

100501-6
No. [unassigned]

SUPREME COURT
OF THE STATE OF WASHINGTON

Cosentino, Sarah
Respondent
v.
Mitchell, John
Petitioner

PETITION FOR REVIEW OF DECISION TERMINATING REVIEW

John Mitchell
pro se

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Griffin v. Illinois

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A. IDENTITY OF PETITIONER

John Mitchell asks this court to accept review of the decisions designated in Part B of this motion.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.5 Mitchell seeks review of the November 18, 2021 Court of Appeals order denying a motion to modify the August 25, 2021 Court of Appeals order dismissing an appeal of the Superior Court order on contempt.

A copy of the decision is in Appendix A and a copy of the order denying the motion to modify is in Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals violate the Rules of Appellate Procedure? If so, does this constitute a conflict with a decision of the Supreme Court?
2. Did the Court of Appeals violate Mitchell's constitutional right to appellate review? If so, is it a significant question of law under the constitution?
3. Did the Court of Appeals violate Mitchell's constitutional right to equal protection when it dismissed his appeal due to reasons of indigency? If so, is it a significant question of law under the constitution?

D. STATEMENT OF CASE

This petition for review rises out of an appeal of a King County Superior Court order finding Mitchell in contempt of court for violating of a domestic violence protection order. Protection order proceedings were designed to give victims quick and easy access

to the courts; in doing so, the courts have also given abusers quick and easy access to an entire arsenal of instruments to inflict terror on their victims.

A petitioner-abuser who is granted a protection order entered against a respondent-victim gains an unprecedented level of power over their victim. When the courts fail to ensure the rights of the respondent are protected, the petitioner-abuser is able to devastate the life of their victim. This inherent risk makes the role of supervisory courts essential to ensuring justice for the victim and maintaining the integrity of the courts.

Mitchell has not committed any acts of violence, physical or otherwise; Cosentino's alleged basis for the protection order was harassment. The root of the underlying action – both the protection order and the contempt order – is based entirely on speech. Mitchell has talked openly about his relationship with Cosentino and the abuse he experienced; Mitchell has made no attempt to contact, communicate with, or have anything to do with Cosentino since the beginning of the underlying action – Cosentino wants to punish Mitchell for speaking truthfully about their former relationship. The court's basis for contempt is deeply constitutionally flawed and facially untenable. (See Order on Contempt)

The unusual procedural history of this case should be a signal to the court that something is seriously wrong. So far the trial courts have awarded Cosentino over \$200,000 in sanctions and attorney's fees despite Mitchell being indigent and Cosentino having a net worth of well over \$2,000,000. There are 221 documents in the court docket. Mitchell has filed three motions for revision and have prevailed in two; the third was lost because the court used improper covid emergency court rules to deny Mitchell his right to be heard on revision.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

“A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b)

1. The Court of Appeals violated the Rules of Appellate Procedure.

The decision of the Court of Appeals to dismiss Mitchell’s appeal conflicts with the Supreme Court’s decision via *State v. Ashbaugh*¹. In *Ashbaugh*, this court explained how appellate rules apply to an appellant’s failure to timely act:

Rather, [RAP] provides that an appellant "should" take certain steps and "must" take others. When an appellant fails to do that which he "should," the appellate court has wide discretion in fashioning a sanction. This will usually be a fine or compensatory award. RAP 1.2(b); 18.9. When an appellant fails to do that which he "must," the failure either (1) is governed by the terms of RAP 18.8(b), or else it (2) "may result in more severe than usual sanctions." RAP 1.2(b).

The Court of Appeals in *Ashbaugh* dismissed the appeal based on the appellant’s failure to timely act on that which he *must*. Since the failure was not included in the narrowly defined grounds for dismissal defined in RAP 18.8(b), this court concluded that

¹ *State v. Ashbaugh*, 90 Wn.2d 432, 583 P.2d 1206 (1978)

the failure was subject to RAP 1.2(b) and “simply ‘may result in more severe than usual sanctions’ Typical sanctions are a fine or compensatory award.” *Id*

The *Ashbaugh* court held that the rules expressly prohibit dismissing a case based on noncompliance with rules, except in compelling circumstances where justice demands.

