

No. 63259-1-I

COURT OF APPEALS DIVISION I  
OF THE STATE OF WASHINGTON

---

SHELDON REYNOLDS, an individual,  
and BRICE BATES, an individual, Appellants  
v.  
JANIE HENDRIX, an individual, Respondent

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BRIEF OF APPELLANTS

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SIGNED at Seattle WA on October 28, 2009



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## **A. Assignments of Error**

### **1. Assignments of Error**

a. The trial court erred: a) in determining that a grant of summary judgment against plaintiff Brice Bates (“Bates”) as to his claim of “Outrage” resulted in a dismissal of “all claims alleged against the defendant [Hendrix]” (order of January 9, 2009);” and b) in failing to revise its summary judgment order to reflect that other claims which may arise under C.R. Rule 8(a) survived summary judgment (order of January 26, 2009).

b. The trial Court erred in failing to instruct the jury on the elements of a claim for malicious interference with a parent – child relationship. *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973)

### **2. Issues Pertaining to Assignments of Error**

a. Whether pursuant to C.R. Rule 8(a) there is a requirement that a party title or otherwise specifically delineate a “cause of action” in a complaint, and whether the content of the complaint, rather than its title, determines what claims have been pled by a party. *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962); *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007)

b. In ruling on a motion for summary judgment may the trial court restrict its analysis to specifically titled or identified causes of action, or must the trial court also consider whether there are genuine issues of material fact relating to claims arising within the contents of the pleadings, but which have not been specifically titled or otherwise delineated as causes of action.

c. When a trial court is given notice that claims other than titled or identified causes of action exist within the body of the complaint is it error for the trial court determine that dismissal of the titled or identified causes of action requires an automatic dismissal of all causes of action whether titled or untitled.

d. When a party comes forward at trial with evidence supporting each of the five elements of a claim for malicious interference with a parent child relationship is it error for the

Court to fail to instruct the jury consistently with *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973).

**B. Statement of the Case**

Brice Bates was born in early 1986. (RP February 3, 2009, pp.141-142) His mother is Regina Bates. (RP February 3, 2009, p.5) Plaintiff-Appellant Sheldon Reynolds (“Reynolds”) had a two or three month relationship with Regina Bates in 1985. (RP February 3, 2009, pp. 85; 141-142) During the relationship they had sexual intercourse. (RP February 3, 2009, pp.144) At some point after Bates’ birth, Regina Bates told Sheldon Reynolds he was the father. (RP February 3, 2009, pp.85-86) Bates was told by his mother that Sheldon Reynolds was his father. (RP February 3, 2009, pp. 58) Reynolds did not believe Bates to be his son. (RP February 2, 2009, pp. 16) This belief was based on factors including: 1) the physical appearance of the child (RP February 2, 2009, pp.16); 2) the fact that Regina Bates had a number of contemporaneous sexual partners (RP February 2, 2009, pp.18); and 3) other acts of fraud and dishonesty by Regina Bates. (RP February 3, 2009, pp. 84-86)

Reynolds married Defendant-Appellee Janie Hendrix (“Hendrix”) in 2000. (RP February 3, 2009, pp.92) Hendrix was the President and CEO of Experience Hendrix, LLC, and was responsible for overseeing the Jimi Hendrix estate as well as “anything that has to do with protecting his rights.” (RP February 2, 2009, pp. 13) Hendrix had been involved with six prior cases involving allegations of paternity. (RP February 2, 2009,

pp. 23) A number of the claims involved paternity tests. (RP February 3, 2009, pp.98-99) Upon the death of Ms. Hendrix' father, intra-family litigation took place regarding the estate. Reynolds indicates that during the litigation Hendrix became, "sort of paranoid" about "everything going on." (RP February 3, 2009, pp.95; 98)

Hendrix indicated that she paid Reynolds' bills, including those relating to "his excessive charging and shopping...." (RP February 2, 2009, pp. 37) When Reynolds first discussed with Hendrix having genetic testing done regarding Bates she "felt that it was a bad time to do it ... because she said if it comes back positive she was worried about whether [Bates'] mom Regina would come after her because of who she represented...." (RP February 3, 2009, pp. 100) She "felt like because she represented the Hendrix estate that she would be a target before me for either back child support or some kind of bogus claim." (RP February 3, 2009, pp. 101)

Reynolds relied on Hendrix' knowledge of and experience with DNA testing. (RP February 3, 2009, pp.101) In May of 2002, Reynolds indicated to Bates that they needed to know the truth of their relationship, so they undertook genetic testing. (RP February 3, 2009, pp.15; 63-64) They took an oral swab test, sealed the sample in an envelope and sent it to the testing laboratory. (RP February 3, 2009, pp.17; 102-103)

When the results came back, they were picked up by Hendrix. (RP February 3, 2009, pp.104) The results were received and were opened in Hendrix' office. (RP February 3, 2009, pp.35; 104) Reynolds could not read or understand them. (RP February 3, 2009, pp.35; 70; 104-105) He gave them to Hendrix to read. (RP February 3, 2009, pp.35; 105) She indicated that she was not sure what they said, but believed the test was negative. (RP February 3, 2009, pp.105) She kept the results and indicated to him she would make further inquiry as to what the results meant. (RP February 3, 2009, pp.105) Within a few hours Hendrix called Reynolds and told him "he's not your son; the test is negative." (RP February 3, 2009, pp.105-06) At this point, Reynolds indicated that he trusted Hendrix with his life. (RP February 3, 2009, pp. 106)

