

Nota bene. Court of Appeals published this opinion 14 Jun 04 on the court web site. At that time it became part of the public record. A dilemma arises from the trial court decision to censor names of Council House attorneys and directors despite them appearing in the public record. That prior restraint presents a serious ethical problem for a journalist: Does one publish a court opinion verbatim or alter that public record to comply with an irrational court order?

This illustrates the catch-22 that Judge James A. Doerty created in the trial court. He sent the author to jail for 111 days (25 days in solitary confinement) for publishing Council House attorneys' and directors' names. - all part of the public domain. This opinion contains some of those same names. The author has decided to leave the transcript as a true record of the proceedings. The names still appear in the text although they do not appear in the commentary. [*Metamorphosis*]

Kafkaesque as this may seem, the author has tried to comply with an irrational (probably unlawful) trial court order until reversed by a higher court. If Court of Appeals orders deletion of the names from its own opinion, with specific directions on the language to replace it, then the author will comply with that ruling. [*The Scab Family*]

BECKER, J. - A trial court issued an order restraining Paul Trummel from harassing his neighbors in a high rise apartment building for senior citizens, and then jailed him for contempt of court when he persistently posted their names and addresses on the Internet. Although Trummel vigorously puts forth the First Amendment as a shield, the trial court focused on Trummel's conduct rather than his speech. The court appropriately used the civil antiharassment statute to protect the residents from having to endure aggressive and hostile personal confrontations and surveillance while in the privacy of home; and appropriately concluded that the public posting of personal information violated the no-surveillance provision of the order. We affirm the trial court in all respects.

Proceedings on Antiharassment Petitions

Council House is a non-profit low income apartment complex, 12 stories high, in Seattle. Stephen Mitchell is the administrator. Approximately 160 senior citizens reside at Council House. For two and a half years, Paul Trummel was one of them.

While living at Council House, Trummel produced and distributed a newsletter called "Disconnected" in which he used hostile and harsh language to criticize the other residents, Council House administration, and Mitchell in particular. Mitchell asked him to stop and Trummel responded on March 3, 2001 by petitioning for an antiharassment order against Mitchell. [*Seattle Municipal Code - Prohibited Acts by Owners*]

A statute permits a court to enter an order of protection for a person who is the target of a seriously harassing course of conduct by another who has no legitimate reason for carrying on with the harassing conduct. RCW 10.14.010 et seq. Trummel's petition alleged that Mitchell was making "inflammatory and slanderous" statements about him, and was invading his privacy by entering his apartment without permission and misusing personal information about him. He also said he personally patrolled the building at night documenting noise made by other residents, and he complained that Mitchell had failed to control the noise. [*Life in a Seattle Squirrel Cage*]

Mitchell cross-petitioned against Trummel. He alleged that Trummel "has established a practice of constant defamation of my character I have been under constant investigation because of his false accusations, from state, federal and local government agencies causing me emotional distress and an inability to focus on my daily duties". He said he was receiving constant complaints about Trummel from other residents. [*Rampant Judicial Delusion*]

Trummel's petition came on for hearing before Judge Doerty on March 20. The court heard testimony and made oral findings, but the appellate record does not contain a transcript. The court issued an order denying Trummel's petition and retaining jurisdiction over litigation involving the disputes at Council House. The court continued Mitchell's cross-petition to April 19, 2001, in order to give Trummel more time to prepare his response.

Mitchell modified his petition on April 5 by requesting an antiharassment order be issued to him not only as an individual but also in his representative capacity, on behalf of the residents, employees and directors of Council House. The petition alleged that Trummel's harassing course of conduct included the "tactical use of yelling fits, libelous correspondence and baseless legal actions". Mitchell submitted several letters that Trummel had written to other residents, and declarations from 43 members of the Council House community. The declarations gave concrete detail to the allegations of Trummel's alarming behavior. One resident reported that Trummel confronted him as he was getting off the elevator: "He blocked my path and yelled at me.while accosting me he said twice: 'I will get you, you little runt.'" Another reported that she personally witnessed Trummel haranguing a former resident who was terminally ill, by calling her names such as "a pandering pygmy." Another resident attested that Trummel called him a "disgusting runt" when they met in the elevator, and on another occasion used obscenities when telling him to keep his mouth shut. When one resident disagreed with Trummel in a meeting, Trummel "put his forehead against mine and shouted 'Get off my back, you racist. I have proof you are a racist and I am going to put it in my paper.'"