Furthermore, the rules explicitly state that "Cases ... will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands ..."

Unlike *Ashbaugh*, the lower court in this case dismissed the appeal based on Mitchell's failed to timely file a designation of clerk's papers. An appellant *should* file a designation of clerk's papers within 30 days. RAP 9.6(a) This failure should be subject to even less severe sanctions.

When the lower court does have a compelling circumstance where justice demands dismissal of a case prior to reaching the merits, appellate rules allow a case to be dismissed on either 1) on motion of commissioner or clerk; or 2) on motion of a party. Neither the court nor any party filed a motion, there was no 10-day notice given, there were no hearings held to establish a high bar of compelling circumstances.

2. The Court of Appeals violated Mitchell's constitutional right to appeal.

The *Ashbaugh* court also considered the contention that petitioner "abandoned" his appeal and therefore the motion of dismissal was properly granted pursuant to the contention that the appellant "abandoned" his appeal and dismissal would be proper under RAP 18.9(c)(1). The record showed that the appellant took no action on his appeal for four and a half months. Mitchell's appeal was also dismissed as "abandoned", though only 2 months had passed.

The *Ashbaugh* court again was unable to uphold the dismissal based on these grounds. The court held that appellate rules provide no specific guidance as to when an appellant has abandoned his appeal; however, under older rules the higher court held that “a motion to dismiss for want of prosecution rests within the sound discretion of the court hearing the motion” (citing *Hamilton v. Kiona-Benton Irrigation Dist.*, 44 Wn.2d 421, 268 P.2d 446 (1954)).

It must be remembered, however, that the right to appeal is a constitutional right. Consequently, any waiver of that right via the alleged abandonment of an appeal must be knowing, intelligent and voluntary. *State v. Adams*, 76 Wn.2d 650, 458 P.2d 558 (1969).

Mitchell did not knowingly, intelligently, nor voluntarily waive his constitutional right to appeal. The lower court provided no facts or findings that could allow this court to determine that Mitchell did waive his right; however, Mitchell did explain the reasonable mitigating circumstances and this Court can review those circumstances to determine that Mitchell did not, as a matter of fact, abandon his appeal. (See Motion to Modify, and Motion to Modify Reply)

3. The Court of Appeals dismissed the case for reasons of indigency

“[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)

Mitchell is indigent. Mitchell has no income, has been unemployed for a year and a half, and qualifies for public assistance. On the trial court’s order, Mitchell was represented by a public defender. There is no question as to whether Mitchell is indigent. Mitchell has explained that he cannot afford the fees associated with the designation of

clerk's papers or statement of arrangements (See Motion to Modify, Motion to Modify Reply, and Letter to Clerk)

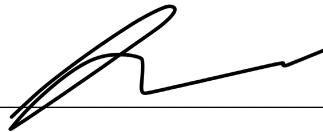
Mitchell has also moved for an order of indigency in the trial court, however the trial court has refused to make a ruling on the motion. Without that ruling, Mitchell does not even have access to most of the trial court documents and has no way of determining which documents to designate should he be forced to continue representing himself.

Cosentino, with the help of the courts, has destroyed Mitchell's career. The trial court granted Cosentino a protection order that prohibited Mitchell from having any contact with "any of Cosentino's friends" – one of whom Mitchell reported to and worked closely with at Microsoft. As could be expected from being prohibited from contact with your boss, Mitchell was eventually let go. After a 20+ year career with no employment gaps, I have been unemployed for a year and a half. Now the court wants to deny Mitchell's constitutional right to appellate review.

F. CONCLUSION

For the reasons within, Mitchell requests that this court grant review of the Court of Appeals dismissal of his appeal.

Respectfully submitted this 20th day of December 2021.

A handwritten signature in black ink, appearing to read 'John Mitchell', is written over a horizontal line.

John Mitchell, *pro se*

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SARAH COSENTINO,

Respondent,

v.

JOHN MITCHELL,

Petitioner.

