

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
7/2/2021 10:34 AM  
BY ERIN L. LENNON |  
CLERK

No. 99672-5

SUPREME COURT OF THE STATE OF WASHINGTON

---

K.M.P., a minor child, by and through her natural mother  
and custodial parent, SARAH HALL PINHO,

Respondent/Plaintiff,

v.

BIG BROTHERS BIG SISTERS OF PUGET SOUND, and  
MICHAEL WAYNE SANCHEZ, an individual,

Petitioner/Defendant.

---

Court of Appeals No. 80293-3-I

---

**RESPONDENT'S ANSWER TO  
MEMORANDUM OF AMICUS CURIAE**

---

Richard L. Anderson, WSBA #25115  
**SCHROETER, GOLDMARK & BENDER**  
500 Central Building  
810 Third Avenue  
Seattle, Washington 98104  
(206) 622-8000

**TABLE OF CONTENTS**

|  | <b><u>Page</u></b> |
|--|--------------------|
| I. INTRODUCTION .....  | 1                  |
| II. ARGUMENT .....   | 2                  |
| A. Due Process Does Not Require that Sanchez<br>Be Provided Counsel for a Civil Matter, Nor<br>Was Sanchez Denied the Assistance of<br>Counsel in Any Event .....      | 2                  |
| B. The Eighth Amendment Protects Against<br>Excessive Fines But Does Not Protect Civil<br>Litigants from Repercussions of Bringing<br>Baseless and Unjust Claims ..... | 3                  |
| C. There is No “Nexus” Between this Case and<br>the Public Interest in Providing for the<br>Public Defense .....   | 4                  |
| III. REQUEST FOR ATTORNEYS’ FEES .....   | 5                  |
| IV. CONCLUSION.....  | 6                  |

## TABLE OF AUTHORITIES

|   | <u>Page(s)</u> |
|---|----------------|
| <b><u>Cases</u></b>   |                |
| <i>Adir International, LLC v. Starr Indemnity and Liability Company</i> ,<br>994 F.3d 1032, (9th Cir. 2021) .....                             | 2              |
| <i>Amy v. Curtis</i> ,<br>2021 WL 858399 (No. 19-cv-02184-PJH, signed 3/8/21).....  | 4              |
| <i>Austin v. United States</i> ,<br>509 U.S. 602, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993).....  | 3              |
| <i>Guajardo-Palma v. Martinson</i> ,<br>622 F.3d 801 (7th Cir. 2010) .....  | 2              |
| <i>K.M.P. by and through Pinho v. Big Brother Big Sisters<br/>of Puget Sound</i> ,<br>No. 80293-3-I at *12, 483 P.3d 119 (2021).....          | 5              |
| <i>King v. King</i> ,<br>162 Wn.2d 378, 174 P.3d 659 (2007).....  | 2              |
| <i>Kulas v. Flores</i> ,<br>255 F.3d 780 (9th Cir. 2001) .....  | 3              |
| <i>State v. Grocery Manufacturers Association</i> ,<br>15 Wn. App. 2d 290, 475 P.3d 1062 (2020).....  | 4              |
| <i>United States v. 30.64 Acres of Land, More or Less,<br/>Situated in Klickitat Cty., Washington</i> ,<br>795 F.2d 796 (9th Cir. 1986) ..... | 2              |
| <b><u>Statutes</u></b>  |                |
| RCW 4.24.510 .....  | <i>passim</i>  |
| <b><u>Rules</u></b>   |                |
| RAP 18.1(j).....  | 6              |

## I. INTRODUCTION

The anti-SLAPP<sup>1</sup> statute, RCW 4.24.510 was enacted to protect individuals who make reports to law enforcement and other government agencies from frivolous and retaliatory litigation brought unjustly by those who want silence from their critics. KMP, a nine-year-old girl, reported to her chaperone caregiver that Michael Sanchez, a stranger to her, had sexually assaulted her at Steel Lake Park in Federal Way, Washington. After being arrested, charged, and ultimately convicted of a crime based on KMP's report, Sanchez brought defamation and other similar claims against her.