Trummel appeared pro se at the hearing on April 19, 2001, after filing a written response in which he denied the allegations. Judge Doerty asked both Trummel and Mitchell if they would like to present testimony. Trummel said he had "an attorney who has agreed to review the case" but who, due to short notice, could not be present as he was in court on another matter. Both Trummel and Mitchell agreed to rely on the written submissions. Judge Doerty then discussed the matter

in an extensive oral ruling, in which he detailed the specific items in the declarations that satisfied the elements of unlawful harassment under RCW 10.14. Having found each element to be established, Judge Doerty issued a written order restraining Trummel from contacting Mitchell and the residents of Council House, and effectively preventing him from returning there to live:

1.1 Respondent is RESTRAINED from:

- (a) making any attempts to contact the petitioner.
- (b) making any attempts to keep the petitioner under surveillance.
- (c) going within 1,000 FEET of the petitioner's residence and workplace.

1.2 Other relief ordered:

Paul Trummel is restrained from entering the premises known as Council House, 1501 17th Avenue, Seattle, King County, Washington or coming within 500 feet thereof. Paul Trummel is also restrained 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.

Judge Doerty, while acknowledging the severity of the order, said he could not see any other way to write the order that could be effective, given Trummel's "approach to the proceedings, his contemptuous behavior of the earlier court order, his written responses, his unrelenting opinion that his career as a journalist entitles him to do anything he wants to the detriment of other people". He gave Trummel an opportunity at the hearing to respond to the proposed order, but Trummel offered no comment. Judge Doerty then continued:

This is distressing to me, I don't like the idea of putting people out on the street under an Antiharassment Order, but I want the record to be clear, I don't see any other way to do it and when invited to offer me another way to do it, Mr. Trummel declined to respond.

At this point, Trummel said, "I declare it on the basis of not being represented by counsel."

Eleven days after this hearing, attorney Robert Siegel filed a notice of appearance on behalf of Trummel, and moved for reconsideration of the antiharassment order. Judge Doerty denied the motion. Trummel filed a notice of appeal. His appeal of the civil antiharassment order entered on April 19, 2001, and the order denying reconsideration is the first of the two appeals we review herein.

1. Findings on Statutory Elements.

A trial court may properly issue an antiharassment order "if the court finds by a preponderance of the evidence that unlawful harassment exists". RCW 10.14.080(3). The civil antiharassment statute defines unlawful harassment as follows:

(1) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of "course of conduct."

Trummel initially contends that the April 19th antiharassment order must be reversed because the court failed to enter written findings specifying Trummel's course of conduct, the person at whom his conduct was directed, and the emotional distress suffered by such person. Trummel contends written findings are required by *State v. Noah*, 103 Wn. App. 29, 39, 9 P.3d 858 (2000). While the trial court entered written findings in *Noah*, neither *Noah* nor the statute mandate the entry of written findings; *Noah* simply states that the appellate court's inquiry "is whether there was a factual basis for the antiharassment order". *Noah*, 103 Wn. App. at 39. Here, the trial court's detailed oral findings establish the factual basis for its actions.

Trummel also contends written findings are required by CR 52. At this late date, Trummel's reliance on CR 52 is misplaced. Assuming that this is an action in which CR 52 requires the entry of findings and conclusions, the rule also requires a timely demand for such findings. "A judgment entered in a case tried to the court where findings are required, without findings of fact having been made, is subject to a motion to vacate within the time for the taking of an appeal." CR 52(d). If Trummel felt he was prejudiced by the lack of formal findings and conclusions, he should have made a timely motion to vacate the order of the superior court. Having failed to do so, Trummel has waived objection under CR 52.

We conclude appellate review of the April 19 order is not precluded by the lack of formal findings and conclusions. The trial court's detailed oral opinion shows that the court was mindful of the statutory elements and found all of them satisfied, based upon the written declarations of over 40 Council House residents, and other evidence in the record of the case.

