

2006

Mark Towner v. Michael Ridgway : Brief of Appellee

Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARK TOWNER,	:	
Petitioner and Appellee,	:	Supreme Court Case No. 20060677-SC
v.	:	
MICHAEL RIDGWAY,	:	
Respondent and Appellant.	:	

**Appeal from the Third Judicial District Court
in and for Salt Lake County, State of Utah,
The Honorable Denise P. Lindberg**

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Attorneys for Appellee

- ORAL ARGUMENT REQUESTED -

COURTS

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with the Towners. In this case, Judge Lindberg found the Towners had a reasonable basis to fear Mr. Ridgway therefore the Court should affirm the civil stalking injunction as ordered.

B. The Civil Stalking Injunction Does Not Restrict Mr. Ridgway's Political Speech on Any Topic.

Mr. Ridgway is free to post all political commentaries. The injunction reads,

“The Defendant, Michael Ridgway is free to post communications on electronic media so long as the posting represents commentary on the substance of political positions taken by Mr. Towner, otherwise Mr. Ridgway is enjoined from making comments directed at Petitioner or his family that are designed to harass or annoy.” R. 92 ¶ 4.

Here, Respondent would like the Court to interpret this provision very narrowly in assuming Mr. Ridgway is restrained “from speaking publicly on any topic that may annoy the Towners, unless Mr. Towner has first adopted it as his own political view.” *See* Br. of Appellant at 32. A plain reading of paragraph 4 shows that Judge Lindberg is not placing a prior restraint on Mr. Ridgway's political speech. There is no restraint prohibiting Mr. Ridgway from speaking on any political topic. There is no need for the civil stalking injunction to specifically state that Mr. Ridgway can post political commentaries on any subject. Any other ruling would be an obvious violation of free speech. Instead, the civil injunction only addresses Mr. Ridgway's communication, directly or indirectly with the Towners and prohibits Mr. Ridgway from making comments directed at Mr. Towner or his family that are designed to harass and annoy. Additionally, the injunction gives Mr. Ridgway the freedom to post any political commentary he wishes in response to a

political commentary posted by Mr. Towner.

Furthermore, it does not make it a criminal offense for Mr. Ridgway to post political commentaries that may “annoy” the Towners. Instead, the civil stalking injunction only prohibits Mr. Ridgway from making comments directed at the Towners that are designed to harass or annoy. Therefore the Court should affirm Judge Lindberg’s order as amended because it does not place a prior restraint on Mr. Ridgway’s political free speech.

C. Vacating This Civil Stalking Injunction Will Have a Chilling Effect on Political Participation.

If the court vacates this civil stalking injunction it will have a chilling effect on ordinary citizens who wish to become involved in politics, or any other organization in their community. Respondent argues that if the injunction is not vacated, it enjoins him from participating in “heated political exchanges.” This is simply not true. The Towners associate with hundreds of members of the Utah Republican Party and often engage in political exchanges that could be considered “heated political exchanges.” Yet, “heated political exchanges” do not include physical invasion of personal space and personal threats of potential physical harm or emotional distress.

In a public forum of debate, conduct such as Mr. Ridgway’s is not only ungentlemanly, it is outrageous and intolerable in that it offends the generally accepted standards of decency and morality. The Republican Party is a private organization. Positions of leadership held in any political party are no different than positions in any

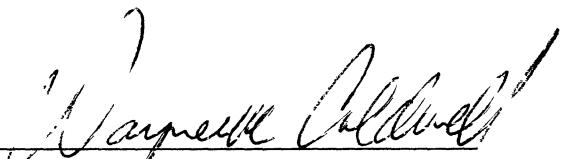
other private organization, for example the PTA. Conduct such as Mr. Ridgway's behavior, that crosses the line between free speech and moves to unacceptable threatening conduct is not appropriate in any public forum. Therefore, to avoid a chilling effect on ordinary citizens who are involved in politics in their community, or any other organization in our society, the Court should affirm Judge Lindberg's order when the Towners have a reasonable basis of fear against Mr. Ridgway.

CONCLUSION

For the reasons stated above, the Towners respectfully requests that this Court affirm Judge Lindberg's continuance of the amended stalking injunction.

Dated this 8th day of January, 2007.

STIRBA & ASSOCIATES

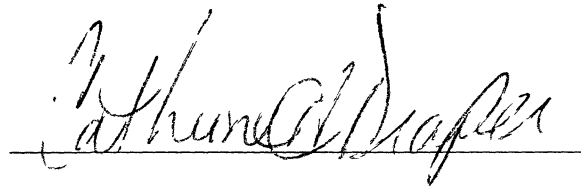
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2007, I caused to be served a true copy of **BRIEF OF APPELLEE** by the method indicated below, to the following:

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JURISDICTIONAL STATEMENT

Respondent, Michael Ridgway, is appealing an amended civil stalking injunction requested by Petitioner, Mark Towner, and granted by Judge Lindberg on June 14, 2006 in the Third Judicial District Court, Salt Lake County, State of Utah. At the request of the Appellant, this Court retained this case. This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2 and Article VIII, section 3 of the Utah Constitution.

APPELLATE ISSUES

Issue 1. Whether There is Sufficient Evidence to Support the District's Courts Findings of Fact To Issue a Civil Stalking Injunction When Mr. Ridgway's Actions Were Threatening and Aggressive.

Standard of Review: Factual issues, such as a claim of insufficient evidence, require the deferential clearly erroneous standard of review. *State v. Peña*, 869 P.2d 932, 935-40 (Utah 1994).

Issue II: Whether the District Court was Correct in Granting a Civil Stalking Injunction Pursuant to Utah Law When Petitioner Held a Reasonable Basis of Fear Because of Respondent's Threatening and Aggressive Behavior.

Standard of Review: "The challenge to the constitutionality of a statute presents a question of law, which [is] review[ed] for correctness." *Salt Lake City v. Lopez*, 935 P.2d 1259, 1262 (Utah Ct. App.1997). However, some mixed questions of law and fact require that some measure of deference be given to the trial court's factual findings. *Peña*, 869 P.2d at 935-40.

Issue III. Whether Comments Designed to Harass and Annoy Petitioners Should Be Restricted When a Court Orders a Stalking Injunction Because of Respondent's Threatening and Aggressive Behavior.

Standard of Review: "The challenge to the constitutionality of a statute presents a question of law, which [is] review[ed] for correctness." *Lopez*, 935 P.2d at 1262.

RELEVANT STATUTE OF CENTRAL IMPORTANCE

Utah Code Ann. § 76-5-106.5 (2006) (edited)

(1) As used in this section:

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

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

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

(2) A person is guilty of stalking who:

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

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

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

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

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

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

(c) whose conduct:

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

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

RELEVANT STATUTE OF CENTRAL IMPORTANCE (con't)

Utah Code Ann. § 77-3a-101 (2006) (edited)

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

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

(a) respondent may be enjoined from committing stalking;

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

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

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

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

(9) The ex parte civil stalking injunction shall be served on the respondent within 90 days from the date it is signed.

STATEMENT OF THE CASE

Mark Towner, Petitioner, and his wife, Carrie Towner, are active members of the Salt Lake County Republican Party and the Utah State Republican Party. (R. 112:2,27.) Both have had held positions of party leadership. (*Id.*) Mr. Ridgway is also active in the Republican Party. After more than two years of trying to be amicable with the Respondent, the final threatening incident combined with the cumulation of harassing encounters between the Towners led Mr. Towner to file a petition for a stalking injunction against the Respondent. (R. 112:28,30; R. 1.) Judge Lindberg issued an amended stalking injunction at a final hearing on July 7, 2006. (R. 92-94.) Judge Lindberg found the Towners presented enough evidence of physical confrontations or menacing approaches by Respondent to establish by a preponderance of evidence that the injunction was sought because there is a reasonable basis of fearing Respondent. (R. 112:46.) Nevertheless, the Respondent insists that the stalking injunction was sought as “political payback.” (Br. of Appellant at 11.) Additionally, Mr. Ridgway claims the stalking injunction infringes on his political free speech. (Br. of Appellant at 30.)