In July of 2006, Bates again contacted Reynolds. (RP February 3, 2009, pp.26-27) Reynolds and Bates discussed the original negative test results. (RP February 3, 2009, pp.28) They determined they would take a second genetic test. (RP February 3, 2009, pp.27-29) The test confirmed their father-son relationship. (RP February 3, 2009, pp.30)

In September of 2006, Hendrix informed Reynolds she wanted a divorce. (RP February 3, 2009, pp. 116). Reynolds asked Hendrix to forward to him the original genetic testing results when she sent the divorce papers. (RP February 3, 2009, pp. 117) The last time Hendrix had seen the papers they were in Hendrix hands in her office. (RP

February 3, 2009, pp. 117) Hendrix indicated that she said she would look for the papers. When she sent the divorce papers, she did not send the testing papers. (RP February 3, 2009, pp.118) Reynolds informed Bates that Hendrix, his former wife, had lied to him about the results of the tests original genetic testing. (RP February 3, 2009, pp.33-4; 72)

Bates' belief that the genetic testing was negative led him to have doubts as to his mother's honesty, and caused "turbulence" in their relationship. (RP February 3, 2009, pp.22) Bates indicated that he did not have the support of his father during important and traumatic events in his life including the death of his uncle (RP February 3, 2009, pp. 37); his graduation from high school (RP February 3, 2009, pp. 38); and his selection to the Sothern University marching band (RP February 3, 2009, pp.39).

Reynolds' mother passed away three years after the original paternity test. (RP February 3, 2009, pp. 107) Reynolds often talks about how his mother never got to meet Bates, and becomes "somewhat hysterical" when he discusses the matter. (RP February 3, 2009, pp.36) He feels "pain" because they cannot go back and change things. (RP February 3, 2009, pp.37) Reynolds indicates that Hendrix "had denied me the right to know my own child." (RP February 3, 2009, pp. 120) Reynolds stated:

The most important gift your wife can give you is the truth and you don't get it and now you realize that not only have

you lost time with your child, how he will never share with his grandmother, who I know would have benefited in her quality of life if not length of life. That's where I was. Based on that, I was – it's hard to put into one word. But I felt destroyed. I felt like I was dying., like I had no where to go and the only light was that I now knew I actually had a son and hearing his voice every morning is what kept me going.

(RP February 3, 2009, pp.120-121)

Bates filed his original complaint in the above-captioned matter on or about August 8, 2007. (CP 1, pp. 10-14) On or about December 4, 2008, Hendrix filed a Motion for Summary Judgment of Dismissal. (CP 19, pp. 19-32) Hendrix' Motion for Summary Judgment addressed only issues associated with the titled claim of "Outrage." Hendrix' motion did not address other claims which may arise from the facts pled, but which were not specifically delineated by title or called claims for relief.

Reynolds and Bates filed a Response to Hendrix' Motion for Summary Judgment of Dismissal, on or about December 29, 2008. (CP 25, pp. 61-75) The Response argued that pursuant to C.R. 8(a), Brice Bates' complaint raised claims other than outrage which must be considered by the Court and which precluded summary judgment:

The complaint in this case gave sufficient notice to Defendant of the nature of the claim brought against her. Whether the claim is titled as a claim for "outrage" or a claim for interference with the right to an accurate determination of paternity is largely irrelevant. The manner in which the action is titled does not warrant the dismissal of the entire cause of action for improper pleading. *Id.* ("If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called."). The complaint sufficiently apprised

Defendant that she would have to defend against a claim of intentional interference with the father / son relationship of the Plaintiffs. *Adams v. King County*, 164 Wn.2d 640, 657-658 (Wash. 2008) (“[I]nitial pleadings which may be unclear may be clarified during the course of summary judgment proceedings.”); *see also, Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (The pleadings need not identify any particular legal theory under which recovery is sought.”)

**(CP 25, pp. 14-15)**

During oral argument regarding Hendrix’ Motion for Summary Judgment, Counsel for Bates argued that the Court must look past the titled claims and evaluate the evidence in light of the facts as pled. (RP January 9, 2009, pp. 60-63) The trial Court at one point during oral argument considered whether the pleadings may give rise to claims other than “Outrage” and stated: “It’s some other tort.” (RP January 9, 2009, pp. 27-28) The trial court recognized “[T]his motion is to knock out the tort of outrage claims. It’s not – [interruption omitted] – to knock out your other claims.” (RP January 9, 2009, pp. 61)

The Court’s January 9, 2009 summary judgment order as to Bates initially contemplated only claims for outrage. This order specifically granted summary judgment “as to Brice Bates [sic] **claim for the tort of outrage.**” (CP 53, p. 254, emphasis added) However, rather than addressing other claims which may have arisen under C.R. Rule 8(a), the trial court went on to state that “**all claims alleged** against defendant” by Bates were dismissed. (CP 53, p. 254, emphasis added) The trial court’s

dismissal of all claims reasonably raised by the pleadings, irrespective of whether or not they related to the claim of outrage, or were otherwise supported by competent evidence was error.

At trial, Reynolds requested the jury be instructed regarding the elements of the tort of malicious interference with a parent-child relationship. The instruction requested by the Plaintiff was nearly identical to that approved by the Court of appeals in *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973). Without explanation, the Court declined to tender the proposed instruction to the jury. (RP February 4, 2009, pp. 54)

### **C. Summary of Argument**

The trial court erred in failing to properly consider and apply the requirements of C.R. Rule 8(a) in a summary judgment context. As of January 9, 2009 it was clearly established law in the state of Washington that a complaint simply must give sufficient notice to the defendant of the nature of the claim being brought. *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962). It was likewise clearly established that the substance of the complaint, rather than titles or headings, determined whether a claim was properly pled. "If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called." *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962) "The pleadings need not identify any particular legal theory under which

recovery is sought." *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007)

The trial court's January 9, 2009 summary judgment order focused solely on the "titled claim" of "Outrage" and whether there was evidence to support that claim. (CP 53, pp. 253-254) The trial court failed to apply well established C.R. Rule 8(a) precedent which required the trial court to look beyond the title of the complaint and determine whether the facts alleged, and supported by competent evidence, gave rise to any claim, whether titled or untitled. In so doing, the court improperly dismissed all claims, including a claim for malicious interference with the parent-child relationship, which although not so titled, was evident from the body of the pleadings.