Judge Doerty said that not all of the declarations submitted would establish the grounds for unlawful harassment. {B}ut I do want to refer to several of them, and I regret I have to refer to them by the name of the person that is in each particular case the author of the declaration. I regret that for obvious reasons; it is quite clear. that one of the problems here is that when Mr. Trummel disagrees with somebody, he goes after them with a vengeance. . . . Mr. Trummel is nonetheless, as anybody else, purported journalist or not, is entitled to the same due process as

anybody else and that means, of course, that I need to identify which bits of evidence in these declarations I am relying upon.

Judge Doerty identified Mitchell and several of the residents by name and recognized the fear, humiliation, and invasion of privacy they experienced as the result of Trummel's on-going confrontations and criticisms. He read into the record portions of several declarations on which he particularly relied. One declarant reported receiving angry telephone calls from Trummel every day as early as 6:30 a.m. Another complained about Trummel's newsletters being posted on his door despite his protests that they were unwelcome. Residents reported that they felt "leery about using the elevators and hallways" ¹⁸ because Trummel subjected them to verbal attack and they feared physical confrontation. One resident stated that Trummel "makes me feel scared. I never know what he is going to do. Whether he is going to write something about me, or hit me. I feel intimidated and frightened to live here with him." ¹⁹ One piece of evidence Judge Doerty found particularly persuasive was the declaration of a witness who saw Trummel patrolling the hallways at 3 a.m., placing his ear to the doors of apartments. By reading these declarations, Judge Doerty clearly identified the course of conduct he was concerned about.

There is simply no journalistic excuse to put elderly senior citizens through this sort of annoyance, pain and suffering. It is nothing less than outrageous and it is not merely the claim of one or two individuals on one of two circumstances, it is very clearly an ongoing pattern of abusive behavior by Mr. Trummel.

We conclude the court's oral opinion adequately states findings supporting the statutory elements of unlawful harassment.

2. Constitutionally Protected Activity

The statute provides that constitutionally protected activity is not included within the meaning of "course of conduct." RCW 10.14.020(2). Trummel argues that after excluding activities that are constitutionally protected, the evidence was insufficient to establish a harassing course of conduct.

We do not dispute Trummel's claim that speech, leafleting, publishing, filing small claims lawsuits, and complaining to government agencies are all constitutionally protected activities that cannot, in and of themselves, support an action of harassment. But the trial court's oral ruling makes plain that the basis for the order was Trummel's harassing conduct, not his constitutionally protected activities. Harassment is not protected speech. "The gravamen of the offense is the thrusting of an offensive and unwanted communication upon one who is unable to ignore it." Thus, just as harassment is not protected merely because it is accomplished by using a telephone, so in this case harassment is not protected merely because it is accomplished in part by use of newsletters. The record indicates that Trummel used his newsletters as an extension of his vitriolic and threatening personal confrontations with the other residents of Council House.

While courts often expect individuals simply to avoid speech if they do not want to hear it, this is not the case when the unwilling listener is at home.

"The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." Our prior decisions have often remarked on the unique nature of the home, "the last citadel of the tired, the weary, and the sick," and have recognized that "[p]reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value."

Trummel's conduct of keeping watch over the residents inside their own homes in order to obtain material for publication was not constitutionally protected and was permissibly considered as evidence of a harassing "course of conduct."

In the course of his oral ruling, Judge Doerty stated that Trummel's claim to be a journalist was "bogus" insofar as he had no employer or publisher other than himself. Trummel maintains that this remark was an improper basis for denying First Amendment protection to Trummel's newsletters.

Briefs of amici curiae also attack this remark. As Trummel notes, the First Amendment does not afford any greater protection to journalists than to anyone else. To attempt to draw a line between "genuine" journalism and "bogus" journalism would most likely be both futile and unwise, but we do not perceive this one comment as being central to Judge Doerty's assessment of Trummel's surveillance of Council House. The court was not applying its negative view of Trummel's journalistic credentials as a basis to undermine his First Amendment rights. The court restricted him from engaging in a harassing course of conduct, not from engaging in journalism.