In the years since pleading guilty, Sanchez has persisted in prolonging the trauma and memory of KMP's abuse without proper evidence or justification. Now, Kenneth Henrikson, Sanchez's former public defender and admitted ghostwriter of the defamation counterclaims that are the subject of this litigation, seeks to support review of the Court of Appeals Division One's decision through the amicus process to further his own interests in his conflict with his previous employer. Mr. Henrikson spends nearly 8 pages of prose outlining how he was terminated by the King County Department of Public Defense (DPD) for insubordination for

---

<sup>1</sup> Strategic Lawsuit Against Public Participation

assisting Sanchez in his civil counterclaims. Unfortunately, none of the facts he relates are in the record or properly before this Court. Equally unfortunate, Mr. Henrikson's employment difficulties have no bearing on the reasons for Division One's decision in this matter, and do not provide a valid basis for this Court to consider overturning it.

## II. ARGUMENT

### A. **Due Process Does Not Require that Sanchez Be Provided Counsel for a Civil Matter, Nor Was Sanchez Denied the Assistance of Counsel in Any Event**

Amicus Curiae appears to suggest that the Due Process Clause of the Fifth Amendment guarantees Sanchez both the right to appointed counsel as well as the right to counsel of his own choosing. While a civil litigant does enjoy the right to retain and fund the counsel of their choice, courts have long held that right does not extend to "subsidized access" to counsel in civil matters. *Adir International, LLC v. Starr Indemnity and Liability Company*, 994 F.3d 1032, 1039, (9th Cir. 2021) (citing *Guajardo-Palma v. Martinson*, 622 F.3d 801, 803 (7th Cir. 2010); *King v. King*, 162 Wn.2d 378, 397, 174 P.3d 659 (2007) (no right to appointed counsel in dissolution proceeding because physical liberty not at stake). Indeed, courts have long held that there is generally "no constitutional right to counsel in a civil case." *United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cty., Washington*, 795 F.2d 796, 801 (9th Cir. 1986). Nor does

Sanchez have a right to be personally present at any hearing. *Kulas v. Flores*, 255 F.3d 780, 786 (9th Cir. 2001).

Perhaps more importantly, Sanchez had the assistance of counsel during the underlying trial court proceedings. In fact, in light of the references made by Amicus in its briefing, Sanchez had the services of both his counsel of record (Mr. Chang), as well as that of Amicus (Mr. Henrikson) working behind the scenes on Sanchez's behalf. The only support offered by Amicus that any due process rights were implicated is the fact that Sanchez was not successful in defeating KMP's summary judgment motion. Clearly, no constitutional or other rights were violated here.

**B. The Eighth Amendment Protects Against Excessive Fines But Does Not Protect Civil Litigants from Repercussions of Bringing Baseless and Unjust Claims**

Amicus cites no authority whatsoever that the imposition of costs and reasonable attorney fees pursuant to legislative prerogative implicates the Eighth Amendment. Naturally, as a civil matter, the Excessive Fines Clause of the Eighth Amendment applies only to fines "directly imposed by, and payable to, the government." *Austin v. United States*, 509 U.S. 602, 607, 113 S.Ct. 2801, 125 L. Ed. 2d 488 (1993). Even if one were to ignore this principle, the Excessive Fines Clause might be applied to the instant proceedings only if any fines imposed could fairly be characterized as

punishment. *State v. Grocery Manufacturers Association*, 15 Wn. App. 2d 290, 300, 475 P.3d 1062 (2020). RCW 4.24.510 is remedial in the sense that the party who was obligated to respond to a SLAPP lawsuit should be compensated for their time and expense in defending against the unjust claim. RCW 4.24.510 is akin to a civil damages remedy for an improperly brought action. *See Amy v. Curtis*, 2021 WL 858399 \* 5 (No. 19-cv-02184-PJH, signed 3/8/21) (upholding a civil statutory award of \$150,000 per plaintiff for a defendant convicted of possession of child pornography as not violative of the Eighth Amendment). Interpretation of the Eighth Amendment will not be implicated by this Court denying further review.