No. 82286-1-I

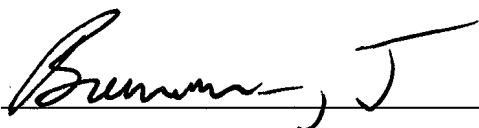
ORDER DENYING MOTION
TO MODIFY

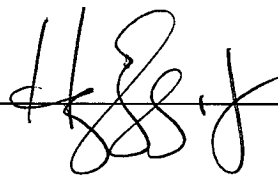
Petitioner John Mitchell moves to modify the commissioner's August 20, 2021 ruling dismissing his appeal for failure to timely perfect the record. We have considered the motion, the respondent Sarah Cosentino's response, and the petitioner's reply under RAP 17.7 and have determined that the motion should be denied. Now, therefore, it is

ORDERED that the motion to modify is denied; it is further

ORDERED that the respondent's request for attorney fees and costs is also denied.







LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
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August 25, 2021

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Case #: 82286-1
John Mitchell, Petitioner v. Sarah Cosentino, Respondent
King County Superior Court No. 19-2-24476-3

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on August 20, 2021:

“A designation of clerk’s papers and a statement of arrangements are long overdue (due June 2, 2021 as set by Commissioner Jennifer Koh’s May 11, 2021 ruling). On June 25, 2021, Commissioner Koh issued a ruling, stating that appellant John Mitchell’s failure to file the required documents might result in dismissal of this case without further notice. As of this ruling (August 20, 2021), nothing has been filed since Commissioner Koh’s May 11 ruling. I consider this case abandoned. Pursuant to the June 25, 2021 ruling, this case is dismissed.”

Sincerely,



Lea Ennis
Court Administrator/Clerk

ssd

SUPREME COURT OF THE STATE OF WASHINGTON


Cosentino, Sarah - Respondent) Motion
v.)
Mitchell, John - Petitioner)

On August 25, 2021 a Court Administrator/Clerk dismissed this case as being abandoned, quoting Commissioner Koh’s June 25 ruling that failure to submit a designation of clerks papers and statements of arrangements might result in the dismissal of this appeal without further notice. I am requesting that this case not be dismissed for the following reasons:

- 1) I did not receive the June 25, 2021 ruling and was unaware that the appeal might be dismissed.
- 2) The designation of clerk’s papers requires access to the court documents, which I do not have an cannot afford to purchase.
- 3) I have previously requested an order of indigency from the lower Court, which the lower Court has refused to rule on (the lower Court has failed to rule on at least 3 motions in this case).
- 4) I have been at an extreme disadvantage throughout this case as Cosentino has used her wealth to retain a premium law firm to represent her, while I have been largely forced to represent myself pro se.
- 5) I lost my job as a result of the unlawful orders of the lower Court and continue to be unemployed (the lower Court ordered me not to have contact with Cosentino’s friends, one of whom I reported to).
- 6) I was represented by a Court appointed public defender for the contempt portion of this case, but due to the public defenders being changed between the initial denial of contempt and the subsequent revision, I was not given effective council.
- 7) Cosentino’s attorney has refused to provide me with a copy of the lower Court documents.
- 8) I have never committed acts of domestic violence against Cosentino or anyone else, and dismissal of this case would be unjust.

I respectfully request that this Court not dismiss this case and order legal counsel on my behalf.

Respectfully submitted,



John Mitchell, pro se

NO. 80944-0-1

COURT OF APPEALS STATE OF WASHINGTON
DIVISION I

SARAH COSENTINO,

Respondent,

v.

JOHN MITCHELL,

Petitioner.

Response of Sarah Cosentino on John Mitchell's Motion to Modify
the Dismissal of the Case

Brian Edwards, WSBA No. 45232
Attorney for Respondent Sarah Cosentino

MCKINLEY IRVIN
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A. INTRODUCTION

Respondent is Sarah Cosentino. Ms. Cosentino is the petitioner in the domestic violence protection order action below. Ms. Cosentino asks this Court to deny Petitioner's request for a Motion to Modify.