We conclude the court's determination that Trummel was engaged in a harassing course of conduct was supported by substantial evidence, and did not impermissibly include constitutionally protected activity as a basis for the order.

Because we conclude the order was justified by the findings of unlawful harassment, we need not address Trummel's argument that it could not be justified by Mitchell's allegation that the newsletters were defamatory.

As an alternative to his argument that the order impermissibly includes constitutionally protected activity within its finding that he was engaged in a harassing course of conduct, Trummel brings an overbreadth challenge to the civil antiharassment statute. "If, as Mitchell suggests, the antiharassment statute permits a court to restrict websites or newsletters regardless of whether the content of such publications is constitutionally protected, then the statute proscribes `a substantial amount of protected speech.'"²² We reject this argument because its premise is unfounded. Neither Mitchell nor the trial court assume that the statute disregards constitutionally protected activity. The order at issue was based on Trummel's constitutionally unprotected activity, not the content of his publications.

3. Scope of the Order

Trummel argues on appeal that the antiharassment order was too broad in that it restrained him from having contact with any resident at Council House. He also contends that the provision preventing him from coming within 500 feet of Council House was not narrowly tailored to prevent the specific harms alleged by Mitchell in his petition.

The scope of an antiharassment order is reviewed for abuse of discretion. *State v. Noah*, 103 Wn. App. at 43. A court, when exercising its equitable powers under RCW 10.14, may issue a protection order on its own motion even in the absence of a petition requesting one. The statute specifically grants broad discretion to fashion relief.

We reject Trummel's disparaging characterization of the trial judge's attitude as a "lazy unwillingness" to craft a properly tailored order.

The court expressed its distress at having to issue such a broad order, but given what the court found to be Trummel's contemptuous behavior, and his failure to propose any more feasible alternative when given the opportunity, we cannot find fault with the court's conclusion that there was simply no other way to do it. We conclude the scope of the order does not represent an abuse of discretion.

4. Denial of Continuance to obtain Counsel

Trummel asserts that Judge Doerty abused his discretion by denying a motion for a continuance to obtain counsel. We review a trial court's ruling on a motion for a continuance for a manifest abuse of discretion. An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.

The antiharassment statute provides that: "Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order." RCW 10.14.070 (emphasis added). The statute also recognizes a person's right to be represented by private counsel.

On April 19, the day of the hearing, Trummel filed a written motion for a continuance to obtain the assistance of counsel. He appeared at the hearing pro se and claimed to have an attorney who was unable to be present. Trummel did not identify a specific attorney who had agreed to represent him. No attorney had filed a notice of appearance for Trummel at that time. The court had already continued the hearing on Mitchell's petition once, exceeding the statutorily mandated 14 day period. We therefore reject, as baseless, Trummel's contention that Judge Doerty "railroaded" him into a hearing in which he was unprepared and unrepresented. The court had a tenable basis to go ahead with the hearing despite Trummel's lack of representation. We find no abuse of discretion. Based on this conclusion, we need not reach Trummel's contention that

some of the evidence considered by the court on April 19 was technically inadmissible. Because he did not object to any of the evidence, he waived the right to argue its admissibility on appeal. His only argument is that proper objections would have been made if only the court had not prevented his lawyer from being there. As discussed above, Trummel -- not the court -- is responsible for his lack of representation.

5. *Evidentiary Hearing*

Trummel contends the court impermissibly deprived him of a right to an evidentiary hearing at which the witnesses against him could be confronted and cross-examined, and instead held an unauthorized trial by affidavit. This argument overlooks the fact that Trummel did not request an opportunity to cross-examine witnesses. At the beginning of the hearing, Trummel twice told the court he would rely on his written response. He did not object when Mitchell indicated that he, too, would submit the matter on the written record.

The civil antiharassment statute requires notice and a "full hearing". RCW 10.14.080(2). In a setting where an important decision turns on questions of fact, due process requires notice and an opportunity to be heard, which includes an opportunity to confront and cross-examine adverse witnesses. Trummel has not shown that either the statutory requirement of a full hearing, or the opportunity promised by Goldberg means a trial court must make witnesses testify in person when neither party has shown an inclination to hear such testimony. Because Trummel did not raise a timely objection to having the court proceed without live testimony, we conclude he waived any right he may have had to a trial-type hearing, and the trial court did not err in resolving the issues on the basis of the affidavits.