The state of Washington recognizes that a claim arises when there is: 1) an existing family relationship; 2) a malicious interference with the relationship by a third person; 3) an intention on the part of the third person that such interference results in a loss of affection or family association; 4) a causal connection between the third [party's] conduct and the loss of affection; and 5) that such conduct resulted in damages. *Strode v. Gleason*, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973); *Babcock v. State*, 112 Wn.2d 83, 107, 768 P.2d 481 (1989), *overruled on other grounds in Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991); *Waller v. State*, 64

Wn. App. 318, 338, 824 P.2d 1225, *review denied*, 119 Wn.2d 1014 (1992)

Reynolds came forward at trial with evidence supporting each of the above-stated propositions. The jury was not instructed that proof of the above constituted a claim on which they could grant relief to Reynolds. Jury instructions need to be sufficient to allow each party to argue their theory of the case, need to be not misleading and, when read as a whole, need to properly inform the trier of fact of the applicable law. *Id.* If an incomplete or erroneous jury instruction is prejudicial, there should be reversal and remand. *Boeing Co. v. Key*, 101 Wn.App. 629, 633, 5 P.3d 16 (2000).

Reynolds requested the jury be instructed regarding the elements of the tort of malicious interference with a parent-child relationship. The instruction requested by the Plaintiff was nearly identical to that approved by the Court of Appeals in *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973) Evidence supporting each of the five elements of a malicious interference with a familial relationship claim was introduced at trial. It was error not to instruct the jury as to the elements of this claim.

#### **D. Argument**

- 1. The trial court erred: a) in determining that a grant of summary judgment against plaintiff Bates as to his claim of “Outrage” resulted in a dismissal of “all claims alleged against the defendant [Hendrix]” (order of January 9, 2009);” and b)**

**in failing to revise its summary judgment order to reflect that other claims which may arise under C.R. Rule 8(a) survived summary judgment (order of January 26, 2009).**

The trial court erred in failing to properly consider and apply the requirements of C.R. Rule 8(a) in a summary judgment context. As of January 9, 2009 it was clearly established law in the state of Washington that a complaint simply must give sufficient notice to the defendant of the nature of the claim being brought. *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962). It was likewise clearly established that the substance of the complaint, rather than titles or headings, determined whether a claim was properly pled. "If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called." *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962) "The pleadings need not identify any particular legal theory under which recovery is sought." *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007)

The trial court's January 9, 2009 summary judgment order focused solely on the "titled claim" of "Outrage" and whether there was evidence to support that claim. (CP 53, pp. 253-254) The trial court failed to apply well established C.R. Rule 8(a) precedent which required the trial court to look beyond the title of the complaint and determine whether the facts alleged, and supported by competent evidence, gave rise to any claim, whether titled or untitled. In so doing, the court improperly dismissed all

claims, including a claim for malicious interference with the parent-child relationship, which although not so titled, was evident from the body of the pleadings.

**a. Standard of Review**

The standard of review on appeal of a summary judgment order is de novo, with the reviewing court performing the same inquiry as the trial court. *See Del Guzzi Constr. Co. v. Global Northwest Ltd.*, 105 Wn.2d 878, 882, 719 P.2d 120 (1986); *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). Evidence not presented before the trial court is not considered on appeal. *See Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 390, 715 P.2d 1133 (1986). This appeal is thus limited to facts before the Court at the time it entered its orders of January 9, 2009 and January 26, 2009.

The burden is on the moving party to establish its right to judgment as a matter of law. *Hansen v. Horn Rapids O.R.V. Park*, 85 Wn. App. 424, 932 P.2d 724, review *denied*, 133 Wn.2d 1012, 946 P.2d 402 (1997). Facts and reasonable inferences from the facts are considered in favor of the nonmoving party. *Goad v. Hambridge*, 85 Wn. App. 98, 931 P.2d 200, review *denied*, 132 Wn. 2d 1010, 940 P.2d 654 (1997). Summary judgment is available only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Neff v. Allstate Ins. Co.*, 70 Wn. App. 796, 855 P.2d 1223 (1993),

*review denied*, 132 Wn.2d 1004, 868 P.2d 872 (1994). Trial court must deny a motion for summary judgment if the record shows any reasonable hypothesis which entitles the nonmoving party to relief. *Mostrom v. Pettibon*, 25 Wn. App. 158, 607 P.2d 864 (1980).

**b. Defendant / Appellee's Motion for Summary Judgment**

On or about December 4, 2008, Hendrix filed a Motion for Summary Judgment of Dismissal. (CP 19, pp. 19-32) Hendrix' Motion for Summary Judgment addressed only issues associated with the titled claim of "Outrage." Hendrix' motion did not address other claims which may arise from the facts pled, but which were not specifically delineated by title or called claims for relief.