ADDITIONAL STATEMENTS OF FACT

1. Mr. Towner testified in 2003 when Mr. Towner was not even credentialed to vote at a Central Committee Meeting, Respondent approached him in a “very aggressive and derogatory” manner calling him “a liar” because Mr. Towner did not vote the way that Mr. Ridgway wanted him to vote. (R. 112:2-3).

2. Mrs. Towner testified that she was scared by Mr. Ridgway after a Central Committee Meeting in 2004 when he approached her in a threatening and aggressive manner, glared at her with his eyes, tensed up, leaned forward, quickly approach her within 18 inches, and then gained enough control to forcefully turn himself around and exit the room. (R. 112:27-28, 36.)

3. Mrs. Towner testified that as Mr. Ridgway left the room, a lady standing next to her warned her about Mr. Ridgway's bad temper and told Mrs. Towner to be careful around him. (*Id.*)

4. After that experience, Mr. Towner testified that he accompanied Mrs. Towner to political meetings to make sure that there were no confrontations between Mrs. Towner and Respondent. (R. 112:6.)

5. Mr. Towner testified that he did this because he was afraid for Mrs. Towner's safety. (R. 112:27-28, 36.)

6. Mrs. Towner testified that the Republican Party has had to have the police escort Mr. Ridgway out of meetings. (R. 112:28.)

7. Mr. Towner testified in 2004, as a member of the State Credentialing Committee, Mr. Towner did not vote the way that Mr. Ridgway wanted him to vote and as a result of his vote, Mr. Towner began "receiving harassing e-mails and phone calls" and "instant messages" from Mr. Ridgway for nearly two years. (R. 112:3-4.)

8. Although Mr. Ridgway continued to contact Mr. Towner, one of the last e-

mails Mr. Towner sent to Mr. Ridgway explained to Mr. Ridgway that he had made the most powerful enemy in the Utah Republican Party. This e-mail was sent to Mr. Ridgway on August 24, 2004. (See E-mail from Mr. Towner to Mr. Ridgway attached hereto as Exhibit A.)

9. Ms. Towner testified that prior to the final encounter with Mr. Ridgway, she thought the best way to deal with Mr. Ridgway was to try to be amicable even though she always felt harassed by Mr. Ridgway. (R. 112:35, 37).

10. In April of 2006, Mr. Towner was running to be the Republican nominee for State Senate District Two and hosted a barbeque in Liberty Park, calling and inviting all three Republican candidates and almost 100 delegates, including Mr. Ridgway. (R. 112:13,22,37.)

11. During the caucus election meeting at the Salt Lake County Convention on April 29, 2006, Mr. Ridgway passed out a negative campaign flyer against Mr. Towner. (R. 112:12-13.)

12. Mr. Towner testified that passing out any literature during the election caucus meeting was a violation of the rules. (R. 112:7.)

13. Mr. Towner testified he felt Mr. Ridgway's flyer was filled with lies and innuendoes and had an influence on the outcome of his election. (R. 112:7-8.)

14. After the caucus election meeting was over Respondent said to Mr. Towner, "It doesn't stop here." (*Id.*)

15. Mr. Towner testified he thought Mr. Ridgway's comment was an on-going concerning threat. (*Id.*)

16. Mrs. Towner still in the election caucus room was standing with her daughter when Mr. Ridgway walked passed her and commented "I didn't know the rules."¹ (R. 112:29.)

17. Mrs. Towner testified that she told Respondent to stay away from her, and yet, Mr. Ridgway continued to follow Mrs. Towner and her daughter as they backed out of the room. (R. 112:29-30.)

18. Mrs. Towner put her arm around her daughter to protect her, held up her hand in a position for Respondent to stop, and warned her daughter not to talk with Respondent because he gets violent. (*Id.*)

19. Despite this, Respondent continued to follow Mrs. Towner and her daughter as they backed out of the room. (*Id.*; R.112:9,10.)

20. After the Salt Lake County Convention, Mr. Towner wrote a letter to the State Party resigning his positions in frustration because of Mr. Ridgway's actions of passing out his flyers during the caucus election meeting. (R. 112:14.)

21. In this letter, Mr. Towner kept Mr. Ridgway's threatening and aggressive civil

¹ Contrary to statements in Brief of Appellant, Mrs. Towner did not begin the interaction with Mr. Ridgway by telling Respondent that he was "breaking the rules." (See Br. of Appellant at 8.) Instead, Mr. Ridgway initiated the conversation when he said to Mrs. Towner "I didn't know the rules." (R. 112:29.)

behavior separated from his political conflicts with Mr. Ridgway. (*Id.*) Mr. Towner did not mention any abusive behavior or mention his plans to obtain a civil stalking injunction against Mr. Ridgway. (*Id.*)

22. Mr. Towner wrote a private and confidential e-mail to Don Guyman, a fellow member of the State Central Committee where Mr. Towner explained Mr. Ridgway's illegal distribution of flyers in the caucus meeting at the Salt Lake County Convention. (See E-mail from Mr. Towner Towner to Don Guyman dated May 6, 2006 attached hereto as Exhibit B.)

23. In Mr. Towner's e-mail, he only mentioned Mr. Ridgway's illegal political behavior not his threatening and aggressive civil behavior. (*Id.*)

24. Mr. and Mrs. Towner traveled to California immediately after the Salt Lake County Convention and Mr. Towner petitioned Judge Maughn for the ex parte stalking injunction the following Monday after they returned on May 8, 2006. (R. 112:16,35; R.1).

25. In petitioning the court for the stalking injunction, Mr. Towner essentially followed the on-line instructions and filled in the blanks on www.utcourts.gov. (R. 10.)

26. Along with the petition, Mr. Towner submitted a letter to the court stating, "I am afraid Mr. Ridgway may lose total control and seek a violent revenge against myself, my wife, or my children." "Others in the Republican Party have experienced Mr. Ridgway's harassment when he has followed them to their work or church and verbally

assaulted them in front [sic] of friends and neighbors.” (Letter to the Court from Mr. Towner dated May 8, 2006, attached hereto as Exhibit C.)

27. Judge Maughn issued the ex parte stalking injunction against Mr. Ridgway on May 8, 2006. (R. 21.)

28. Constable Silvan Warnick served the stalking injunction the following Thursday. (See Aff. of Serv. dated May 11, 2006 attached hereto as Exhibit D.)

29. Mr. Ridgway was scheduled to speak at the State Convention in his attempt to defeat Orrin Hatch as the Republican nominee for Senator two days after he was served. (R. 112:23-24.)

30. Mr. Ridgway scheduled an emergency hearing before Judge Peuler on May 12, 2006 where Mr. Towner realized that the restriction prohibiting Mr. Ridgway from speaking at the State Convention was too restrictive and Judge Peuler modified the stalking injunction.² (R. 26; R. 112:34-35.)

31. Once Mr. Towner realized that his request to keep Mr. Ridgway from attending all Republican events was too broad, he agreed to take the request out of the injunction. (R. 112:26.)

² The stalking injunction first issued by Judge Maughn prohibited Mr. Ridgway from attending all Republican meetings. (R. 24.) At the hearing, neither Mr. Towner nor Mrs. Towner objected to Mr. Ridgway’s attendance at the State Convention. (*Id.*) Instead, they asked Judge Peuler if Mr. Ridgway could be escorted by law enforcement. (*Id.*) Judge Peuler held that because of the number of people that would be in attendance, Mr. Ridgway would not need an escort however Respondent was ordered to stay away from the Towners. (*Id.*)

32. During the hearing, Mr. Booher, attorney for Respondent, asked Mr. Towner about a Bob Bernick article printed in the Deseret Morning News article on May 13, 2006, stating that Mr. Towner's motivation in seeking the stalking injunction was to keep Mr. Ridgway from attending the State Convention. (R. 112:17.)

