Respondent's own Brief "that Lana made an obscene gesture toward him when they were exchanging custody of the children" were not addressed, with the exception from quoting from the overturned reasoning of the trial Court in Ellison v. Stam, Ellison v. Stam, 136 P.3d 1242, 1248; 2006 UT App 150, ¶13, implying that only "threats" or actions which render Petitioner "unable to cope" are the standard under law. To further quote from the same case at ¶21-23 where the Court of Appeals set forth the correct standard was set forth by the Court of Appeals:

> ¶21 In Salt Lake City v. Lopez, 935 P.2d 1259 (Utah Ct. App. 1997), this court clarified the definition of "emotional
> 20050228-CA 8
> distress" for purposes of section 76-5-106.5. See id. at 1264. In Lopez, the appellant claimed that because section 76-5-106.5 did not contain a definition for emotional distress, it was unconstitutionally vague. See id. The court rejected this claim, stating that "the tort of intentional infliction of emotional distress is well established in this state," and therefore "emotional distress is well defined in this state." Id. at 1264-65; see also State v. Martel, 902 P.2d 14, 19-20 (Mont. 1995) (holding that use of the phrase "substantial emotional distress" did not render the relevant statute

> unconstitutionally vague where that phrase was defined by prior tort law); Woolfolk v. Commonwealth, 447 S.E.2d 530, 533-36 (Va. Ct. App. 1994) (same, but with use of the phrase "emotional distress"). The Lopez court went on to state that "[e]motional distress results from conduct that is 'outrageous and intolerable in that it offends the generally accepted standards of decency and morality.'" Lopez, 935 P.2d at 1264 (quoting Russell v. Thomson Newspapers, Inc., 842 P.2d 896, 905 (Utah 1992)).
>
> A. Emotional Distress
> ¶21 In Salt Lake City v. Lopez, 935 P.2d 1259 (Utah Ct. App. 1997), this court clarified the definition of "emotional
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> distress" for purposes of section 76-5-106.5. See id. at 1264. In Lopez, the appellant claimed that because section 76-5-106.5 did not contain a definition for emotional distress, it was unconstitutionally vague. See id. The court rejected this claim, stating that "the tort of intentional infliction of emotional distress is well established in this state," and therefore "emotional distress is well defined in this state." Id. at 1264-65; see also State v. Martel, 902 P.2d 14, 19-20 (Mont. 1995) (holding that use of the phrase "substantial emotional distress" did not render the relevant statute unconstitutionally vague where that phrase was defined by prior tort law); Woolfolk v. Commonwealth, 447 S.E.2d 530, 533-36 (Va. Ct. App. 1994) (same, but with use of the phrase "emotional distress"). The Lopez court went on to state that "[e]motional distress results from conduct that is 'outrageous and intolerable in that it offends the generally accepted standards of decency and morality.'" Lopez, 935 P.2d at 1264 (quoting Russell v. Thomson Newspapers, Inc., 842 P.2d 896, 905 (Utah 1992)).

Clearly the correct standard is as set forth by the case above, acts which "outrageous and intolerable in that it offends the generally accepted standards of decency and morality" are the actions which rise to the level of stalking, and flipping someone off in their presence is a fighting words and fighting actions act which has no constitutional protection. Also, the violation of a no-contact order and the temporary

stalking injunction are not under the standard of emotional distress, but only violation of an order.

No reply or rehash of these other issues is made, as Petitioner and Appellant has fully briefed those issues already, and they stand unchallenged by Respondent and Appeallee.

9.3 Is the affirmative defense now raised by Respondent that there was an agreement, but no order, allowing telephone contact a permissible affirmative defense under the law?

Respondent states on page 8 footnote 3 states truthfully:

> The details of the parties custody arrangement do not specifically appear in the record of this case;

Then went on to imply that an order granting telephone visitation privileges for the Respondent existed in case #044904183:

> However there is no dispute that since the inception of the domestic mater the parties have shared custody of the children and that included in the arrangement are telephone visitation privileges.

This statement was clarified by the stipulation of the parties under Rule 11 of the Utah Rules of Appellate Procedure to the stipulation of fact found in "Stipulation To Facts And To Withdraw Rule 40 Motion:" signed by Respondent's Attorney and Petitioner on the 27th of April 2007 which states:

> 2) The parties agree that the details of the parties custody arrangement do not specifically appear in the record of this case;
> 3) The parties agree that there was no order establishing telephone visitation for Respondent in case #044904183.