Reynolds and Bates filed a Response to Hendrix' Motion for Summary Judgment of Dismissal, on or about December 29, 2008. (CP 25, pp. 61-75) The Response argued that pursuant to C.R. 8(a), Brice Bates' complaint raised claims other than outrage which must be considered by the Court and which precluded summary judgment:

The complaint in this case gave sufficient notice to Defendant of the nature of the claim brought against her. Whether the claim is titled as a claim for "outrage" or a claim for interference with the right to an accurate determination of paternity is largely irrelevant. The manner in which the action is titled does not warrant the dismissal of the entire cause of action for improper pleading. *Id.* ("If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called."). The complaint sufficiently apprised Defendant that she would have to defend against a claim of intentional interference with the father / son relationship of the

Plaintiffs. *Adams v. King County*, 164 Wn.2d 640, 657-658 (Wash. 2008) (“[I]nitial pleadings which may be unclear may be clarified during the course of summary judgment proceedings.”); *see also, Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (The pleadings need not identify any particular legal theory under which recovery is sought.”)

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The Court’s January 9, 2009 summary judgment order as to Bates initially contemplated only claims for outrage. This order specifically granted summary judgment “as to Brice Bates [sic] **claim for the tort of outrage.**” (CP 53, p. 254, emphasis added) However, rather than addressing other claims which may have arisen under C.R. Rule 8(a), the trial court went on to state that “**all claims alleged** against defendant” by Bates were dismissed. (CP 53, p. 254, emphasis added) The trial court’s dismissal of all claims reasonably raised by the pleadings, irrespective of

whether or not they related to the claim of outrage, or were otherwise supported by competent evidence was error.

**i. The court must consider all claims raised by the pleadings, whether or not they are given a specific title.**

The rules of civil procedure merely require that a complaint provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” C.R. 8(a). The complaint simply must give sufficient notice to the defendant of the nature of the claim being brought. *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962) (“[P]leadings are primarily intended to give notice to the court and the opponent of the general nature of the claim asserted.”). The Court must liberally construe pleading requirements in order “to facilitate proper decision on the merits, not to erect formal and burdensome impediments to the litigation process.” *State v. Adams*, 107 Wn.2d 611, 620, 732 P.2d 149 (1987).

There is no requirement that Plaintiffs even title their claims. *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (“The pleadings need not identify any particular legal theory under which recovery is sought.”) The complaint simply must give sufficient notice to the defendant of the nature of the claim being brought. *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962) Whether the claim is titled as a claim for “outrage”, a claim for interference with a family relationship, or a claim for interference with the right to an accurate determination of paternity, or otherwise, is largely irrelevant. *Id.* (“If a complaint states

facts entitling the plaintiff to some relief, it is immaterial by what name the action is called.”). Under this very clear precedent, a court must evaluate the pleadings to determine if there are any facts under which a party may prevail, even if a potential claim is not titled or otherwise specifically delineated.

This is particularly true when a party identifies for the trial court claims which have been pled, but which were not specifically titled or called claims for relief. “[I]nitial pleadings which may be unclear may be clarified during the course of summary judgment proceedings.” *Adams v. King County*, 164 Wn.2d 640, 657-658 (Wash. 2008) Bates’ Response to the Motion for Summary Judgment specifically informed the trial court that there were claims other than “Outrage” raised by the pleadings which must be evaluated by the court and that the manner in which the claims were titled was irrelevant. *See* (CP 25, pp. 61-75) Counsel raised this issue again in oral argument. (RP January 9, 2009, pp. 60-63) While it may or may not have been appropriate for the trial court to dismiss the claim of “Outrage” it was error for the trial court to dismiss all claims raised by the pleadings without first making an attempt to determine if: 1) other claims were reasonably raised by the pleadings; and 2) whether there were genuine issues of fact relating to those claims.

**ii. The substance of the Bates complaint alleged facts sufficient to support claims other than “Outrage” including claims of malicious interference with a parental relationship.**

Bates filed his original complaint in the above-captioned matter on or about August 8, 2007. (CP 1, pp. 10-14) In this complaint he alleged that he was the son of Sheldon Reynolds. (CP 1, pp.10-14) He alleged that he undertook genetic testing with Reynolds to determine if there was a father and son relationship. (CP 1, pp. 10-14) He alleged that when the results of the genetic testing were received, Reynolds was unable to read the tests. (CP 1, pp.10-14) Bates alleged that a third party, the Defendant Janie Hendrix, agreed to read the test results for Reynolds and untruthfully reported the tests were negative, when they were in fact positive. (CP 1, pp. 10-14) Bates alleged this false report of a negative test result was made by the defendant "to protect her own financial interests in the Jimi Hendrix estate and to avoid any possible financial entitlement **Bates** might have were he Sheldon's son. (CP 1, pp. 10-14) Bates alleged the false report was "extreme and outrageous conduct which resulted in intentional or, at best, reckless infliction of emotional distress." (CP 1, pp. 10-14) Bates alleged this conduct caused him "damage to the parent child relationship, severe mental suffering and emotional distress." (CP 1, pp. 10-14)

The complaint in this case gave sufficient notice to Hendrix of the nature of the claims brought against her. The complaint sufficiently apprised Defendant that she would have to defend against a claim of intentional interference with the father / son relationship of the Plaintiffs.

*Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (The pleadings need not identify any particular legal theory under which recovery is sought.") The Court's January 9, 2009 order was manifestly in error in failing to consider and to address the other claims which, pursuant to C.R. 8(a) were sufficiently pled to give rise to a jury verdict.