B. COUNTERSTATEMENT OF FACTS

Mr. Mitchell first complains that he was unaware that the case may be dismissed by claiming that he did not receive the June 25th letter stating the same. This strains credulity. Mr. Mitchell routinely received and responded to documents and requests from this Court up until the time that he abandoned his instant action. He made no attempt to remedy deficiencies when this Court issues similar letters on May 12, 2021, April 20, 2021, or March 18, 2021. Mr. Mitchell has done nothing and intends to do nothing. His entire purpose in these filings is based in his desire to harass Ms. Cosentino – the very thing that the underlying DVPO seeks to prevent.

Mr. Mitchell's previous appeal to this Court involved an interlocutory appeal of the actual DVPO. His previous appeal was denied. He filed numerous reconsideration motions. He then sought review by the Supreme Court. As with the instant action, he failed to

follow through on deadlines and then failed to attend a hearing before the Supreme Court Commissioner, so that request for cert was denied as abandoned. Throughout all of this, Mr. Mitchell has done the bare minimum to drag proceedings on while forcing Ms. Cosentino to incur attorney's fees the entire time.

Mr. Mitchell has also never provided the Court with proof of unemployment or an inability to work if he is not working. He was previously employed by Microsoft, and there have been no stated reasons why he could not obtain a similar job at an equivalent company.

Mr. Mitchell is the very picture of a vexatious litigant and an abuser. This motion, like the myriad of others he has filed between the Superior Court and this Court should be denied. Ms. Cosentino should be awarded reasonable attorney's fees.

C. ARGUMENT WHY MOTION SHOULD BE DENIED AND FOR COSTS AND FEES

As set forth above, Mr. Mitchell has provided no cognizable reason for his intransigent failure to make even bare responses on his appeal. This has become a pattern, and especially when the underlying cause is a DVPO in which Mr. Mitchell was found to be an abuser of

Ms. Cosentino, the Court should not allow abuse to continue through intransigent baseless litigation.

We again note that RAP 14.2 permits the substantially prevailing party to recover costs. This should be no more true than in cases originating under RCW 26.50. Fees and costs are expressly considered under RCW 26.50.060. Ms. Cosentino has been forced to endure substantial (and often unnecessary) litigation from Mr. Mitchell. She was awarded fees below and should be awarded fees at this juncture as well.

D. CONCLUSION

For the reasons stated herein, Ms. Cosentino respectfully requests the Court deny Mr. Mitchell's Motion to Modify and requests she be awarded her necessary and reasonable costs.

RESPECTFULLY SUBMITTED this 27th day of September, 2021.

McKINLEY IRVIN

By: 
Brian Edwards, WSBA No. 45232
Attorney for Sarah Cosentino

Attorneys of Record:

Attorneys for Respondent Cosentino:

Brian Edwards, WSBA No. 45232
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1501 Fourth Avenue, Suite 1750
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CERTIFICATE OF SERVICE

I certify that on September 27th, 2021, I caused to be served a true and correct copy of the foregoing Response to Motion to Modify on the following parties via electronic service:

John Mitchell
john@johnmitch.com

DATED this 27th day of September, 2021.

JEFFREY WELLING

MCKINLEY IRVIN

September 27, 2021 - 1:18 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 82286-1
Appellate Court Case Title: John Mitchell, Petitioner v. Sarah Cosentino, Respondent

The following documents have been uploaded:

- 822861_Answer_Reply_to_Motion_20210927131542D1440973_5981.pdf
This File Contains:
Answer/Reply to Motion - Response
The Original File Name was Amended Memorandum re Attorney Fees - 09.27.21.pdf
- 822861_Financial_20210927131542D1440973_6251.pdf
This File Contains:
Financial - Cost Bill
The Original File Name was Response on Motion to Modify - 09.27.21.pdf

A copy of the uploaded files will be sent to:

- john@johnmitch.com

Comments:

Sender Name: Brian Edwards - Email: bedwards@mckinleyirvin.com

Address:

1501 4TH AVE STE 1750

SEATTLE, WA, 98101-3611

Phone: 206-625-9600

Note: The Filing Id is 20210927131542D1440973

No. 82286-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Cosentino, Sarah
Respondent

v.

