

Brief of Appellant - Civil Issues

The case arises from a dispute between appellant Paul Trummel, a retired freelance journalist, and respondent Stephen Mitchell, the administrator of Council House, Inc., a federally-subsidized housing project. Trummel classified Mitchell as a tyrant who abused his authority and violated various laws and regulations. He investigated various events at Council House then reported his findings and opinions in newsletters and on web sites.

Mitchell may dispute the accuracy of allegations but not the right to conduct investigations and publish articles classified as protected speech under the First Amendment. Nevertheless, Mitchell persuaded the King County Superior Court that writing classified as actionable "harassment".

Judge James A. Doerty, Washington Superior Court, held a hearing in which he ignored both First Amendment principles and the statutory elements of harassment. He also violated rights to counsel and to due process. He summarily denied that Trummel held press credentials and claimed he had no First Amendment rights then entered an order of anti-harassment against him.

The trial court's unconstitutional orders led, in rapid progression, to constructive eviction from Council House, to the imposition of punitive fines, and finally to incarceration (at age 68) in the King County Jail for almost four months. Trummel now asks the appellate Court to restore his constitutional rights by reversing virtually every aspect of the trial court's rulings.

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Brief of Respondents - Civil Issues

Trummel violated the peace and security of Council House residents and staff through verbal confrontation, unsolicited inflammatory writings, and express and implied threats. Trummel wrote offensive "newsletters" about Council House staff and residents and distributed these writings either by posting the newsletters or sliding them under the door of individual apartment units.

Council House enacted a "house rule" prohibiting any person from attaching newsletters or any other written communication to the door of any resident's apartment. Trummel filed an anti-harassment petition against Council House administrator Stephen Mitchell, which was denied after a hearing by Judge James A. Doerty.

Stephen Mitchell filed a petition for an anti-harassment order against Trummel. He supported the petition with declarations by forty-three residents who described harassing behavior and the emotional toll that it took on them. The court found engagement in a knowing and willful course of conduct directed at specific persons within Council House detrimental to those people and served no legitimate or lawful purpose.

Doerty entered an anti-harassment order which restrained Trummel from contacting Mitchell or Council House, from keeping Mitchell or Council House under surveillance, and from entering or coming within 500 feet of Council House. Further he restrained Trummel from contacting in person, by mail, electronically, by telephone, by writing, or through any third person any resident of Council House and any board member, staff, or employee of Council House at any location.

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Reply Brief of Appellant - Civil Issues

Mitchell could have brought eviction proceedings against Trummel but he chose a "speedy and inexpensive method of obtaining [a] civil anti-harassment protection order". That resulted in a series of legal errors culminating in Trummel's imprisonment for publication of constitutionally protected materials.

Trummel was unrepresented during the hearing and was denied his right to have counsel to cross-examine declarants. Mitchell excuses this outrage against human rights on grounds that Trummel was rude to old people. This astonished national and international news media.

Appellant urges the Court to review the declarations cited by Mitchell for evidentiary and legal sufficiency and to ignore emotional and conclusory statements. Careful and fair reading of the record leads inescapably to the conclusion that Mitchell's allegations, even if true, do not establish that Trummel has actually harassed Mitchell or anyone else.

Mitchell concedes that the trial court did not make the statutory findings required to ensure that anti-harassment statutes do not violate constitutional rights. He also concedes that an anti-harassment petition cannot be based on lawsuits or complaints to government departments also that content-based restrictions on web sites classify as unconstitutional.

The publications did not rank as defamatory and the declarations submitted by Mitchell were not admissible in that he was not the target of any course of harassing conduct. Moreover, he concedes that he is not a "fiduciary" of tenants, that he does not have legal authority to bring an action on tenants' behalf, and that the tenants are not parties to the action.

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Brief of Appellant - Contempt Issues

Mitchell brought a motion for contempt based on the content of a web site. The trial court found that content violated the "surveillance" provision of a court order, found Trummel in contempt, and imposed fines of \$100 per day. The court then issued a new antiharassment order that explicitly required Trummel to remove "personal identifying information" from his web site.

Mitchell brought a second motion for contempt based on the web site. Trummel appeared without an attorney at the motion. Despite the well-established constitutional right to assistance of counsel in a contempt proceeding, Judge Doerty failed to appoint counsel to represent him.