Washington courts recognize the tort of malicious interference with the parent-child relationship. *See generally Strobe v. Gleason*, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973); *Babcock v. State*, 112 Wn.2d 83, 107, 768 P.2d 481 (1989), *overruled on other grounds in Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991); *Waller v. State*, 64 Wn. App. 318, 338, 824 P.2d 1225, *review denied*, 119 Wn.2d 1014 (1992).<sup>1</sup>

Such claims arise when there is: 1) an existing family relationship (*See* (CP 1, pp. 10-14)); 2) a malicious interference with the relationship by a third person (*See* (CP 1, pp. 10-14)); 3) an intention on the part of the third person that such interference results in a loss of affection or family association (*See* (CP 1, pp. 10-14) a causal connection between the third [party's] conduct and the loss of affection (*id.*); and 5) that such conduct

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<sup>1</sup> The tort of malicious interference with a parent-child relationship is likewise recognized in numerous unpublished opinions. While GR Rule 14.1 precludes citation to those opinions as authority, the unpublished cases demonstrate a wide acceptance of this cause of action. *See Tyner v. State*, 2005 Wash. App. LEXIS 420, 14-15 (Wash. Ct. App. Mar. 14, 2005)(NSFOP); *Bianchi v. Dep't of Soc. & Health Servs.*, 2007 Wash. App. LEXIS 385 (Wash. Ct. App. Mar. 6, 2007) (NSFOP); *Burrill v. State*, 2006 Wash. App. LEXIS 1794 (Wash. Ct. App. Aug. 14, 2006) (NSFOP)

resulted in damages.*(id.)* Bates' Complaint, no matter how the sections are titled, has properly pled a cause of action for violation of the relational rights identified. Bates' complaint clearly alleges sufficient facts to state a claim for malicious interference with the parent-child relationship under C.R. 8(a). It was incumbent upon the trial court to consider whether these claims as pled were supported by sufficient evidence to create a genuine issue of material fact.

**iii. There were facts sufficient to create a genuine issue of material fact regarding claims other than "Outrage."**

There was evidence before the trial court which supported all five elements of a claim for malicious interference with a parent – child relationship. In the face of such evidence, it was error for the trial court to dismiss all claims.

**- Element 1) an existing family relationship**

The existence of a father / son relationship between Bates and Reynolds was confirmed by genetic testing. (CP 25, pp. 61-75, p. 97 of Ex. 2)

**- Element 2) a malicious interference with the relationship**

**- Element 3) an intention on the part of the third person that such interference results in a loss of affection or family association**

There is sufficient information by which a jury could determine that a parent-child relationship was important to Bates and Reynolds.

Hendrix indicates Reynolds “begged” her to have a child for him. (CP 25, pp. 61-75, p. 84 of Ex. 1) Reynolds expressed that it was important to him to have a child, to have that child know his mother, and have the child carry on his name. (CP 25, pp. 61-75, p. 95-96 of Ex. 1) Hendrix recognized the importance of a parent-child relationship. She agreed it was important to participate in the important events in a child’s life, including such events as Christmas, birthdays, and graduations. (CP 25, pp. 61-75, p. 116 of Ex.1)

There is evidence from which a reasonable jury could infer that Hendrix lied about the 2002-2003 paternity test in order to prevent a determination of paternity to protect herself and the Jimi Hendrix estate financially. Hendrix is a legally sophisticated actor experienced in paternity claims, and in defending the Hendrix estate from paternity claims. Hendrix is president and CEO of Experience Hendrix, the entity in part responsible for administering the Hendrix estate. (CP 25, pp. 61-75, p. 75 of Ex. 1) Part of her role as President and CEO is to protect the estate and its assets from false claims of paternity. (CP 25, pp. 61-75, p. 176 of Ex. 1) Hendrix had been involved in six paternity related cases, and one testing to confirm nationality. (CP 25, pp. 61-75, p. 72 of Ex. 1)

Hendrix testified that as a result of her position with the Hendrix estate, she needed to be careful of persons attaching themselves to her or the estate for economic gain. (CP 25, pp. 61-75, p. 40 of Ex. 1) Hendrix

indicates Reynolds was guilty of “financial usury.” (CP 25, pp. 61-75, p. 85 of Ex. 1) This usury was not only personal but crossed into the business as well. (*id.*) She testified it was her opinion that Reynolds was taking advantage of his relationship with Ms. Hendrix and inappropriately benefiting financially from both her and the estate. (*id.*) Hendrix testified she was supporting both the Plaintiff and his mother. (CP 25, pp. 61-75, p. 86 of Ex. 1) She testified that to the extent Reynolds incurred a bill she would be the one paying it no matter what it was. (CP 25, pp. 61-75, p. 87 of Ex. 1) From this evidence, a reasonable jury could infer that Hendrix had a motive to lie about the results of the paternity testing between Bates and Reynolds.

Hendrix admits Reynolds indicated he was unable to read the 2002-2003 paternity test results and requested Hendrix read it for him. (CP 25, pp. 61-75, p. 109 of Ex. 1) She agrees the documents were left with her to read. (CP 25, pp. 61-75, p. 102 of Ex. 1) Reynolds indicates she read the results and informed him they were negative. (CP 25, pp. 61-75, p. 96 of Ex. 2) In 2006, after a second paternity test, Reynolds learns that in fact Bates is his son. (CP 25, pp. 61-75, p. 97 of Ex. 2) The lab wherein the tests were taken submitted an affidavit that the tests have a very high accuracy and reliability threshold and that false negatives are unlikely. (CP 25, pp. 61-75, p. Ex. 4) Reynolds testified that Hendrix lied about the tests. (CP 25, pp. 61-75, p. 97 of Ex. 2)

A reasonable jury could certainly find that Hendrix lied about the results of the paternity test, and did so for the purpose of protecting herself financially by preventing the recognition of the parent / child relationship between Reynolds and Bates. A jury could certainly find such conduct was intentional, was directed purposefully toward the family relationship, and was malicious in nature. *State v. Williams*, 144 Wn.2d 197, 220 (Wash. 2001) (“[M]alicious,”... means “an evil intent, wish, or design to vex, annoy, or injure another person....” A reasonable jury could find that Bates was injured as a result. There was sufficient evidence by which the Court could have found there was a genuine issue of material fact on a claim of interference with a parent-child relationship. *Babcock v. State*, 112 Wn.2d 83, 107, 768 P.2d 481 (1989), *overruled on other grounds in Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991); *Waller v. State*, 64 Wn. App. 318, 338, 824 P.2d 1225, *review denied*, 119 Wn.2d 1014 (1992).