33. Mr. Towner told Mr. Booher that the quote was a misquote and it was corrected by the Deseret Morning News.³ (*Id.*)

34. At the final hearing before Judge Lindberg on June 14, 2006, Mrs. Towner testified that they do not want to receive continued harassing phone calls or e-mails, and above all, they do not know what Mr. Ridgway is capable of doing, especially with his brain stem injury. (R. 112:33,36.)

35. Mr. Towner testified he believes that Mr. Ridgway holds grudges against people who have different opinions than he does, and retaliates when he does not get his way. (R. 112:12,13.)

36. Mr. and Mrs. Towner both testified they believe Respondent is mentally unstable and has a propensity to be violent. (R. 112:12,37.)

37. Mr. Towner testified that he believes Mr. Ridgway has a propensity for violence basing his decision on his own experiences and talking with over 20 people that

³ Nevertheless, Respondent continues to state this argument in his brief knowing that the article contained a misprint which misconstrued Mr. Towner's motivation for seeking the stalking injunction. (*See Br. of Appellant at 8.*) Mr. Towner's corrected statement was "Absolutely Not."

have had similar experiences with Mr. Ridgway including a history of the Respondent pushing people down and touching women. (R. 112:12.)

38. Mr. Towner testified that he believes Mr. Ridgway is very unpredictable and does not want Mr. Ridgway anywhere close to him or his family. (R. 112:10-12.)

39. Mrs. Towner testified she fears Mr. Ridgway will “go crazy” and that he is capable of coming to their home, capable of hurting them physically, or worse, hurting their children. (R. 112:37.)

40. At the hearing Respondent chose not to speak on his behalf. (R. 112:41.)

41. Judge Lindberg’s analysis of the statute noted that there are no time limitations on when a course of conduct may accrue. (R. 112:44).

42. In her decision, she was convinced that Mr. Towner and Mrs. Towner presented enough evidence of physical confrontations or menacing approaches by Respondent to establish by a preponderance of evidence that the injunction was sought because there is a reasonable basis of fearing Respondent. (R. 112:46.)

43. On July 7, 2006, Judge Lindberg entered an amended stalking injunction against Mr. Ridgway prohibiting Respondent from placing himself within 20 feet of the Towners at all locations. (R. 92-94.)

44. Judge Lindberg declined to sign the first proposed amended stalking injunction . (R. 90, attached hereto as Exhibit E.)

45. The amended stalking injunction prohibits Respondent from contacting the

Towners directly or indirectly through any form of communication including written, oral, or electronic means. (*Id.*)

46. The amended stalking injunction allows Mr. Ridgway to “post communications on electronic media so long as the posting represents commentary on the substance of political positions taken by Mr. Towner, otherwise, Mr. Ridgway is enjoined from making comments directed at Petitioner or his family that are designed to harass or annoy.” (*Id.*)

SUMMARY OF ARGUMENT

The District Court correctly ordered a civil stalking injunction against Mr. Ridgway when Mr. Ridgway demonstrated an aggressive course of conduct designed to threaten the Towners causing them to have a reasonable basis of fear of bodily injury and suffer emotional distress. Mr. and Mrs. Towner are active in the Republican Party, and hold positions of leadership, however this does not prohibit them from seeking legal protection against Mr. Ridgway particularly when the incidents on the record demonstrate an invasion of personal space and a reasonable basis to fear the potential of future physical assaults.

The Towners believe Mr. Ridgway is mentally unstable and capable of hurting them or their family. The Towners should be able to assemble at political functions, or at non-political events, without continual harassment and fear of Mr. Ridgway.

The civil stalking injunction issued by Judge Lindberg does not restrain Mr.

Ridgway's free speech on any political topic, or restrain him from making comments about the Towners. Instead, the civil stalking injunction properly restrains Mr. Ridgway from speaking to the Towners, directly or indirectly. Simply because Mr. and Mrs. Towner are involved in a political party, it does not make them political figures open to public harassment and hate speech. If this were the case, it would have a chilling effect on all citizens who have a desire to become involved in their community. The District Court was correct in limiting Mr. Ridgway's comments that are designed to harass and annoy the Towners when Mr. Ridgway's course of conduct has displayed threatening and aggressive behavior.

ARGUMENT

I. There is Sufficient Evidence to Support the District's Courts Findings of Fact to Issue a Civil Stalking Injunction When Mr. Ridgway's Actions Were Threatening and Aggressive.

The District Court found sufficient evidence to issue a stalking injunction against Respondent, Mr. Ridgway, because of his threatening and aggressive behavior against the Towners. On appeal, Respondent claims that the Towners failed to produce sufficient evidence to support the District Courts ruling in issuing the civil stalking injunction. *See* Br. of Appellant at 24 ("These are the incidents that the district court ruled satisfied the elements of the crime of stalking in section 76-5-106.5." "Mr. Ridgway's conduct simply does not constitute the crime of stalking.") A claim of insufficient evidence, requires the deferential clearly erroneous standard of review. *State v. Peña*, 869 P.2d 932, 935-40

(Utah 1994).

A. The Respondents Failed to Marshal The Facts For Review.

This Court holds “In order to challenge a district court's finding of fact, “ ‘an appellant must first marshal all the evidence in support of the finding and then demonstrate that the evidence is legally insufficient to support the finding even when viewing it in a light most favorable to the court below.’ ” *Parduhn v. Bennett*, 112 P.3d 495, 523 Utah Adv. Rep. 17, 2005 UT 22 ¶ 25 (quoting *Chen v. Stewart*, 100 P.3d 1177, 2004 UT 82, ¶ 76 (internal quotation omitted)). Marshaling the evidence is not simply re-arguing the case, or reviewing the evidence at trial. *Id.* “A challenge to an ultimate finding of fact is tantamount to a claim that there are insufficient subsidiary facts to support that finding. Accordingly, a challenge to a subsidiary finding is really a challenge to the ultimate finding it supports. A party challenging a subsidiary finding must therefore marshal evidence in support of the ultimate finding.” *Id.* An appellant's brief “should correlate particular items of evidence with the challenged findings, supporting the findings with all available evidence in the record, and only then should appellant attempt to demonstrate how the challenged findings are clearly erroneous.” *Neely v. Bennett*, 51 P.3d 724, 448 Utah Adv. Rep. 14, 2002 UT App 189 ¶ 12 (*certiorari denied*)(*internal cites omitted*).

The marshaling requirement is rigorous and strict. *Chen*, 2004 UT 82 ¶ 79. The appellant fairly bears the expense and time of marshaling the evidence. *Id.* If the

appellant fails to marshal the evidence, “the appellate court has grounds to affirm the court's findings on that basis alone.” *Id.* at ¶ 80 (citing *Wilson Supply, Inc. v. Fradan Mfg. Corp.*, 54 P.3d 1177, 455 Utah Adv. Rep. 64, 2002 UT 94 ¶ 26.) The Court assumes that the evidence supports the trial court's findings when the appellant does not marshal the facts. *Id.* (citing *Utah Medical Products, Inc. v. Searcy*, 958 P.2d 228, 230, 341 Utah Adv. Rep. 20 (1998)).

Here, Mr. Ridgway cannot discharge his duty to marshal all evidence supporting challenged factual findings by simply providing an exhaustive review of all evidence presented at trial. Mr. Ridgway contends that the Towners did not present enough evidence to support the District Courts findings yet Mr. Ridgway did not meet his burden of marshaling the evidence. There is adequate evidence in the record to support Judge Lindberg’s findings of fact and conclude that her ruling was not clearly erroneous. Therefore, because Mr. Ridgway failed to marshal the evidence, the Court has grounds to affirm the District Court's findings on that basis alone.