> 4) It is Respondent's position that the right of telephone visitation was established through agreement of the parties, not through a court order.

This clearly correct stipulated fact contradicts Respondent's statements to the police officers found in the police report at R. 57 ¶13, where respondent said "Svetlana said her custody order from the judge allows her to make phone contact with the children every other day at 17:00 hours."

With this issue of fact out of the way, the issue before the Court is properly one of law only. Does an alleged agreement of the parties predating an ex-parte injunction nullify the no-contact order? The language of the no-contact order, based upon a form approved for use by ALL stalking injunctions, is itself determinative of this issue of law. See R. 59, "This injunction will be presumed valid until superseded by a subsequent order" As there is no dispute that no such subsequent order exists, the courts findings are simply incorrect under the law.

Furthermore, the findings and order of Judge Lindberg only imply an affirmative defense, but do not contain a subsequent order which superseded the no-contact order. The Courts findings on this issue are found at R. 629 states:

> Call were during a time that Respondent was scheduled to call the children, that petitioner picked up and hung up the phone repeatedly as was therefore a clear attempt to interfere with Respondent's ability to contact the children.

The issue is only one of law. There is no dispute that Respondent called Petitioner's phone over 10 times in a row, nonstop. There is no dispute that there was no order at any time in case #044904183 which gave Respondent any right to have telephone visitation with the children, however there was an order that Respondent

was not to contact Petitioner without exception. See R. 61 ¶3, "Respondent is restrained from contacting Petitioner directly or indirectly, through any form of communication including written, oral, or electronic means...." Clearly both the 11 phone calls and the emails highlighted in section 9.6 of Appellants Brief were violations of this order. In addition, calling someone 11 times in a row is a clear violation of UCA 76-9-201(2)(a)(ii), see Provo City v. Thompson, 2002, 44 P.3d 828, 442 Utah Adv. Rep. 24, 2002 UT App 63 at ¶4-6, where a male was found guilty under UCA 76-9-201 for the following facts:

> ¶ 4 Officer Bastian arrived at Carolyn's apartment at 12:47 a.m. and observed that Carolyn was "nervous, emotional, [and] appeared kind of scared." She told Officer Bastian that defendant "had been calling her and upsetting her by his frequent phone calls and [that] she just wanted him to stop." As Officer Bastian spoke with Carolyn, the phone in her apartment rang again. The phone's caller identification function indicated that the call was from defendant, bringing his total calls to eleven within the hour.
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> ¶ 5 Officer Bastian answered the phone and asked who was calling. Defendant identified himself. Officer Bastian told defendant not to leave his apartment because he, Officer Bastian, would soon be arriving. Officer Bastian then went to defendant's apartment and cited defendant for telephone harassment.
>
> ¶ 6 Defendant claimed at trial that Carolyn initiated the first telephone call and expressed suicidal intentions. Defendant said he had "learned in school and from counselors and therapists" that "whenever you're faced with a situation where you're talking with somebody who ... is threatening to commit suicide ..., as soon as they hang up you immediately call them back to get them on the line ... and keep talking to them, and if they hang up, call back." Thus, he claimed, he did not call Carolyn repeatedly with any intent to annoy her, but only out of concern for her safety.

If a male is not allowed to make even a single call to a woman who has a protective order with a no-contact provision against him, even by accidentally hitting a stored number, or by the agreement and coaxing of the "victim" that she would commit suicide, why would a female be allowed to call only for the reason that she wanted to talk to the children "right now"? Absent unequal application of the law due to gender bias under Article 1 section 24 and the 14th Amendment, there is no rational reason. Notice that contact was not wanted can not be clearer than a court order served under Rule 4.

9.4 Did the trial court properly dismiss the petition for a civil stalking injunction?

This question would be able to be addressed had the Trial Court entered sufficient findings of fact to review regarding the admitted sending of emails in violation of the no-contact order, the disobedience of Respondent in willfully refusing to surrender the photographs that were "objectionable picture of Petitioner, constitutes a significant problem and certainly something that could be considered as part of a "course of conduct" involving stalking.": and the admitted "obscene gesture toward him when they were exchanging custody of the children" therefore the issues are not before the Court of Appeals on review. The Court of appeals must remand these issues to the Trial Court to make findings to review, and can not proceed to make findings on it's own without allowing due process for both parties. See argument in 9.1 above.