Trummel argued, *pro se*, that the trial court had no jurisdiction over his web site and that his speech was protected in any event. The trial court disagreed, found Trummel in contempt, and jailed him indeterminately.

His wrongful incarceration has captured the attention of the national and international media. After Trummel had been in jail for more than two months, the trial court, appointed an attorney to represent him in contempt proceedings. Judge Doerty launched a review hearing with invective then conditionally released Trummel pending a hearing to give him an opportunity to purge his contempt by removing "private information" from his publications.

Strangely, the court also claimed that Trummel was "not ordered to quit writing or to quit publishing in any way," even though Trummel had just served three and a half months in jail - including several weeks in solitary confinement - for publishing the names of third parties who were not even petitioners.

The trial court denied a motion to vacate the finding of contempt, declined to return him to jail, then entered a new antiharassment order with altered geographical restrictions to stay away from hundreds of people who never petitioned the court for relief, and from posting, on his web site, any "identifying information," including the names of any current, former or future staff member, tenant or attorney of Council House.

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Brief of Respondents - Contempt Issues

Subsequent to the entry of an anti-harassment order, Trummel continued to keep surveillance over the staff and residents at Council House. Instead of posting his newsletters to the residents' doors, he broadcast his defamatory publications on the world wide web.

The publications alleged that Mitchell and Council House staff engaged in racial, political, and religious discrimination. Council House residents and staff reported that continued surveillance made them fear for their safety.

Judge Doerty found that Trummel had violated the "surveillance" portion of an anti-harassment order and ordered him to remove all personal identifying information regarding Council House staff and residents from his web site. He found that the specific posting on the internet of names and home addresses coupled with inflammatory rhetoric violated the antiharassment order in that it caused the subjects to reasonably feel under surveillance.

Another contempt motion was brought resulting in a finding that he had again violated the anti-harassment order entered against him. The trial court claimed that lesser sanctions had been insufficient to compel him to obey the authority of that court.

Judge Doerty ordered Trummel to the King County jail to be detained until he fully complied with his order. At a compliance hearing the Court found that Trummel had appropriately purged his contempt and removed the personal identifying information from his web site and released him from jail.

Based on supplemental declarations presented by Council House residents and staff, Judge Doerty again entered a modified anti-harassment order which designated a specific geographical area around Council House which Trummel could not enter and retained the restrictions on contacting Council House residents and posting personal identifying information to the internet.

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Reply Brief of Appellant - Contempt Issues

One of the most serious errors committed by the trial court was the issuance of anti-harassment orders restricting Trummel's contact with dozens of tenants who were not parties, many of them his friends. This followed Mitchell's frivolous assertions that he had the legal authority to file a lawsuit on behalf of his tenants.

The record and Mitchell's own arguments on appeal show that Mitchell never had the "representative capacity" upon which his petition was originally based. The only petitioner in the action was Mitchell himself. Even if Trummel's actions constituted harassment (they did not), the trial court had no jurisdiction to restrict contact with third parties.

Mitchell argued that this "fiduciary" relationship gave him the authority to sue on the tenants' behalf. He never mentioned "real party in interest". Mitchell has changed his position 180 degrees and has abandoned his frivolous claims that the tenants are legally "disabled". He now argues that this is an issue of "real party in interest".

If Mitchell had not falsely represented to the trial court that he had the "representative capacity" to sue on behalf of the tenants, many of the trial court's errors would never have occurred. The statute clearly states that a person claiming harassment must file a petition. The statute also clearly states that direction of a course of harassing conduct must apply only to the petitioner and not to third parties.

The trial court did not have the discretion to determine what "surveillance" meant. No evidence - admissible or otherwise - showed that Trummel engaged in surveillance of Council House or its staff. The trial court relied on "feelings" rather than evidence that Trummel had actually violated the order. That determination had no legal or factual basis.

As a threshold matter, there is some confusion as to whether the term "prior restraint" should be used to describe an unconstitutional post publication restriction on speech. But the issue is not whether the use of the term "prior restraint" to describe the trial court's unconstitutional restrictions on the web site is technically correct. Instead, the issue relates more to whether those patently unconstitutional restrictions on speech may be collaterally attacked.

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[*Attorneys-at-Law*]

[*Washington Supreme Court Decision*]

[*Appellate Judges*]

[*Court Location - Map*]

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