**C. There is No “Nexus” Between this Case and the Public Interest in Providing for the Public Defense**

Without elaboration, Amicus argues that a failure by this Court to accept review will implicate public defense and access to justice. Unfortunately, no citation or argument was put forth that would allow for an intelligent and thorough response. However, as noted above, Sanchez has no right to have counsel provided at public expense for his unsupported and illogical claim that the anti-SLAPP statute should afford less protection to children and minors because they tell a caregiver about sexual abuse before reporting to law enforcement. Clearly, such a reading is indefensible, and would violate numerous precepts of statutory interpretation as

described by Division One in its opinion. Mr. Sanchez was represented by counsel at the trial court, and there has been no showing that he lacked the resources to procure different counsel should he have decided to do so. Indeed, the fact that he has twice attempted review of the trial court's decision on summary judgment suggests that Sanchez has ample resources to fund additional or alternate counsel of his choosing. There has been no evidence presented that Sanchez was denied any access to the courts, and as such should not provide the basis for further review by this Court.

### **III. REQUEST FOR ATTORNEYS' FEES**

A party prevailing on the defense provided for in the anti-SLAPP statute is entitled to an award of attorney's fees and expenses. RCW 4.24.510. As a result, the trial court awarded KMP her statutorily provided for fees and costs. CP 1295-1301. Likewise, KMP was awarded her attorney fees and expenses for prevailing in her appeal to Division One. *K.M.P. by and through Pinho v. Big Brother Big Sisters of Puget Sound*, No. 80293-3-I at \*12, 483 P.3d 119 (2021). Similarly, KMP is entitled to her reasonable attorney fees and costs here. RAP 18.1(j). KMP respectfully requests this Court allow for her reasonable attorney fees and expenses on appeal, and for her time in responding to Amicus Curiae.



#### IV. CONCLUSION

The opinion of the Court of Appeals was neither erroneous nor does it meet the criteria for review by the Supreme Court. Mr. Henrikson, in his amicus briefing, demonstrates why the anti-SLAPP provisions of RCW 4.24.510 are so crucial in protecting the rights of individuals who report sexual abuse and other crimes to law enforcement. Not even his own guilty plea to a crime regarding KMP's allegations has been enough to stop Sanchez or his former public defender from continuing to harass and prolong KMP's suffering and connection to her abuser. This Court should deny review, providing finality and well-earned relief from Mr. Sanchez's tortured interpretation of the clear public mandate in RCW 4.24.510.

DATED this 2nd day of July, 2021.

Respectfully submitted,

SCHROETER, GOLDMARK & BENDER

*s/ Richard L. Anderson*

RICHARD L. ANDERSON, WSBA #25115

Attorney for Plaintiffs/Respondents

810 Third Avenue, Suite 500

Seattle, WA 98104

Phone: (206) 622-8000

Fax: (206) 682-2305

[anderson@sgb-law.com](mailto:anderson@sgb-law.com)

## CERTIFICATE OF SERVICE

I certify that on this day, I caused a true and correct copy of the foregoing, along with this Certificate of Service, to be served on the following in the manner indicated:

Peter T. Connick, WSBA #12560  
Law Office of Peter T. Connick  
12351 Lake City Way NE Ste 203  
Seattle, WA 98125-5437  
*Counsel for Petitioner*  
*Michael Sanchez*

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Court Electronic Service

Kenneth Henrikson, WSBA #17592  
20646 Miller Bay Rd NE  
Poulsbo, WA 98370-7722  
*Amicus Curiae*

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Court Electronic Service

Dated this 2nd day of July, 2021, in Seattle, Washington.

  
Julie Pazoff, Legal Assistant  
Schroeter Goldmark & Bender  
810 Third Avenue, Suite 500  
Seattle, WA 98104  
(206) 622-8000  
[pazoff@sgb-law.com](mailto:pazoff@sgb-law.com)

**SCHROETER GOLDMARK BENDER**

**July 02, 2021 - 10:34 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 99672-5  
**Appellate Court Case Title:** K.M.P., et ano. v. Big Brothers Big Sisters of Puget Sound, et al.

**The following documents have been uploaded:**

- 996725\_Answer\_Reply\_20210702102828SC634250\_4615.pdf  
This File Contains:  
Answer/Reply - Other  
*The Original File Name was Pinho Answer to Amicus Curiae Memorandum.pdf*

**A copy of the uploaded files will be sent to:**

- Peterconnick@gmail.com
- henrikson@prodigy.net

**Comments:**

Respondent's Answer to Memorandum of Amicus Curiae

---

Sender Name: Richard Anderson - Email: anderson@sgb-law.com  
Address:  
810 3RD AVE STE 500  
SEATTLE, WA, 98104-1657  
Phone: 206-622-8000

**Note: The Filing Id is 20210702102828SC634250**