6. *Permanency of Order*

A trial court has discretion to enter a permanent antiharassment order if it finds that the respondent is likely to resume unlawful harassment when the order expires. Mitchell called this provision to the court's attention after the end of the hearing on April 19, 2001, and the court agreed to make the order permanent. Trummel asks that we reverse this portion of the order because it lacks a written finding that he was likely to resume unlawful harassment after a year. We reject this argument because the necessary finding is implicit in the court's oral ruling.

Proceedings on Motion for Contempt

The second appeal arises from criminal contempt sanctions the court imposed upon Trummel for violating the antiharassment order of April 19, 2001. Mitchell filed a motion for a finding of contempt on September 19, 2001. He claimed that Trummel had violated the no-surveillance provision of the order, as evidenced by articles he had published on his website. Mitchell submitted copies of two articles from the website. One of them, titled "Ethnic Eviction Shenanigans," describes events that allegedly took place at Council House in August 2001. It gives the home addresses of Mitchell and two of his assistants. The other, "Tall Structure Terror,"

insinuated a connection between a Muslim security guard employed at Council House and bomb-smuggling suspect Ahmed Ressam. This article stated that the guard had "used Council House computers to download myriad fundamentalist and terrorist tracts from the Internet" and had "openly declared an affinity" with Afghan terrorists. The article concluded it was logical to presume that Council House "presents a potential target for Islamic extremists." Mitchell alleged that by falsely linking staff to Islamic terrorism, and publishing their home addresses, Trummel was making them particularly fearful in light of the recent events of September 11, 2001. He argued that the articles showed that Trummel was continuing to engage in surveillance of Council House and its residents and staff, in violation of the order of April 19, 2001.³⁰ He asked the court to find Trummel in contempt; order removal from the website of material that violated the order; and impose a civil fine, as allowed by RCW 7.21.030.

Trummel responded with his own declaration and a brief by counsel. He contended he was merely publishing information that came to him from friends who were residents at Council House. He invoked the shelter of the First Amendment for his articles and opinions.

Judge Doerty held a hearing on the contempt motion on October 1, 2001.

Attorney Siegel represented Trummel. At the hearing, the website was on display, and the court mentioned that it had similarly been on display in previous hearings. Judge Doerty entered written findings and an order holding Trummel in contempt:

The court finds that the specific posting on the internet of victim names, home addresses, coupled with repeated inflammatory rhetoric connecting them with concepts like Islamic terrorism and racism are a violation of the anti-harassment order issued April 19, 2001 in that it causes the victims to reasonably feel under surveillance by Mr. Trummel contrary to the specific restriction of section 1.1(b) of the order.

Judge Doerty ordered Trummel to edit his website immediately by removing names, addresses, and other personal information about staff, residents, and others connected with Council House. He scheduled a compliance hearing and ordered fines of \$100 per day until Trummel edited the site as specified. He also found that Trummel had made material misrepresentations to the court in order to obtain an order of indigency in July, 2001.³⁴ He based this finding upon evidence of Trummel's solicitation for a legal defense fund, his receipt of cash donations, and his apparent ability to maintain a new residence while continuing to pay rent for his unit at Council House.

On October 26, 2001, the court found that Trummel was still in contempt. The court modified the antiharassment order by including provisions that specifically required Trummel to remove "personal identifying information" from his website, as the court had ordered at the October 1 contempt hearing.

Trummel appealed from the entry of this modified antiharassment order. Meanwhile, he purged the order of contempt by redacting his website as directed. But at some point, according to

Mitchell, Trummel posted an advisory to Washington residents to disregard his original website, and go instead to a different web address where he had reposted his articles, complete with the names and addresses the court had ordered him to redact.

Mitchell brought a second motion for contempt and a show cause hearing was set for February 27, 2002.

Attorney Siegel filed a notice of withdrawal on February 14, 2002.