B. Factual Assertions on Appeal are not Supported by the Record Nor By Competent Evidence.

Mr. Ridgway must rely on the facts presented in the case. Respondent chose not to challenge any specific factual findings and therefore must accept the facts in the record as correct. *See* Br. of Appellant at 1 ¶ 2. At the hearing Respondent chose not to speak on his behalf. (R. 112:41.) Despite this fact, Mr. Ridgway claims he vigorously disputes his conduct as described by the Towners outside of this appeal. *See* Br. of Appellant at 24.

However, the record only contains Mr. Ridgway's conduct as described by the Towners and there is no reference to Mr. Ridgway's conduct or behavior outside of the facts of this appeal.

Respondent misstated the facts of the second incident involving Ms. Towner and Mr. Ridgway. *See* Br. of Appellant at 8 ¶ 3. Contrary to Respondent's versions of the facts, Mrs. Towner did not begin the interaction with Mr. Ridgway by explaining to Mr. Ridgway that he was "breaking the rules" when Mr. Ridgway responded to Mrs. Towner that he "didn't know the rules." Instead, Mr. Ridgway initiated the conversation when he approached Mrs. Towner and said "I didn't know the rules." (R. 112:29.) Slanting the versions of the facts as Respondent did implies that Mrs. Towner instigated a conversation with Mr. Ridgway after the meeting which was certainly not the case.

The Appellant's Brief is full of insinuations that are simply not in the record, or that are merely assumptions of facts. For instance, Mr. Ridgway states, as a matter of fact, that it was Mr. Towner who "called the press" to report the civil stalking injunction against Mr. Ridgway. *See* Br. of Appellant at 25 (stating "but instead called the press and waited until less than 40 hours before the State Republican Convention"). The Towners vigorously dispute this statement. There is no reference to Mr. Towner calling the press to report the civil stalking injunction.⁴

⁴ Instead, the Towners believe that Mr. Ridgway called the press in an effort to seek publicity for himself as a candidate trying to run against Orrin Hatch. Mr. Towner was quoted in the paper because Bob Bernick called Mr. Towner after getting the story.

Even more disturbing is Respondent's demonstratively incorrect reliance on an article printed in the Deseret Morning News. Appellant's Brief states:

"The morning after the stalking injunction was served, the Deseret News ran an article in which Mr. Towners is quoted as follows: "Asked if he sought the injunction as one way to keep Ridgway from the convention, to be held in the South Towne Expo Center, Towner said 'Absolutely.'" See Br. of Appellant at 25-26.

In actuality, the record shows that the Deseret Morning News corrected this statement.⁵ The record shows the following testimony:

Q. Are you aware that there's a Deseret News article that came out the 13th, the day before the convention which quotes you as saying that your motivation in seeking the stalking injunction was to keep Mr. Ridgway from the Republican convention?

A. Yeah, and it was a misquote and it was corrected.

Q. And you -

A. And you [sic] were aware of that. (R. 112:17.)

Respondent's attorney now cites to this article as if it were properly in the record.

Clearly the misstatements by the Respondent are an attempt to intentionally misconstrue the facts of the case. There is no factual evidence in the record which indicates that Mr. Towner sought the stalking injunction as a means to keep Mr. Ridgway from attending the State Convention or that Mr. Towner sought the injunction as a political weapon.

Respondent is attempting to state his case through evidence that is clearly not in the

⁵ The correction in the Deseret Morning News is as follows: Correction: Mark Towner Former GOP state Senate candidate Mark Towner said he did not seek a restraining order against former U.S. Senate candidate Mike Ridgway to keep Ridgway from attending the State Republican Convention. Towner was misquoted in a story that ran May 12.

record. References to facts which do not exist in the record, or references to facts that are improperly implied to be in the record, should not be considered by the Court.

II. The District Court was Correct in Granting a Civil Stalking Injunction When Petitioner Held a Reasonable Basis of Fear Because of Respondent's Threatening and Aggressive Behavior.

The Court should affirm the civil stalking injunction issued by Judge Lindberg against Mr. Ridgway when the Towners have a reasonable basis of fear against Mr. Ridgway because of his threatening and aggressive behavior. “The challenge to the constitutionality of a statute presents a question of law, which [is] review[ed] for correctness.” *Salt Lake City v. Lopez*, 935 P.2d 1259, 1262 (Utah Ct. App.1997). However, some mixed questions of law and fact require that some measure of deference be given to the trial courts findings of fact. *State v. Peña*, 869 P.2d 932, 935-40 (Utah 1994).

The Court has explained in *State v. Levin* that “[b]ecause a trial court is in a better position to “judg[e] credibility and resolv[e] evidentiary conflicts,” the standard of review for finding of fact is clear error.” 144 P.3d 1096, 560 Utah Adv. Rep. 9, 2006 UT 50 ¶ 21. However, the standard of review for a district court’s conclusions of law is for correctness. *Id.* While “the legal effect of the facts is the province of the appellate courts”, the Court “recognize[s] that, with regard to many mixed questions of fact and law, it is either not possible or not wise for an appellate court to define strictly how a legal concept is to be applied to each new set of facts.” *Id.* at ¶ 22. This is mainly

because “overinvolvement by an appellate court can lead to confusing and inconsistent pronouncements of the law.” *Id.* Accordingly, a trial court's decision on mixed questions of fact and law is reviewed “with deference commensurate to that discretion.”

The Court relies on three factors to determine the level of deference given to the trial courts decision. *Id.* at ¶ 25. First, “the degree of variety and complexity in the facts to which the legal rule is to be applied; (2) the degree to which a trial court's application of the legal rule relies on “facts” observed by the trial judge, “such as a witness's appearance and demeanor, relevant to the application of the law that cannot be adequately reflected in the record available to appellate courts;” and (3) other “policy reasons that weigh for or against granting discretion to trial courts.” *Id.*

Under Utah law, a court may issue a stalking injunction when a respondent engages in an intentional course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury or suffer emotional distress. Utah Code Ann. § 76-5-106.5(2). Mr. Ridgway contends “the only reason the injunction is called a “civil stalking injunction” is that it can be obtained by a private citizen and not just a prosecutor; otherwise, the elements supporting an injunction are the same as those constituting the criminal offense of stalking.” *See* Br. of Appellant at 15. While elements of civil stalking are identical to criminal stalking, a salient difference exists between the two. As created by the Utah legislature, a civil stalking injunction does not create a criminal record for the respondent. Utah Code Ann. § 76-5-106.5. Instead, a respondent

must intentionally and knowingly violate a permanent civil injunction, ordered by a district court, before a respondent is guilty of a misdemeanor and therefore create a criminal record.⁶ *Id.*

A civil stalking injunction is issued as a protective measure against the possibility of future actual bodily harm or emotional stress. *See* House Floor Debate on H.B. 25, Civil Stalking Amendments, 2001 Leg. Gen. Sess. (statement of Rep. LaWanna Shurtliff.) attached to Br. of Appellant as Addendum F. The legislative intent reflected in the plain language of the statute offers protection to a broad category of persons.

Although traditional stalking is associated with the crime of domestic violence, The National Center for Victims of Crime reports that thirty-four percent of male victims are only acquaintances of the stalkers, and thirty-six percent of male victims do not know the individual that is stalking them.⁷ The same report shows nineteen percent of women are stalked by acquaintances and twenty-three percent of women are stalked by a stranger. *Id.* The National Center for Victims of Crime suggests victims to take action against

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

(4) Stalking is a class A misdemeanor: (a) upon the offender's first violation of Subsection (2); or (b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions. Utah Code Ann. § 77-3a-103(2).

⁷ *Stalking in America, National Violence Against Women Survey*, Stalking Resource Center, National Center for Victims, *available at* http://www.ncvc.org/src/main.aspx?dbID=DB_NVAW587 (last visited December 29, 2006).

stalkers because “stalkers seldom “just stop.””⁸ In fact, “behaviors can turn more and more violent as time goes on.” *Id.* Therefore citizens requesting a civil stalking injunction should be granted such protection if the district court finds the petitioner has a reasonable basis to fear the respondent. The Court should affirm the civil stalking injunction because the Towners have a reasonable basis to fear Mr. Ridgway’s threatening and aggressive behavior.

