

Court of Appeals

Div. 1

Case No. 67256-8-1

Jonathan P. Ross

Appellant

vs.

Pauline B. Schneider

Respondant

Jonathan P. Ross, Appellant's Brief

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
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Table of Cases.

Trial Case Number: 11-2-13647-7 KNT

Statutes cited: Washington State Constitution

Art. 1. Sec. 21 of the Declaration of rights. Pg. 5

A. Assignments of Error

1. The trial court erred in the Order of May 10, 2011, violating the defendants right to trial by jury.
2. The trial court erred in the order of May 10, 2011, violating the respondents right to defend himself.
3. The e-mail the petitioner produced during her testimony was not entered into the court record.

Issues pertaining to Assignments of Error

1. The trial court conducted a civil hearing without the benefit of a jury trial or a waiver of that right by both parties interested. Did the trial court violate the respondents right to a jury trial in a civil hearing under Article 1 Sec. 21 of the Washington State Constitution?
2. The trial court did not allow the attorney for the respondent a chance to ask for a recess to talk with his client regarding new evidence brought before the trial court by the petitioner during the hearing.

The trial court did not allow the attorney for the respondent a chance to defend his client against new evidence brought before the trial court during the hearing. Did the trial court violate the respondent's right to defend himself?

3. The e-mail produce during the petitioner's testimony was not entered in to the court record. Did the trial court deny the respondent the right to appeal the trial court's decision by not entering that evidence into the court's record?

## Statement of Case

1. The Washington State Constitution Art.1, Sec.21 of the Declaration of rights states:

Trial by Jury:. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

The respondant was not given the chance to have a trial by jury in this civil case and did not to his knowledge waive that right nor is there any documentation on the record stating that the parties interested in this case consented to a waiver of a jury trial.

2 In the report of proceedings one can see where the Petitioner is given the opportunity to testify starting on page 3, line 21. The petitioners testimony continues through to page 7, line 16. The respondents

attorney is given the opportunity to speak on his clients behalf (page 7, line 19-25). Before the respondent's attorney can even begin to defend his client the Pro Tem Commissioner Kathleen Royer states she does not have the respondents working papers (page 8, line 1-17) resulting in a recess so the Pro Tem Commissioner can read the respondents declaration.

The Pro Tem Commissioner brings the court back in session on page 8, line 20 and asks the petitioner a question and allows the petitioner to testify a second time when the respondent's attorney should have been allowed to testify in his clients behalf. The petitioner testifies from page 8, line 22 to page 12, line 6.

The respondents attorney is allowed to respond on page 12, line 10 through page 15, line 19.

The petitioner is then allowed to testify a third time and introduce new evidence starting on page 15, line 21. The Commissioner is given a e-mail by the petitioner and asks the respondent a question regarding a e-mail page 16, lines 14- 24. The petitioner tries to state something (page 16, line 25) and Mr. Rhodes says that he can put it in context in a minute

(page 17, lines 1, 2).

Mr. Rhodes was never given the opportunity to put that e-mail in context nor did the respondent or his attorney get to view the e-mail that the petitioner handed the commissioner.

The petitioner continues to testify starting on page 17, line 3 through page 20, line 22.

The commissioner then gives her verdict in the case and even states the e-mail given to her by the petitioner as being one of the deciding factors without the respondent or his attorney having the opportunity to defend or make any statements regarding the new evidence that was introduced by the petitioner. The commissioner also introduces evidence against the respondent on page 21, line 20-24. The commissioner did not give the appellant or his attorney the opportunity to defend himself against this evidence. The appellant was a petitioner in 2007 for a order of protection and it was granted. The order against the appellant in 2008 (who was a respondent in that case) was not granted.

3. The trial court failed to enter the e-mail that the petitioner produced during her testimony into the courts record. The respondent has the right to appeal the trial courts decision but can only used the evidence

that has been entered in to the courts record. The trial court wrongfully convicted the respondant with evidence that was not entered in to the courts record and violated the respondants right to used that evidence in his defence in the appeal.

## Argument

The respondent's rights were violated in the trial court.

The appellant respondent has the right to a jury trial according to the Washington State Constitution Art. 1, Sec. 21. The respondent was denied the right to a jury trial by the trial court.

The respondent has the right to defend himself against accusations made against him. That right was denied by the trial court as evidenced in the Report of Proceedings. The appellant also has the right to be represented in court by a attorney. The trial court did not give the respondent's attorney the chance to defend his client in the trial court.

Conclusion

The appellant asks for this Protection order to be withdrawn or to be given a new trial. The appellant was not given a fair trial, his rights were violated and evidence introduced and used against him that the appellant and his attorney were not allowed to defend against.

2/15/12

Respectfully submitted,

Jonathan P. Ross  
Jonathan P. Ross  
Appellant