The second prong of this argument by Respondent and Appeallee is that the burden of proof rested upon Petitioner and Appellant to prove stalking. While this is true, it is a due process violation to allow only a few seconds per page of claim in an hearing, deny Petitioner his opportunity to present his evidence and simply cross examine Respondent for an equal amount of time.

Petitioner, even with the unreasonable time limit and without help of counsel, did establish by the clear preponderance of evidence presented the following actions which are the valid basis for a civil stalking injunction to issue:

Distribution of pictures of Petitioner's testicles by Respondent, see R. 629 ¶3(c) court order;

The refusal to surrender those picture, first when served with the ex-parte order demanding that the be surrendered and that she identify who she had distributed these to (see R. 113 ¶4), second at hearing (see R. 699 Transcript p. 47 l. 11), third after hearing and service of the order dismissing the case but still ordering that the photographs be surrendered (see R. 630 order ¶3(c)). . To this date Respondent has not complied.

That Lana made an obscene gesture toward him when they were exchanging custody of the children" See Respondent's Brief on page 19 line 2 and section 9.5 of Appellant's Brief;

That Lana contacted Petitioner in violation of a no-contact order, and that no subsequent order modified that no-contact order, see section 9.6 of Appellant's Brief and section 9.3 of this Brief for emails and telephone contact respectively;

Further more the death threats, threats to kidnap his children, and other allegations were not allowed to be argued with the assistance of counsel nor with sufficient time to present them nor with sufficient notice to prepare for the event. At the time of the hearing, Rule 75 of the Utah Rules of Civil Procedure had not been adopted, however it has now. This Rule would make clear that Judge Lindbergs unreasonable restriction on counsel found at R. 658, Transcript p. 6 l. 15-18 was both illegal and would not be allowed to happen again. Further limits on Petitioner's ability to present even the most limited testimony or evidence are found at R. 675 Transcript p. 23 l. 25, R. 676 Trancript p. 24, l. 6-23, where in reverse order the Court instructed Petitioner that he had 20 minutes to cross examine Respondent, respond to Kim Luhn, and explain why he should not have filing restrictions imposed upon him. This is perhaps the worst example of a Court intentionally distracting and defocusing a statutory hearing that according to Respondent was only about dismissal of a stalking injunction. Clearly for the male, it was not just about that, but about anything else conceivable which could benefit the female. See also R. 689-90 Transcript p. 37 l. 20 to P. 38 l. 15. The results of a subpoena showing phone contact were requested but not yet available at hearing date.

9.5 Which was in error, not allowing a civil complaint to be heard with the stalking injunction or allowing a domestic civil complaint and custody issue to be heard with a stalking injunction?

This issue was originally briefed by Petitioner and Appellant in his documents, however Petitioner's argument was mischaracterized by Respondent in their answer. Respondent claims that Petitioner has argued that the Trial Court was wrong in finding "The statute does not allow Petitioner to raise other civil claims in connection with a civil stalking injunction." R. 636 ¶5B. Petitioner has since before filing his brief abandoned his position on the issue, and instead asked why does this principle not apply to Respondent as well?

The Ruling of the Court on this issue of law should stand, and citing the authority cited by the Court in it's order is sufficient authority under Rule 24. Petitioner and Appellant did argue in section 9.8 that the Court applied this standard only to benefit the female, while entering orders on Custody and restraining orders against the male in the case completely unrelated to stalking in clear violation of this standard of Jurisdiction. For instance the Court ruled against Petitioner at R. 636 ¶5G imposing filing restrictions on Petitioner which outlived the dismissal of the instant case. The court ruled R. 638-639 in ¶6 on children's custody, a issue that is clearly outside the scope of the stalking injunction statute.

Respondent has raised this issue and Petitioner has a due process right to respond. The authority for this argument is clearly constitutional in Article 1 section 24. Either the statement ""The statute does not allow Petitioner to raise other civil

claims in connection with a civil stalking injunction." Also applies to all parties, or it applies to none. This issue was raised and is a clear example of bias in applying the law against one party but ignoring it for the other parties benefit.

