

**IN THE COURT OF APPEALS OF WASHINGTON
DIVISION ONE**

PAUL TRUMMEL,)	
Appellant,)	NO. 48662-4-I
)	
vs.)	
)	DECLARATION OF
STEPHEN MITCHELL AND)	ERIC BROMAN RE:
COUNCIL HOUSE, INC.,)	EFFORTS TO TRANSCRIBE
Respondents.)	HEARING OF 3/20/01

_____)

Eric Broman, declares and states as follows:

1. I am one of the attorneys for appellant Paul Trummel in this matter. Our firm, Nielsen, Broman & Koch, PLLC, was appointed as counsel in the contempt case by this Court's ruling dated September 26, 2002. Other counsel in the civil case were Elena Garella and William Crittenden. As the Court's file will reveal, the case had a complicated procedural history before we were appointed.

2. This declaration responds to the Court's assumption, stated in the current Opinion at 6, n. 13, that the

events at the hearing of March 20, 2001, would not support Trummel's position on appeal. The Opinion suggests that the Court found it reasonable to construe the absence of a transcript from that hearing against Mr. Trummel's position.

3. Based on the facts stated herein, detailing the efforts to procure a transcript from that hearing, I believe it is wholly inappropriate to assume that the facts would not support Mr. Trummel's position. This is particularly true where the respondent appeared at that hearing through counsel, and was at least as capable of procuring that record as Mr. Trummel. RAP 9.2(c), 9.5(c).

4. I have been an attorney in Washington since 1989, and have concentrated my practice in appeals in this Court throughout that time. I have personally handled over 400 appeals. Since taking a position with the predecessor to this firm in 1994, I have also supervised of the perfection of the records in the cases our firm handles. I believe we have handled on average at least 300 cases per year since 1994.

5. It is my opinion that our office made diligent efforts to procure a record from the March 20, 2001 hearing. That belief

is based on the following facts, coupled with my substantial experience as an appellate litigator.

6. I have personally reviewed our file. It includes notes from our office staff and my own notes. Relevant unprivileged documents are attached as appendices.

7. We requested the transcript of the March 20, 2001 hearing from the Superior Court by letter dated November 13, 2002. The statement of arrangements includes that hearing. See Appendix A and B.

8. After conferring with Mr. Trummel, counsel never had a reason to believe that we should avoid the March 20th transcript for tactical reasons. Mr. Trummel instead provided counsel with reason to believe that a transcript from that hearing would support his position on appeal.

9. Unlike the minutes from other hearings, the Minutes from the March 20th hearing did not identify a tape or a court reporter. Appendix C. Our office staff made substantial efforts to determine whether a tape of the hearing was made, and whether a court reporter was present to report the proceedings.

10. Our office staff made repetitive contacts with the Superior Court, in particular John Rodenberg and reporter Cheryl

Anderson. Ms. Anderson had since moved to Florida, further complicating matters. Appendix D.

11. I personally filed an email motion to extend time to file the opening brief on November 19, 2002. Paragraph 3 of that motion related in general terms the troubles we were already having in procuring a transcript from the March 20th hearing. Appendix E.

12. On December 19, 2002, this court granted an extension to file the briefs to 45 days after the remaining transcripts were received. The March 20th transcript still had not been provided to counsel.

13. On December 23, 2002, our firm received a declaration from Ms. Anderson requesting an additional 90 days to file the March 20th transcript. The listed reasons were "awaiting notes to be located & sent to me in Florida for King County Administration." Appendix F.

14. On January 15, 2003, I spoke with Ms. Anderson after calling a Florida phone number. She stated that Mr. Rodenberg had only faxed her the minute sheets, not the actual reporter's notes from the hearing. She also stated that the case had been heard on the antiharassment calendar, and that those

hearings are not generally reported. She did not state that she had been present nor that she reported the hearing.

15. On January 15, 2003, after speaking with Ms. Anderson, I emailed attorney Brad Meryhew. Mr. Maryhew was familiar with the record since he had been belatedly appointed to assist Trummel after Trummel had already been jailed for alleged contempt. Mr. Maryhew replied that he had not seen any transcript of the March 20th hearing, and his experience led him to suggest that the hearing might not have been transcribed. Appendix G.

16. I also conferred with Mr. Trummel, who appeared at the March 20th hearing pro se. He stated that he had asked Judge Doerty for permission to tape the proceedings, which was denied. He believed that Ms. Anderson had reported the hearing.

17. On January 16, our office manager John Sloane again spoke with Mr. Rodenberg. Mr. Rodenberg confirmed that he had only faxed the minutes from the hearing to Ms. Anderson, not the notes. Ms. Anderson's notes were in unlabeled boxes and he could find no notes dated March 20, 2001. Appendix D.

18. In January, February, and March 2002, the civil brief of appellant was substantially drafted by attorney Bill Crittenden.

I consulted with Mr. Crittenden to determine whether it was necessary to make efforts to reconstruct the record of the March 20th hearing. After that consultation we concluded that the issues raised on appeal were fully supported by the existing record.

19. I have personally been involved in more than ten cases where the trial court held hearings to try to reconstruct a missing transcript due to missing notes or a court reporter's unfortunate absence. Those proceedings have been, without exception, very time consuming and professionally unsatisfying for all participants. Given the acrimonious nature of the trial court proceedings, and the trial judge's obvious disdain for Mr. Trummel, counsel decided that it would make no sense to spend the time and resources necessary to try to construct an accurate record from the March 20th hearing, nearly 12 months later.

20. Further complicating this process was the fact that respondent's trial counsel, Maureen Mitchell, had become a clerk to Judge Coleman with this Court. In my opinion, with all of these hurdles, it simply made no sense to try to construct or reconstruct a verbatim or non-verbatim record of this early hearing.

21. I filed a letter with this Court, dated April 23, 2003, discussing the efforts that we had made to produce a transcript from the March 20th hearing. Appendix H. It further informed the Court and the respondents that we would be going forward without the March 20th transcript.

22. Despite being expressly notified, the respondents never objected to the lack of a transcript from the March 20th hearing, nor argued that anything occurring at that hearing should be construed in the respondent's favor. If that argument had occurred, appellant's counsel likely would have decided it was worth the time and effort to seek to construct a transcript or a narrative report of the March 20th proceedings.

23. Based on my experience, in light of these facts, a report of the March 20th proceedings was sought with due diligence by the appellant. The absence of that report of proceedings was due to the Superior Court's failures and cannot reasonably be blamed on appellant.

24. Based on my experience, in light of these facts, I respectfully believe that it is wholly inappropriate for the Court to assume that a report of proceedings, absent through no fault of the appellant, and never demanded by the respondent, would

nonetheless support the respondent's position. That assumption is neither fair nor just on these facts.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington this _____ day of July, 2004.

Respectfully submitted,

ERIC BROMAN, WSBA 18487