A. The District Court Found the Petitioner Met the Burden of Proof In Demonstrating the Necessary Elements of the Stalking Injunction.

In this case, the District Court found the Towners met the burden of proving the elements of stalking. Stalking occurs when a person “(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;” “(c) whose conduct: (i) induces fear in the specific person of bodily injury to himself or a member of his immediate family; or (ii) causes emotional distress in the specific person or a member of his immediate family.” Utah Code Ann. §76-5-106.5(2). A course of conduct is defined in the statute as “maintaining a visual or physical proximity to a person or

⁸ *Stalking Myths and Realities*, Stalking Resource Center, National Center for Victims, *available at* <http://www.ncvc.org/src/AGP.Net/Components/DocumentViewer/Download.aspxnz?DocumentID=40528>

repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person.” *Id.* at 1(c). Repeatedly is defined as on two or more occasions. *Id.* at (c).

In *Salt Lake City v. Lopez*, the defendant challenged the constitutionality of the stalking statute by offering innocent examples of conduct, such as necessary contact of a divorced couple during child visitations, that might “cause a reasonable person to become upset, without the requirement of a visible threat.” 935 P.2d 1259, 1263, 313 Utah Adv. Rep. 26 (Utah App. Ct. 1997). The *Lopez* court held the examples offered by the defendant were “not typically a course of conduct “directed at” another party causing another person emotional distress.” *Id.* at 1264. The court explained that emotional distress results from conduct that is outrageous and intolerable in that it offends the generally accepted standards of decency and morality.” *Id.* (citing *Russell v. Thomson Newspapers, Inc.* 842 P.2d 896, 905 (Utah 1992)).

In this case, Mr. Ridgway contends that he “never threatened any bodily injury to the Towners,” yet during one of the encounters between Mr. Ridgway and Mrs. Towner, Mr. Ridgway’s threat was implied by his threatening and aggressive move toward Mrs. Towner. Mrs. Towner witnessed Mr. Ridgway physically control his actions and forcefully turn himself away from her as he came within one and half feet, or 18" from her body. (R. 112:27-28, 36.) Mrs. Towner was also warned by another lady who witnessed this encounter that Mr. Ridgway had a bad temper and told Mrs. Towner to be

careful around him. *Id.*

In another incident between Mr. Ridgway and Mrs. Towner she felt it necessary to put up her hand in signaling for Mr. Ridgway to stop approaching her to protect her daughter. (R. 112:29-30.) Clearly, these incidents demonstrate that the Towners do not have to show “emotional distress” because Mr. Ridgway’s conduct implied the possibility of physical violence and his behavior was not innocent. Instead, Mr. Ridgway’s conduct was intentionally directed toward Mrs. Towner and was sufficient for Mrs. Towner to fear bodily injury for herself and for her daughter. Both incidents demonstrate an invasion of personal space and a reasonable basis to fear a potential physical assault.

Notwithstanding this, the record is riddled with enough other examples showing Mr. Ridgway’s conduct that meets the standard of emotional distress because his behavior is outrageous and intolerable offending the generally accepted standards of decency and morality. In addition to Mr. Ridgway approaching Mrs. Towner in a threatening manner, Mr. Ridgway’s verbal threat to Mr. Towner that “It doesn’t stop here,” (R. 112:8.) and Mr. Towner’s report of receiving “harassing e-mails and phone calls” and “instant messages” for nearly two years, (R. 112:3-4.) constitutes evidence of further unwanted encounters with Mr. Ridgway. Respondent clearly misconstrues the facts when he contends that there are only a few incidents several years apart.

Even if the Court considers only the two incidents of Mr. Ridgway’s physical aggression toward Mrs. Towner, it is clear Petitioners met their burden of proving each

element of the statute. Here, Mrs. Towner points directly to two incidents where Mr. Ridgway engaged in a course of conduct by “maintaining a visual or physical proximity” to Mrs. Towner conveying threats implied by Mr. Ridgway’s conduct on “at least two occasions.” The Court should affirm Judge Lindberg’s order following the plain language of the statute for the civil stalking injunction when the District Court found the Towners met the burden of proving each element of the civil stalking injunction.

B. The Statute Calls for a Reasonable Person Standard.

The District Court found the Towners met the required standard by showing a reasonable fear of Mr. Ridgway. The appropriate standard of Utah’s Stalking injunction is for a “reasonable person” to be “placed in reasonable fear of bodily injury” or “suffer emotional distress” to himself or a member of his immediate family. Utah Code Ann. 76-5-106.5(2). A respondent’s conduct should be viewed in light of all the facts and circumstances of a case. *Ellison v. Stam*, 136 P.3d 1242, 1248, 549 Utah Adv. Rep. 24, 2006 UT App. 150 ¶29 (reversing and remanding a dismissed stalking injunction because the respondent’s behavior may have been outrageous conduct when all of the incidents were viewed cumulatively instead of individually.) *Id.* at ¶ 33. A reasonable person standard considers what a reasonable person would believe after experiencing their own incidents with a respondent, and in addition, what a petitioner believes about the respondent’s conduct with others.

Here, the Towners believe Mr. Ridgway is unpredictable, mentally unstable, and

has a propensity to be violent. (R.112:10-12,37.) When petitioning the District Court, the Towners also had personal knowledge of Mr. Ridgway's encounters of physical violence with others. (See "Exh. C.") Evidence of Mr. Ridgway's unpredictable behavior is also demonstrated in the record by the Affidavit of Service by Silvan D. Warnick when Mr. Ridgway's demeanor instantly changed from amicable to hostile. See "Exh. D."

The Towners are personally aware of Mr. Ridgway's unacceptable aggressive and threatening behavior. They are aware that the Republican Party has had to call the police to have Mr. Ridgway escorted out of several meetings. (R. 112:28.) These incidents reflect what the Towners believe about Mr. Ridgway's behavior and the standard of having a reasonable basis of fear. The Court should affirm the civil stalking injunction because when viewed cumulatively, Respondent's behavior directed toward the Towners combined with the Towners' belief that Mr. Ridgway is unpredictable, mentally unstable, and has a propensity to be violent demonstrates that the Towners have a reasonable basis of fear against Mr. Ridgway.

C. The Civil Stalking Injunction Meets Requirements of the Plain Language of Utah's Stalking Injunction Statute.

The District Court ordered the civil stalking injunction because Petitioners met the requirements in the plain language of Utah's stalking injunction therefore the Court should affirm Judge Lindberg's decision. The Court "read[s] statutes in accordance with their plain language." *Bailey v. Bayles*, 52 P.3d 1158, 1165 (Utah 2002)(citing *Associated Gen. Contractors v. Bd. of Oil, Gas & Mining, Dep't of Natural Res.*, 38 P.3d 291, 2001

UT 112, ¶ 27). Courts “presume that the legislature used each word in a statute advisedly”, and they “give effect to each term according to its ordinary and accepted meaning.” *Li v. Enterprise Rent-A-Car Co. of Utah*, 2006 WL 3488859 (Utah 2006) (citing *Arredondo v. Avis Rent A Car Sys., Inc.*, 2001 UT 29, ¶ 12, 24 P.3d 928 (citation and internal quotation marks omitted)).

Here, the plain language of the statute is not ambiguous. Judge Lindberg’s application of the facts to the elements of the statute are correct. At odds with Respondent’s argument, Utah’s legislature has not defined a limit of time when a course of conduct may accrue. Even if there were a limit of time for accruing a course of conduct, Mr. Ridgway is misconstruing the facts to contend that there are only “two verbal exchanges eighteen months apart (with amicable encounters in the interim)” *See* Br. of Appellant at 26. The incidents between Mr. Ridgway and Mrs. Towner were not isolated incidents, nor were they limited to verbal encounters. Instead, both incidents involved Mr. Ridgways physical approaches into Mrs. Towner’s personal space causing her to fear possible bodily injury. Additionally, the incidents were not isolated to two encounters with physical proximity and the threat of violence. The record shows that Mr. Towner was continually receiving harassing e-mails during this time.