- **Element 4) a causal connection between the third [party's] conduct and the loss of affection**
- **Element 5) that such conduct resulted in damages**

A reasonable jury could find that Bates was injured as a result of the intentional conduct of Hendrix. Bates testified that as a result of the misrepresentation regarding the paternity test, he will never get to meet his paternal grandparents, missed out on the time that his father could have spent with him as he matured. (CP 25, pp. 61-75, p. 170 of Ex. 3) He

indicates time, which he characterized as “the most precious gift” could never be returned to him. (CP 25, pp. 61-75, p. 171 of Ex. 3) This is certainly a sufficient basis in causation and damages to survive summary judgment.

c. **Revision of Order Pursuant to – C.R. Rule 54(b)**

Wash. C.R. Rule 54(b) provides “any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, **and the order or other form of decision is subject to revision at any time** before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” (emphasis added) *see Snyder v. State*, 19 Wn. App. 631, 635 (Wash. Ct. App. 1978) Upon receipt and review of the Court’s Order for Summary Judgment, Bates filed a timely C.R. Rule 54(b) Motion to revise the Court’s order to reflect that it only addressed the claim of “Outrage” and that other claims may exist which were not dismissed. (CP 62 pp. 285-296) Bates specifically addressed the trial court’s order in the context of the tort of malicious interference with the parent-child relationship.

In ruling on the Rule 54 (b) motion the trial court stated: “The motion heard and decided upon during oral argument on January 9, 2009 pertained to the tort of outrage which was the only cause of action contained in the complaint.” (CP 79, p. 618)

This statement by the Court is manifest error in light of the very clear precedent that a court must evaluate the pleadings to determine if there are any facts under which a party may prevail, even if a potential claim is not titled or otherwise specifically delineated. *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (The pleadings need not identify any particular legal theory under which recovery is sought.) The complaint simply must give sufficient notice to the defendant of the nature of the claim being brought. *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962) Whether the claim is titled as a claim for “outrage”, a claim for interference with a family relationship, or a claim for malicious interference with a parent child relationship is largely irrelevant. *Id.* (“If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called.”). This is particularly true in light of the trial court’s apparent recognition that the pleadings may give rise to claims other than “Outrage. (“It’s some other tort.” (RP January 9, 2009, pp. 27-28)) Failure to revise the order constituted a manifest abuse of discretion and must be reversed. *Holiday v. Merceri*, 49 Wash. App. 321, 324, 742 P.2d 127, review denied, 108 Wash. 2d 1035 (1987). See also *Madson v. Shanks*, 1998 Wash. App. LEXIS 332 (Wash. Ct. App. Mar. 3, 1998)

2. **The trial Court erred in failing to instruct the jury on the elements of a claim for malicious interference with a parent –child relationship.**

The state of Washington recognizes that a claim arises when there is: 1) an existing family relationship; 2) a malicious interference with the relationship by a third person; 3) an intention on the part of the third person that such interference results in a loss of affection or family association; 4) a causal connection between the third [party's] conduct and the loss of affection; and 5) that such conduct resulted in damages.<sup>2</sup> Reynolds came forward at trial with evidence supporting each of the above stated propositions. The jury was not instructed that proof of the above constituted a claim on which they could grant relief to Reynolds. The failure of the Court to give the requested instruction on this cause of action was error.

**a. Standard of Review**

A trial court's refusal to give proposed jury instructions is reviewed for abuse of discretion. *Alcoa v. Aetna Cas. & Sur.*, 140 Wn.2d 517, 537, 998 P.2d 856 (2000); *Goodman v. Boeing Co.*, 75 Wn.App. 60, 68, 877 P.2d 703 (1994). Jury instruction rulings founded on errors of law are reviewed de novo. *Tuttle v. Allstate Ins. Co.*, 134 Wn.App. 120, 131, 138 P.3d 1107 (2006).

A trial court has broad discretion to determine the number of instructions and the specific language in those instructions. *Bodin v. City*

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2. *Strode v. Gleason*, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973); *Babcock v. State*, 112 Wn.2d 83, 107, 768 P.2d 481 (1989), *overruled on other grounds in Babcock v. State*, 116 Wn.2d 296, 809 P.2d 143 (1991); *Waller v. State*, 64 Wn. App. 318, 338, 824 P.2d 1225, *review denied*, 119 Wn.2d 1014 (1992)

of *Stanwood*, 130 Wn.2d 726, 927 P.2d 240 (1996). However, jury instructions need to be sufficient to allow each party to argue their theory of the case, need to be not misleading and, when read as a whole, need to properly inform the trier of fact of the applicable law. *Id.* If an incomplete or erroneous jury instruction is prejudicial, there should be reversal and remand. *Boeing Co. v. Key*, 101 Wn.App. 629, 633, 5 P.3d 16 (2000). An erroneous instruction given on behalf of the party in whose favor the verdict was returned is presumed to be prejudicial and requires a new trial unless it affirmatively appears that the error was harmless. *Franks v. Department of Labor & Indus*, 35 Wn.2d 763, 215 P.2d 416 (1950); *State v. Dunning*, 8 Wn.App. 340, 343, 506 P.2d 321 (1973).