Trummel appeared at the hearing on February 27 without counsel, and did not request a continuance. He maintained that the previous order applied only to the Washington website. He argued that the articles were now posted on an offshore website and were therefore outside of the jurisdiction of the court.³⁸ Trummel's argument did not persuade Judge Doerty, who found him in contempt and sent him to jail.³⁹ The order of contempt explains that the court had personal jurisdiction over Trummel and that lesser sanctions, specific warnings of the likelihood of incarceration and regular monitoring had all failed to compel compliance. Trummel filed a notice of appeal from this order.

Judge Doerty held a review hearing on April 3, 2002, determined that Trummel had not yet come into compliance, and returned him to jail. After further review hearings, the court released Trummel from custody after a hearing on June 21, 2002. During that same hearing, the court considered a motion by Trummel -- through new counsel appointed by the court -- to vacate the finding of contempt. Another new attorney for Trummel, Elena Garella, presented a motion to reconsider the underlying harassment order. The court denied both motions. Trummel filed a notice of appeal from these rulings. We now consider the issues raised by Trummel in connection with his various appeals from the contempt orders of October 1, 2001; February 27, 2002; and June 21, 2002.

1. Violation of Restraint against Surveillance

First, Trummel contends there was insufficient evidence to support the finding of contempt entered on October 1, 2001. Mitchell contends the issue whether the finding of contempt was appropriate is moot because Trummel is no longer in custody and the court can provide no relief, citing *Because there are attorney fees still at issue in this appeal, we conclude the issue concerning the finding of contempt is not moot.*

The issue is whether there was sufficient evidence to establish that Trummel violated the provision of the April 19, 2001 antiharassment order which restrained him from making any attempts to keep people at Council House under surveillance.

Trummel argues that the court construed the term "surveillance" too broadly when it found that Trummel's website "causes the victims to reasonably feel under surveillance by Mr. Trummel". Trummel accepts the definition of "surveillance" as keeping a "close watch" over persons. He

contends the evidence shows merely that he kept track of events at Council House through information received from others.

Under Noah, a harasser cannot act through third parties to do what he cannot do himself. The finding of contempt in Noah was based upon the defendant receiving and developing photos he was restrained from taking himself, and then placing them on display. Similarly, Trummel received information about activities within Council House. He developed articles from information the order clearly precluded him from gathering himself, and then published them on his website. The trial court perceived this activity as Trummel's way of contacting the victims despite the no-contact order.⁴² We conclude the court did not err in finding that Trummel violated the antiharassment order's prohibition against "watching over" Council House when he posted names and addresses of people at Council House in connection with inflammatory rhetoric about events at Council House in which they were participants.

2. Collateral attack on Contempt Findings

Trummel next contends that we must vacate the findings of contempt because the underlying order is void. A contempt judgment will normally stand even if the order violated was erroneous or was later ruled invalid. However, an exception lies, permitting a collateral attack where the underlying order is void for lack of jurisdiction.

Trummel contends the antiharassment order of April 19 is void because the court improperly entered it on behalf of the residents at Council House who were not actual litigants. Like the appellant in Noah, he has confused "the distinction between an order that is void because a court lacks jurisdiction and one that is merely erroneous. . . . A court does not lose jurisdiction by interpreting the law erroneously." We do not say it was error for the court to order relief on behalf of the residents; but even if it were, it would not have the effect of rendering the order void.

Trummel next contends that the modified antiharassment order is void because it is an unlawful prior restraint. Court orders that amount to invalid prior restraints may be void for purposes of the collateral bar rule. However, the restriction against publishing names and addresses is a post-publication sanction, not a prior restraint. It was imposed only after Trummel published the personal identifying information and the court found that his doing so was a contemptuous evasion of the original order prohibiting surveillance. This is a considerably different situation than in Coe, where there was no previous restriction making it a violation to disseminate the information.

Post-publication restrictions imposed after a showing of abuse of the right to speak can be imposed consistent with the First Amendment. In Bering, members of an anti-abortion organization challenged an injunction that prevented protesters from using words such as "killers" or "murderers" as an unconstitutional prior restraint on speech. The Bering Court held that the restriction did not constitute prior restraint, but was instead a post-publication restraint

that simply prohibited the further exercise of the right after a showing of abuse. The situation here is analogous. The trial court implicitly found that Trummel had already abused his right to speak when he found that posting the information reasonably caused the Council House victims to feel that Trummel still had them under surveillance. Because the restriction followed the unlawful publication, it was not a prior restraint. Accordingly, there is no basis here to apply the Coe exception to the collateral bar rule.