Respondent also misconstrues the facts of the case to imply that the Towners had amicable encounters with Mr. Ridgway. Instead, the facts show that Mrs. Towner tried to be amicable as she testified “You always kind of feel harassed [by Mr. Ridgway] but you

just try to put up with it.” (R. 112:37.) Here, based on the plain language of the statute, as defined by the legislature, the Court should affirm the civil stalking injunction issued by Judge Lindberg.

D. The Civil Stalking Injunction was Sought as a Protective Measure Against Further Violence.

Mr. Towner petitioned the District Court for the civil stalking injunction as a protective measure against the possibility of future threats or acts of physical violence from Mr. Ridgway. The district court is in the best position to weigh the credibility of the witnesses and from this make findings of fact. *Matter of Estate of Beesley*, 883 P.2d 1343, 1349 (Utah 1994). “Accordingly, absent a proper showing, [a reviewing court] will not revisit the facts on appeal.” *Id.* (citing *Saunders v. Sharp*, 806 P.2d 198, 199 (Utah 1991) (per curiam); *Oneida/SLIC v. Oneida Cold Storage & Warehouse, Inc.*, 872 P.2d 1051, 1052-53 (Utah Ct.App.1994).

At the hearing, Respondent argued that Mr. Towner sought the civil stalking injunction as a means of political payback. Despite this claim, after hearing all of the evidence, Judge Lindberg found the Towners had a reasonable basis of fear of Mr. Ridgway. A review of the record shows that Mr. Towner separated his personal disagreements with Mr. Ridgway’s unacceptable political behavior from Mr. Ridgway’s threatening and aggressive behavior. Respondent relies on the misstatement in the Deseret Morning News as his only solid evidence of Mr. Towner’s political motives, even though Respondent knows that this was a misstatement, corrected, and therefore should

not be part of the record unless Respondent relies on the corrected version of the facts. The omission of one word in the news article, from “Absolutely” to “Absolutely Not,” completely changes Mr. Towner’s reason for seeking the civil stalking injunction.

Respondent also claims that the timing of service shows the civil stalking injunction was sought to keep Mr. Ridgway from speaking at the convention. *See* Br. of Appellant at 25. As stated above, Mr. and Mrs. Towner left on vacation immediately after the Salt Lake County Convention, Saturday, April 29, 2006 (R. 112:12-13.), and Mr. Towner petitioned the court the Monday after he returned from California on May 8, 2006. (R. 112:16,35; R.1). Constable Silvan Warnick served Mr. Ridgway on May 11, 2006, three days later. *See* “Exh. D.” The Affidavit of Service shows Mr. Towner paid a Rush fee of \$25.00. *Id.* Nothing in the record reflects Mr. Towner’s intent to seek the civil stalking injunction for any other reason than as a protective measure against further violence from Mr. Ridgway.

Respondent points to an e-mail sent directly to Mr. Ridgway, which was one of Mr. Towner’s last e-mail communications with Mr. Ridgway, explaining to Mr. Ridgway that he had made the most powerful enemy in the Utah Republican Party. *See* Br. of Appellant at 7; “Exh. A..”) This e-mail concerned a personal political disagreement between Mr. Ridgway and Mr. Towner and had nothing to do with Mr. Towner’s petitioning the court for the civil stalking injunction. The e-mail was dated August 24, 2004, almost two years prior to Mr. Towner’s petitioning the court for the civil stalking

injunction.

Respondent also points to a letter Mr. Towner wrote to Utah State Republican Party Chairman, Joe Cannon. In this letter, Mr. Towner only discussed Mr. Ridgway's unacceptable political behavior at the Salt Lake County Convention. At no time did Mr. Towner discuss Mr. Ridgway's threatening and aggressive behavior to Joe Cannon or Mr. Towner's intention to petition the district for a civil stalking injunction against Mr. Ridgway. (R. 112:14.) The facts of this case show that Mr. Towner separated his personal political disagreements from his fear of Mr. Ridgway's threatening and aggressive behavior.

This is true, as well, for the e-mail Mr. Towner sent to Don Guyman. *See* "Exh. B." This e-mail described Mr. Ridgway's illegal distribution of flyers in the caucus meeting at the Salt Lake County Convention without any mention of the incident between Mrs. Towner and Mr. Ridgway after the caucus meeting. *Id.* The Towners never asserted that Mr. Ridgway's distribution of flyers during the caucus election meeting was censurable conduct for the purposes of a civil stalking injunction. A careful review of the record shows that Mr. Towner's personal political disagreements with Mr. Ridgway had nothing to do with his petition to the District Court for protection against future violence from Mr. Ridgway. Accordingly, Judge Lindberg was correct in continuing the amended stalking injunction against Mr. Ridgway.

III. Comments Designed to Harass and Annoy Petitioners Should Be Restricted Because of Respondent's Threatening and Aggressive Behavior.

The Court should affirm Judge Lindberg's order because the stalking injunction does not restrain the political free speech of Mr. Ridgway. Under Utah law, one who believes that they are a victim of stalking may petition the district court for an injunction against the perpetrator. Utah Code. Ann. § 77-3-101(2). A district court issuing a stalking injunction may enjoin the respondent from "coming near the residence, place of employment, or school of the other party or specifically designated locations." *Id.* at 5(b). The district court may also restrain the respondent from "contacting, directly or indirectly, the other party, including personal, written or telephone contact with the other party, the other party's employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party." *Id.* at (c). This is precisely what the civil stalking injunction challenged by Mr. Ridgway does. Nevertheless, Respondent argues the stalking injunction, as ordered, violates the First Amendment and is not authorized by Utah's stalking statute. *See* Br. of Appellant at 12.

Respondent continues to argue that the injunction, as ordered, "makes it a criminal offense for Mr. Ridgway to make comments about the Towners—both political figures—which contain content that may "annoy" the Towners, unless the comments are in direct response to a political position taken by Mr. Towner." *See* Br. of Appellant at 13. Additionally, Mr. Ridgway argues that if "heated political exchanges alleged here constitute the crime of stalking, then Utah's criminal stalking statute is constitutionally

overbroad, as it would punish citizens for engaging in political speech.” *Id.* As stated above, Respondent misconstrues Judge Lindbergs order.

A. Mr. Ridgway is Not Prohibited From Making Comments to Other People About the Towners.

The civil stalking injunction, as applied, does not enjoin Mr. Ridgway from making comments about the Towners to other people. The legislature empowered the district court with the authority to restrain the respondent from contacting the petitioner in any manner “directly or indirectly.” Utah Code. Ann. § 77-3-101(5)(c). This includes contacting the petitioners “employers, employees, fellow workers or others with whom communication would be likely to cause annoyance or alarm to the other party.” *Id.*

Here, the civil stalking injunction states:

“The Defendant, Michael Ridgway is free to post communications on electronic media so long as the positing represents commentary on the substance of political positions taken by Mr. Towner, otherwise Mr. Ridgway is enjoined from making comments directed at Petitioner or his family that are designed to harass or annoy.” R. 92 ¶ 4.

As stated above, this provision only enjoins Mr. Ridgway from making comments to the Towners or making comments that are directed to the Towners, that are designed to “harass or annoy” the Towners. The injunction does not make it a criminal offense for Mr. Ridgway to make comments about the Towners to other people, unless the comments are designed to reach the Towners because the comments are directed to the Towners, causing further harassment.

The injunction is not overbroad. This is best demonstrated in the record by the

first proposed amended civil stalking injunction. *See* R. 90; “Exh. E.” Here, Judge Lindberg correctly refused to sign the proposed amended civil stalking injunction because paragraph 5 read:

“The Defendant, Michael Ridgway is enjoined from posting any communications on electronic media which are directed to or personally reference Mark E. Towner or Carrie Towner. The Defendant is free to post electronic communications which are “strictly political speech” and which are not personalized to Mark E. Towner or Carrie Towner.”