**b. Reynolds' requested instruction had previously been approved by the Court of Appeals; properly stated the law; and was supported by competent evidence.**

Reynolds requested the jury be instructed regarding the elements of the tort of malicious interference with a parent-child relationship. The instruction Requested by the Plaintiff was nearly identical to that approved by the Court of appeals in *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973) Specifically, Plaintiff Appellant requested the jury be instructed as follows:

JURY INSTRUCTION NO. \_\_\_\_

On plaintiffs' claim of malicious interference with a parental relationship, the plaintiffs have the burden of proving each of the following propositions:

1. There was an existing family relationship between Plaintiff Sheldon Reynolds and Plaintiff Brice Bates;
2. Defendant interfered with that relationship;
3. Defendant's conduct in interfering with the relationship was malicious;
4. Defendant's intention was that such interference results in a loss of affection or family association;
5. That Defendant's interference with the relationship cause Plaintiffs to suffer injury, damage or loss.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiff on the claim of malicious interference with a parental relationship. On the other hand, if you find that any of these propositions has not been proved, your verdict should be for the defendant on this claim.

Source: *Tyner v. State*, 2005 Wash. App. LEXIS 420, 14-15 (Wash. Ct. App. Mar. 14, 2005)

(Appendix A)(*see also* RP February 4, 2009, pp. 51-52)

In *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973) the Washington Court of Appeals approved instructing the jury with substantially identical language. Reynolds' proposed instruction, based on established Washington case law was a proper statement of the law.

This instruction was tendered together with instructions relating violations of the Washington and United States Constitutions. (RP February 4, 2009, pp. 52) The Court specifically addressed and rejected

the instructions relating to the constitutional violations stating: “In order to have a violation of a constitutional interest, you need to have state action. The allegation here is simply private action by Ms. Hendrix....” (RP February 4, 2009, pp. 53) The Court did not specifically address the tort of malicious interference with a parent–child relationship claim, which arises as a result of common law, not constitutional provision. Nor did the court specifically address the above appended instruction. (see RP February 4, 2009, pp. 53-54) Without explanation, the Court declined to tender the proposed instruction to the jury. (RP February 4, 2009, pp. 54)

**c. Evidence admitted at trial supported instructing the jury on an interference with parent–child relationship claim.**

Evidence supporting each of the five elements of a malicious interference with a familial relationship claim was introduced at trial.

**- Element 1) an existing family relationship**

Brice Bates was born in early 1986. (RP February 3, 2009, pp.141-142) His mother is Regina Bates. (RP February 3, 2009, p.5) Sheldon Reynolds had a two or three month relationship with Regina Bates in 1985. (RP February 3, 2009, pp. 85; 141-142) During the relationship they had sexual intercourse. (RP February 3, 2009, pp.144) At some point after Bates’ birth, Regina Bates told Sheldon Reynolds he was the father. (RP February 3, 2009, pp.85-86) Genetic testing

confirmed Sheldon Reynolds and Brice Bates were father and son. (RP February 3, 2009, pp. 29-30)

- **Element 2) a malicious interference with the relationship**
- **Element 3) an intention on the part of the third person that such interference results in a loss of affection or family association**

In January of 1994 Bates expressed a desire to meet and to know his father. (RP February 3, 2009, pp.12) He was told by his mother that Sheldon Reynolds was his father. (RP February 3, 2009, pp. 58) Reynolds did not believe Bates to be his son. (RP February 2, 2009, pp. 16) This belief was based on factors including: 1) the physical appearance of the child (RP February 2, 2009, pp.16); 2) the fact that Regina Bates had a number of contemporaneous sexual partners (RP February 2, 2009, pp.18); and 3) other acts of fraud and dishonesty by Regina Bates. (RP February 3, 2009, pp. 84-86)

Reynolds married Hendrix in 2000. (RP February 3, 2009, pp.92) Hendrix was the President and CEO of Experience Hendrix, LLC, and was responsible for overseeing the Jimi Hendrix estate as well as “anything that has to do with protecting his rights.” (RP February 2, 2009, pp. 13) Hendrix had been involved with six prior cases involving allegations of paternity. (RP February 2, 2009, pp. 23) A number of the claims involved paternity tests. (RP February 3, 2009, pp.98-99) Upon the death of Ms. Hendrix’ father, intra-family litigation took place regarding the estate.

Reynolds indicates that during the litigation Hendrix became, “sort of paranoid” about “everything going on.” (RP February 3, 2009, pp.95; 98)

Hendrix indicated that she paid Reynolds’ bills, including those relating to “his excessive charging and shopping....” (RP February 2, 2009, pp. 37) When Reynolds first discussed with Hendrix having genetic testing done regarding Bates she “felt that it was a bad time to do it ... because she said if it comes back positive she was worried about whether [Bates’] mom Regina would come after her because of who she represented....” (RP February 3, 2009, pp. 100) She “felt like because she represented the Hendrix estate that she would be a target before me for either back child support or some kind of bogus claim.” (RP February 3, 2009, pp. 101)

Reynolds relied on Hendrix’ knowledge of and experience with DNA testing. (RP February 3, 2009, pp.101) In may of 2002, Reynolds indicated to Bates that they needed to know the truth of their relationship, so they undertook genetic testing. (RP February 3, 2009, pp.15; 63-64) They took an oral swab test, sealed the sample in an envelope and sent it to the testing laboratory. (RP February 3, 2009, pp.17; 102-103)