Because the antiharassment orders are not void as a prior restraint, they may not be collaterally attacked and will not furnish a basis for vacating the contempt findings.

3. Right to Counsel

Trummel asserts that the finding of contempt entered on February 27, 2002, when the court sent him to jail, must be reversed because he appeared pro se and the trial court failed to advise him he had a right to counsel. When a contempt adjudication may result in incarceration, the person accused of contempt "must be provided with state-paid counsel if he or she is unable to afford private representation." In *Tetro*, the Court reversed a contempt judgment against a father who failed to pay his child support obligation because the indigent contemnor was not advised to his right to state-paid counsel.

Here, Trummel has not established that he is entitled to the benefit of the rule in *Tetro*, because the record does not show that he was indigent and it is not even clear that he was unrepresented.

A previous order finding Trummel to be indigent had been vacated when Judge Doerty discovered that Trummel had a legal trust fund supporting his litigation efforts.⁴³ The court made an unchallenged legal finding that Trummel had made material misrepresentations to the court regarding his financial circumstances. In addition, on October 2, 2001, the State Supreme Court rejected Trummel's request for the expenditure of public funds to proceed on appeal.

Moreover, it is not clear that Trummel was unrepresented. Even though Attorney Siegel did not actually appear at the contempt hearing on February 27, 2002, it is undisputed that his notice of withdrawal was defective in that it purported to be effective immediately despite CR 71(c)(1) which requires 10 days' notice. He did not attempt at that time to withdraw from his representation of Trummel with respect to the appeals already filed with this court. And on February 20, 2002, Attorney Siegel contacted opposing counsel and requested a continuance of the show cause hearing for one week to give Trummel an opportunity to obtain substitute counsel. He contacted them again after the February 27, 2002 hearing to request a copy of the order of commitment and to inquire about Trummel's compliance options for purging the contempt. In the conversation, Attorney Siegel is alleged to have remarked, "This is what happens when I let my clients go to court by themselves."

Given all these circumstances indicating that Trummel was neither indigent nor unrepresented, Judge Doerty was not obligated under Tetro to appoint counsel for Trummel. And there is no reason to believe that the proceedings would have turned out any differently even if he had.

Trummel did not need the help of counsel to understand what the court wanted him to do, as is shown by the fact that he was able to comply with a similar order earlier, and by the fact that he remained in custody for refusing to comply with the court's orders for nearly two months after counsel was appointed for him in May 2002. We find no grounds for reversal in the court's failure to appoint counsel in February or April.

Trummel asks this court to order the case be assigned to a different judge. As this matter has already been transferred to a different judge, the request is moot and we decline to address it.

4. *Requests for Attorney Fees*

Because we have affirmed the contempt findings and orders, there is no basis upon which to grant Trummel's request to reverse the trial court's award of attorney fees.

Trummel seeks attorneys' fees on appeal under RCW 4.24.510. The statute would make attorney's fees available to Trummel only if he prevailed on a statutory defense against a claim based upon his making complaints to government agencies. RCW 4.24.500. As Trummel did not prevail upon such a defense, we deny the request. Trummel also requests attorney fees in equity for dissolving a wrongfully issued injunction. Because no injunction was wrongfully issued, we deny this request also.

Mitchell requests reasonable attorney fees for responding to each appeal. Attorney fees on appeal may be awarded if allowed by applicable law. RAP 18.1(a). Mitchell has not identified applicable law that supports an award of attorney fees for successfully defending an antiharassment order. We therefore deny fees associated with the first appeal. We grant Mitchell's request for fees on appeal incurred in connection with the contempt proceedings, as allowed by RCW 7.21.030(3), which was the statutory basis for the award of attorneys' fees below.

We deny Mitchell's motion to strike amicus *Seattle Weekly's* statement of additional authorities.

Affirmed. WE, [THE SHEEP], CONCUR.

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