As stated above, if Judge Lindberg would have signed the first proposed civil stalking injunction, Mr. Ridgway would not have been allowed to talk about the Towners. However, the amended civil stalking injunction contested by Mr. Ridgway only appropriately prohibits Mr. Ridgway from communicating with the Towners, directly or indirectly.

The record also reflects Judge Lindberg’s careful consideration of this issue. The transcript states:

THE COURT:	“In my view, I am not going to interfere with First Amendment protection practices. As long as -
MR. RIDGWAY:	(Inaudible).
THE COURT:	- a posting has to do with strictly political commentary on political issues and in no way mentions or is directed to the petitioner or the petitioner’s personal situation or family, then you are free to make whatever comments you wish to make as part of your right to engage in political speech.
MR. BOOHER:	Just to clarify, is the content of the e-mail that would be directed to Mr. Towner that would be encompassed by the order, not the fact that an e-mail ended up on his (inaudible).

THE COURT: Correct.⁹
R.112:49-50.

Judge Lindberg further clarified:

THE COURT: So it is understood that from this point on - let me make this very clear. Any personal communications directly aimed at [sic] petitioner and /or his family to personal e-mails, to instant messaging, those kinds of personalized communications may not occur, period.
As to communications to central blogs or list servers that are moderated by Mr. Towner, that will also be permissible to the extent that it is focused strictly on political speech and it is not dealing personally about Mr. Towner. Now, if Mr. Towner is taking a political position and respondent is commenting not as to Mr. Towner but simply as to the political position, he's free to do so.

MR. BOOHER: Or to Mr. Towner as a political candidate?

THE COURT: He can engage in political speech in terms of presenting his views as to why Mr. Towner should or should not be supported as long as obviously that does not cross over into liable or slander but that is part of the market place of ideas and I have no problem with that.
R. 112:50-51.

The legislature designed the civil stalking injunction to relieve the petitioner from continual contact with the respondent after a court determines the petitioner has a reasonable basis to fear a respondent. The District Court was clear in ruling Mr. Ridgway can communicate with anyone, so long as he does not communicate directly or indirectly

⁹ Additionally, Mr. Ridgway is not barred from attending anything. *See* Judge Lindberg's comment at R. 112:47. In Judge Lindberg's answer to Mr. Ridgway's question whether he was barred from attending the University of Utah campus, where Mrs. Towner is a student, Judge Lindberg held: "As long as you are outside of 20 feet from either the petitioner or petitioner's family, I'm not going to impose an order barring you from anything else."

with the Towners. In this case, Judge Lindberg found the Towners had a reasonable basis to fear Mr. Ridgway therefore the Court should affirm the civil stalking injunction as ordered.

B. The Civil Stalking Injunction Does Not Restrict Mr. Ridgway's Political Speech on Any Topic.

Mr. Ridgway is free to post all political commentaries. The injunction reads,

“The Defendant, Michael Ridgway is free to post communications on electronic media so long as the posting represents commentary on the substance of political positions taken by Mr. Towner, otherwise Mr. Ridgway is enjoined from making comments directed at Petitioner or his family that are designed to harass or annoy.” R. 92 ¶ 4.

Here, Respondent would like the Court to interpret this provision very narrowly in assuming Mr. Ridgway is restrained “from speaking publicly on any topic that may annoy the Towners, unless Mr. Towner has first adopted it as his own political view.” *See* Br. of Appellant at 32. A plain reading of paragraph 4 shows that Judge Lindberg is not placing a prior restraint on Mr. Ridgway's political speech. There is no restraint prohibiting Mr. Ridgway from speaking on any political topic. There is no need for the civil stalking injunction to specifically state that Mr. Ridgway can post political commentaries on any subject. Any other ruling would be an obvious violation of free speech. Instead, the civil injunction only addresses Mr. Ridgway's communication, directly or indirectly with the Towners and prohibits Mr. Ridgway from making comments directed at Mr. Towner or his family that are designed to harass and annoy. Additionally, the injunction gives Mr. Ridgway the freedom to post any political commentary he wishes in response to a

political commentary posted by Mr. Towner.

Furthermore, it does not make it a criminal offense for Mr. Ridgway to post political commentaries that may “annoy” the Towners. Instead, the civil stalking injunction only prohibits Mr. Ridgway from making comments directed at the Towners that are designed to harass or annoy. Therefore the Court should affirm Judge Lindberg’s order as amended because it does not place a prior restraint on Mr. Ridgway’s political free speech.

C. Vacating This Civil Stalking Injunction Will Have a Chilling Effect on Political Participation.

If the court vacates this civil stalking injunction it will have a chilling effect on ordinary citizens who wish to become involved in politics, or any other organization in their community. Respondent argues that if the injunction is not vacated, it enjoins him from participating in “heated political exchanges.” This is simply not true. The Towners associate with hundreds of members of the Utah Republican Party and often engage in political exchanges that could be considered “heated political exchanges.” Yet, “heated political exchanges” do not include physical invasion of personal space and personal threats of potential physical harm or emotional distress.

In a public forum of debate, conduct such as Mr. Ridgway’s is not only ungentlemanly, it is outrageous and intolerable in that it offends the generally accepted standards of decency and morality. The Republican Party is a private organization. Positions of leadership held in any political party are no different than positions in any


other private organization, for example the PTA. Conduct such as Mr. Ridgway's behavior, that crosses the line between free speech and moves to unacceptable threatening conduct is not appropriate in any public forum. Therefore, to avoid a chilling effect on ordinary citizens who are involved in politics in their community, or any other organization in our society, the Court should affirm Judge Lindberg's order when the Towners have a reasonable basis of fear against Mr. Ridgway.

CONCLUSION

For the reasons stated above, the Towners respectfully requests that this Court affirm Judge Lindberg's continuance of the amended stalking injunction.

Dated this 8th day of January, 2007.

STIRBA & ASSOCIATES

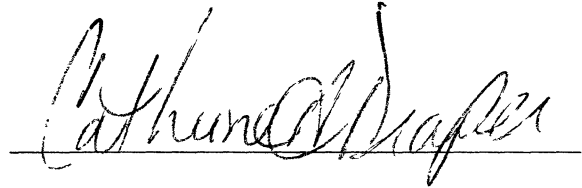
By: 
PETER STIRBA
WAYNE CALDWELL
Attorneys for Mr. Towner, Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2007, I caused to be served a true copy of **BRIEF OF APPELLEE** by the method indicated below, to the following:

Brett P. Johnson (7900)
Troy L. Booher (9419)
Peter H. Donaldson (9642)
Snell & Wilmer, L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801)326-8090
Attorneys for Appellant

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

A handwritten signature in cursive script, reading "Catharine A. Draper", is written over a horizontal line.

Tab A

Messages

- Home
 - Messages
 - Post
 - Chat
 - Files
 - Links
 - Database
 - Polls
 - Members
 - Calendar
- Message # Go
- Search: Search Post Message
- Up Thread | Message Index | View Source | *Message 24313* of 32536 < Previous
Unwrap Lines | Next >
- Reply
- Forward
- From:* "votehunter" <gopguy@...>
Date: Sat Aug 21, 2004 8:02 pm Send Email
Subject: Re: Trying to be Cival with Mike Ridgeway, Read
from Bottom Up

Yahoo!

Groups Tips

Tom, sorry I was so mad at the time when I wrote my email I forgot to type "a" " a most powerfull enemy". I'm sure there are many others that can claim they are bigger enemys, in fact several of you have already pointed this out in private emails.

Did you know...

Create a group for your cause.

As far as forwarding emails. These emails were between Mr. Ridgeway and Myself. He was the person who called me out to go public, not the other way around. It was I who asked that my messages on UTGOP be forwarded to his little Army.