When the results came back, they were picked up by Hendrix. (RP February 3, 2009, pp.104) The results were received and were opened in Hendrix’ office. (RP February 3, 2009, pp.35; 104) Reynolds could not read or understand them. (RP February 3, 2009, pp.35; 70; 104-105) He

gave them to Hendrix to read. (RP February 3, 2009, pp.35; 105) She indicated that she was not sure what they said, but believed the test was negative. (RP February 3, 2009, pp.105) She kept the results and indicated to him she would make further inquiry as to what the results meant. (RP February 3, 2009, pp.105) Within a few hours Hendrix called Reynolds and told him “he’s not your son; the test is negative.” (RP February 3, 2009, pp.105-06) At this point, Reynolds indicated that he trusted Hendrix with his life. (RP February 3, 2009, pp. 106)

In July of 2006, Bates again contacted Reynolds. (RP February 3, 2009, pp.26-27) Reynolds and Bates discussed the original negative test results. (RP February 3, 2009, pp.28) They determined they would take a second genetic test. (RP February 3, 2009, pp.27-29) The test confirmed their father – son relationship. (RP February 3, 2009, pp.30)

In September of 2006, Hendrix informed Reynolds she wanted a divorce. (RP February 3, 2009, pp. 116). Reynolds asked Hendrix to forward to him the original genetic testing results when she sent the divorce papers. (RP February 3, 2009, pp. 117) The last time Hendrix had seen the papers they were in Hendrix hands in her office. (RP February 3, 2009, pp. 117) Hendrix indicated that she said she would look for the papers. When she sent the divorce papers, she did not send the testing papers. (RP February 3, 2009, pp.118) Reynolds informed Bates

that Hendrix, his former wife, had lied to him about the results of the tests original genetic testing. (RP February 3, 2009, pp.33-4; 72)

- **Element 4) a causal connection between the third [party's] conduct and the loss of affection**
- **Element 5) that such conduct resulted in damages**

Because of the summary judgment order, the degree of Bates' damages was not a subject for evidence at trial. Even though it was not subject to evidence at trial, his injury was evident from the testimony. Bates' belief that the genetic testing was negative led him to have doubts as to his mother's honesty, and caused "turbulence" in their relationship. (RP February 3, 2009, pp.22) Bates indicated that he did not have the support of his father during important and traumatic events in his life including the death of his uncle (RP February 3, 2009, pp. 37); his graduation from high school (RP February 3, 2009, pp. 38); and his selection to the Sothern University marching Band (RP February 3, 2009, pp.39).

Reynolds' mother passed away three years after the original paternity test. (RP February 3, 2009, pp. 107) Reynolds often talks about how his mother never got to meet Bates, and becomes "somewhat hysterical" when he discusses the matter. (RP February 3, 2009, pp.36) He feels "pain" because they cannot go back and change things. (RP February 3, 2009, pp.37) Reynolds indicates that Hendrix "had denied me

the right to know my own child.” (RP February 3, 2009, pp. 120)

Reynolds stated:

“The most important gift your wife can give you is the truth and you don’t get it and now you realize that not only have you lost time with your child, how he will never share with his grandmother, who I know would have benefited in her quality of life if not length of life. That’s where I was. Based on that, I was – it’s hard to put into one word. But I felt destroyed. I felt like I was dying., like I had no where to go and the only light was that I now knew I actually had a son and hearing his voice every morning is what kept me going.”

(RP February 3, 2009, pp.120-121)

Claims relating to Defendant’s malicious interference with the Plaintiff’s parent-child relationship have been raised by the pleadings and the evidence. Whether the claim is titled as a claim for “outrage”, a claim for interference with a family relationship, or a claim for interference with the right to an accurate determination of paternity, or otherwise, is largely irrelevant. *See Id.* (“If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called.”)

The complaint in this case gave sufficient notice to Defendant of the nature of the claims brought against her. The complaint sufficiently apprised Defendant that she would have to defend against a claim of intentional interference with the father / son relationship of the Plaintiffs. *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (The pleadings need not identify any particular legal theory under which recovery is sought.) The evidence developed during the case, clearly

support submitting a claim of malicious interference with a familial relationship to the jury.

**E. Conclusion**

Plaintiff / Appellant Brice Bates respectfully requests this honorable Court reverse the trial court's dismissal of all claims and remand the matter to the trial court for a determination as to whether there exist claims, properly pled pursuant to C.R. Rule 8(a), which are supported by sufficient evidence to raise a genuine issue of material fact.

Plaintiff / Appellants Bates and Reynolds request a new trial, and that during said trial, the jury be properly instructed regarding a claim for malicious interference with a parent child relationship pursuant to *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973).

October 28, 2009

Respectfully submitted,

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**APPENDIX A-1**

**A-1 Plaintiff's Tendered Jury Instruction regarding Malicious Interference with a Parent Child Relationship.**

JURY INSTRUCTION NO. \_\_\_\_

On plaintiffs' claim of malicious interference with a parental relationship, the plaintiffs have the burden of proving each of the following propositions:

1. There was an existing family relationship between Plaintiff Sheldon Reynolds and Plaintiff Brice Bates;
2. Defendant interfered with that relationship;
3. Defendant's conduct in interfering with the relationship was malicious;
4. Defendant's intention was that such interference results in a loss of affection or family association;
5. That Defendant's interference with the relationship cause Plaintiffs to suffer injury, damage or loss.

If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiff on the claim of malicious interference with a parental relationship. On the other hand, if you find that any of these propositions has not been proved, your verdict should be for the defendant on this claim.

Source: *Tyner v. State*, 2005 Wash. App. LEXIS 420, 14-15 (Wash. Ct. App. Mar. 14, 2005)