It is for this reason that Petitioner has asked and again asks that all findings and conclusions with regards to Petitioner be found to be void and entered without jurisdiction, and stricken from the order of the Court. Failure to do so clearly a denial of Petitioner's due process rights, in that the findings announced by the Judge were sua-sponte, and Petitioner had not chance to argue against them or defend himself and was *denied the right to have counsel at the hearing.*

Respondent has supported rather than countered the argument of Petitioner in that there is no dispute before the Court of Appeals that a hearing on a stalking Injunction is a limited action, without Jurisdiction to decide custody issues or enter restraining orders against the person who brought the action. Even if the Court had jurisdiction, there was no hearing or chance for Petitioner to respond to any of the allegations at the hearing and Petitioner was told that if he said one more word regarding the presence of the so called "Guardian ad Litem" he would be found in contempt. See R. 675 Transcript P. 23 L. 25.

At trial, Petitioner and Appellant argued in the alternative that either the civil stalking injunction proceedings were open as civil proceedings, and thus the parties could file amended complaints and motions for cross restraining orders, or in the alternative that these proceedings were special as the Trial Court ruled, and that

additional causes of action and relief beyond that contemplated in the Stalking Statute is outside of the scope of the proceeding in question.

9.6 Did the trial Court act properly in the face of a motion to recuse?

Once again, Respondent asks the Appellate Court to exceed it's authority and enter findings directly without any being present in the trial Court Record. As there are no findings present in the record to review, it would be an abuse of discretion to make them up at the appellate level.

9.7 Can harmless error be pled by Respondent when no findings whatsoever on 3 major issues were made by the trial court?

The question of harmless error would be possible to review if the Trial Court had made sufficient findings to address the missing issues, however no findings were made regarding:

a) Violation of the Stalking Injunctions in place, including sending emails to Petitioner and refusal to surrender the photographs which were ruled to be "
b) The "obscene gesture" made by Respondent in the presence of the minor children.
c) The recusal of Judge Lindberg from the case, for which absolutely no findings were entered.

None of these issues were temporary.

Evidence that there was awareness of issues not found in any finding or record in this case was prejudicial against Petitioner and Appellant is found in the Court's

own ruling. The Court referenced case #044904183 repeatedly through R. 637-640, but did not present any orders from the case or allow any argument or briefing on that case. For this reason as well as the Court's own ruling that Stalking injunctions are limited to issues set forth in the statute, there is no basis for allowing a Judge to enter orders like this without due process.

Summary

Each of the actions above would have been determinative of the case had it been found differently. For instance the undisputed emails themselves would constitute an offense of stalking if found to be in violation of the order of the temporary Stalking Injunction. The repeated calls would have required the issuance of a stalking injunction. The violations of the temporary stalking injunction would have been determinative. To this date Respondent has refused to comply with the Courts order to surrender the photographs, and as the case is dismissed there is no recourse for a male to enforce the continued possession and distribution of pictures of his testicles by a stalker, loose his children, and be prevented from accessing the courts by filing restrictions which are only applied to the male and not the female.

(10) Relief Sought

10.1 Petitioner asks that the Court of Appeals find that a written order disposing of a motion to recuse must be entered prior to dismissal of a case, therefore entering a final order was not appropriate and the entire order should be stricken.

10.2 Petitioner asks that the Court of Appeals address if making an obscene gesture to a parent in the presence of a 5 and 7 year old child is on it's face an act "'outrageous and intolerable in that it offends the generally accepted standards of decency and morality.'" therefore qualifying as stalking.

10.3 Petitioner asks that the Court of Appeals address the issue of law as to if an agreement to allow telephone visitation which predated the issuance of a no-contact order allows calling the telephone of the subject of the no-contact order.

10.4 Petitioner asks that the Court of Appeals remand with instructions to the lower court to make findings regarding those missing findings of fact not already ruled upon.

10.5 Petitioner asks that all motions and orders exceeding beyond the scope of a stalking injunction hearing be stricken from this case and declared void for lack of jurisdiction, consistent with equal application of the ruling of law of the trial Court that Stalking Injunction hearings are limited in scope by the statute.

Dated this 10 Th day of May, 2007

Roger Bryner

CERTIFICATE OF SERVICE

I certify that on the 10th day of May, 2006, I did cause to be delivered by U.S. Mail postage prepaid and by hand delivery the forgoing document to the following persons:

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