I attended one meeting with Mr. Ridgeway at the request of Morgan Philpot at Dee's. Since that meeting, Mr. Ridgeway has called me a traitor and a Liar. Now his has made a fatal mistake to call myself and others the same in writing in the form of a time stamped email that can be entered as evidence.

Keep

connected to
your friends

and family
through blogs,
photos and
more.

Mark

--- In gopconservatives@yahoogroups.com, "Thomas W. Clay" <tclay@x> wrote:
> Mark, a couple of things:
>
> 1) "Most powerful enemy"??? I thought it was my turn this week! :)
>
> Ok, all kidding aside,
>
> I have denounced my involvement with Mike a while ago, so I understand your
> decisions. But, your method of denunciation is wrong. On this list, there
> are rules dealing with forwarding messages. Although I have broken them
> (only once - I ask permission now), I do my best to abide by them. If
> someone explicitly requests that a message not be forwarded, I won't forward

> it - at least not without a court order, and even then, I might not.
>
> I don't know if your involvement with Mike was general knowledge (mine was),
> so I will assume it was. The public denunciation is appropriate (as mine was), but your inclusion of emails wasn't, especially since there was at least one specific request for not forwarding it.
>
> Tom
>
>
> -----Original Message-----
> From: votehunter [mailto:gopguy@m...]
> Sent: Saturday, August 21, 2004 12:28 PM
> To: gopconservatives@yahooogroups.com
> Subject: [gopconservatives] Trying to be Cival with Mike Ridgeway, Read from Bottom Up
>
> This was my last and only future correspondence with this individual. I would suggest to anyone else who try's to talk with this individual to expect the same.
>
=====

> =====
> "Mike, You have insulted me for the last time!
>
> NEVER, EVER Speak to me AGAIN
>
> You have made the MOST Powerful ENEMY in the Utah Republican Party"
>
=====

> =====

Tab B

To: Utahgop@yahoogroups.com
From: "Mark Towner" <marktowner@comcast.net>
Date: Sat, 6 May 2006 16:30:11 -0600
Subject: Re: [utahgop] Re: Lets get the facts straight

Don,

I sent an letter via email to Joe Cannon on May 1, 2006 at around 2am out of total disgust. The party should have taken legal action against Ridgway long before now. Censure and Roberts rules are not going to curb his behavior, only the legal system can stop his behavior. I have not received any reply from Joe or the Republican Party as of yet.

The Ridgway incident occurred in the Caucus elections for Senate District 2 at the Salt Lake County Convention. We were told by the officials running the meeting that no handouts were allowed and candidate John Pickering was asked to pick up his campaign flyers. During the second speech (Mr. Pickering) Mike started handing out stacks of flyers to each row of delegates and asked them to take one and pass it along. This disrupted the meeting, and Mr. Pickering had to stop talking, and the officials who were outside the door, came back in, saw what was happening and told Mike to stop. I was the next to speak and while I was trying to speak I could see the delegates reading Mike's letter, not listening to what I was saying. Once I was finished there was much confusion on what to do. Carrie tried to stop the vote and be allowed to speak against Ridgway's action. The delegates were already in a foul mood as there were not enough chairs and to air conditioning and the room was very uncomfortable.

The bottom line Don was Mike did this for only one reason. To poison the delegates about me and cause doubt. Many delegates came up after the meeting and said they were influenced by the letter and wanted to change their vote when they got the facts.

If you can condone this behavior, I will have lost all respect for you. Even Drew Chamberlin thought it was a terrible thing to do, and indicated that he was not aware Mike was planning to stoop this low.

Mark

Tab C

May 8, 2006

FILED
DISTRICT COURT

06 MAY -8 AM 11:00

Letter to the Court:

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY

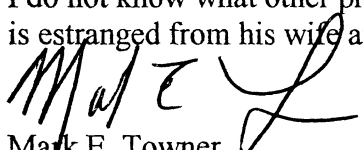
The problems started with Mr. Ridgway in 2003 when my wife was elected as party treasurer for Salt Lake County. Meeting after meeting Mr. Ridgway would confront the party officers and harass. In one incident my wife was afraid Mr. Ridgway would strike her. Mr. Ridgway has suffered some brain trauma and it appears he is not fully aware of his actions.

After this last incident where Mr. Ridgway planned and executed a political dirty trick to influence the outcome of a Political Election, I have decided to take legal action against him. This will involve a tort claim for \$5000 which I had spent to fund my election. With my defeat in the convention assisted by Mr. Ridgway's slanderous letter, I could not continue into a primary and raise funds to offset those I had spent.

My concern is that once Mr. Ridgway is served this and other legal documents he will fly into a rage and come seeking revenge. Others in the Republican Party have experienced Mr. Ridgway's harassment when he has followed them to their work or church and verbally assaulted them in front of friends and neighbors.

I'm afraid Mr. Ridgway may lose total control and seek a violent revenge against myself, my wife, or my children.

I do not know what other protective orders may be in place for Mr. Ridgway. I know he is estranged from his wife and children.


Mark E. Towner
801.502.9134

Tab D

Salt Lake County
UTAH
E OF UTAH)
: SS
ITY OF SALT LAKE)

Silvan D. Warnick
Constable
Amended
AFFIDAVIT OF SERVICE



, Silvan Warnick, being first duly sworn upon my oath say:
I am a CONSTABLE of Salt Lake County, State of Utah and I am a citizen of the United States over the age of 18 years at
the time of service herein, and not a party to or interested in the within action.

On May 11, 2006, I received the within and hereto annexed:

1. Injunction for: Defendant, Michael Ridgway;

and I served said article(s) by leaving a true copy with:

1. Michael Ridgway, Personally

person of suitable age and discretion, where the within named party was residing at,

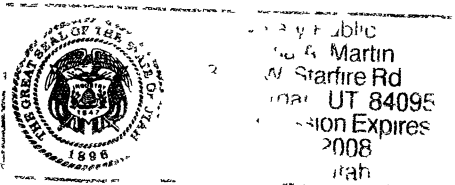
317 N K Street, Salt Lake City, UT

the property where service was made, on **May 11, 2006**

further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my
name and official title thereto.

Subscribed and sworn to before me this May 11, 2006.

[Signature]
3256 WEST STARFIRE ROAD, SOUTH JORDAN, UTAH, 84095



SERVICE CHARGES:	50.00
MILEAGE:	7.50
Rush	25.00
TOTAL CHARGES:	82.50

[Signature]

NOTARY PUBLIC Residing at Salt Lake City, Utah

Case #: 0609075525

Salt Lake District Court

TEST:

I went to the home of Michael Ridgeway on May 11, 2006, to serve the injunction. Mr. Ridgeway answered the door. I explained who
I was and what was ordered. Mr. Ridgeway interrupted me and went back into the house and got a tape recorder. His demeanor
changed from amicable to hostile. He challenged me on served the paper after 5:00 p.m. He said he would go to the Republican
caucus anyway. He said "You can arrest me there " I left the documents and told him to govern himself accordingly

Tab E

4. The Defendant, Michael Ridgway is enjoined from placing himself within 25 feet of Mark E. Towner or Carrie Towner or any of the above listed individuals in any public place or setting.

5. The Defendant, Michael Ridgway is enjoined from posting any communications on electronic media which are directed to or personally reference Mark E. Towner or Carrie Towner. The Defendant is free to post electronic communications which are strictly "political speech" and which are not personalized to Mark E. Towner or Carrie Towner.

6. If Defendant, Michael Ridgway violates this Order, the Court may find him in contempt.

7. If Defendant, Michael Ridgway violates this Order, he may be arrested and prosecuted for the crime of stalking and any other crime he may have committed in violation of this Order.

Dated this ____ day of June, 2006.

BY THE COURT:

HONORABLE DENISE P. LINDBERG
Third District Court Judge

APPROVED AS TO FORM:

Troy Booher
Attorney for Michael Ridgway

*Pursuant to telephone
conf. w/ counsel on
6/27, Petitioner's counsel
declined - to file amended order
filed unsigned*