Mitchell, John
Appellant

REPLY OF APPELLANT
RE Motion to Modify Dismissal

John Mitchell
pro se

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INTRODUCTION1

A. ARGUMENTS1

 1. I did not receive the June 25 letter, and was unaware the case may be dismissed.
 This statement is credible.1

 2. My only purpose in this appeal is to seek justice.2

 3. I am unemployed due to Cosentino’s abuse and the lower Court’s disregard for
 the law.2

 4. None of my pleadings have been frivolous and I have never committed acts of
 domestic violence.4

 5. Cosentino should not be awarded fees.6

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Cases

Marriage of Meredith,

148 Wash. App. 887; 201 P.3d 1056 (2009)

Marriage of Suggs,

152 Wn.2d at 84.

Statutes and Rules

RAP 1.2

RAP 18.9

INTRODUCTION

On September 16, 2021 the Court Administrator/Clerk construed my letter requesting that this appeal not be dismissed as a Motion to Modify. I do not object to the letter being construed as a Motion to Modify; I only mention this as an explanation as to why the letter contained a brief list of reasons rather than a well formulated motion.

Cosentino's Response contains a "counterstatement of facts" that is not organized into individual arguments (other than an argument for fees), however it appears that her basic arguments could be summarized into the following: 1) the statement that I did not receive the June 25 letter and therefore was unaware the case may be dismissed is not credible; 2) my only purpose in filing this appeal is to harass Cosentino; 3) I have never provided proof of unemployment or inability to work; 4) I am a vexatious litigant and an abuser; and 5) Cosentino should be awarded fees. This Reply will address each of these.

A. ARGUMENTS

1. I did not receive the June 25 letter, and was unaware the case may be dismissed.

This statement is credible.

There is no definitive way to prove that I did not receive an email short of hiring a digital forensic expert to analyze my computer. However, I did sign the letter and am fully aware that there are "pains and penalties of perjury"; Cosentino does not point out any instances of me lying or misleading the Court, nor could she – the evidence in this case (including Cosentino's) shows that I am a man of integrity.

Cosentino does point out "Mitchell routinely received and responded to documents and requests from this Court" – as I have also done in the lower courts. I have no desire

for this case to be abandoned; the only rational explanation that I would not have continued to respond, even if only a requested an extension of time, is that I was unaware.

Emails get lost. I could speculate as to possible explanations of why I didn't receive the letter (my email server? the Court's email server? the DNS servers in between resolved to the incorrect IP address?), but I can't imagine that a reasonable person would disagree that sometimes emails don't go through.

2. My only purpose in this appeal is to seek justice.

Cosentino's insistence on labeling anything she doesn't agree with as harassment, and her willingness to use the Court as a means of control and abuse, is exactly why I am seeking justice. I have had no contact with Cosentino, directly, indirectly, or through third parties, since before the beginning of these proceedings over 2 years ago. Cosentino wants to control who I speak to in an effort to conceal *her* abusive behavior, as evident by her initial petition ("Respondent is prohibited from posting *about* Petitioner on *social media* or *any other electronic medium*. Respondent is prohibited from contacting members of Petitioner's *family, friends (including the Kipman family), or ex-husband.*" *Exhibit A* at 2), her previous modification request (initially granted, then denied on revision), and the motion for contempt based on for my willingness to speak openly and honestly about our relationship (initially denied, then granted on revision).

I want nothing more than to seek justice in this Court based on the merits of this case.

3. I am unemployed due to Cosentino's abuse and the lower Court's disregard for the law.

Cosentino argues that I have never provided the Court with proof of unemployment or an inability to work. This is blatantly untrue, as proven by the record – of which Cosentino is fully aware.

The Court record shows that the trial Court ordered a financial screening and appointment of counsel, and was provided an attorney. As mentioned in the Motion to Modify, I do not have a copy of all the Court records; however, the lower Court docket (Dkt. 169, Dkt. 173, Dkt. 194) is clear (*Exhibit B*).

This is even more outrageous since I am unemployed due to Cosentino's abusive litigation and the lower Court's disregard for the unambiguous rulings of this Court (via *Suggs* and *Meredith*). At the request of Cosentino, the lower Court prohibited me from contact with any of Cosentino's friends ("Respondent is prohibited from contacting members of Petitioner's family, *friends...*" *Exhibit A*). As Cosentino is fully aware, one of Cosentino's friends was someone who I reported to and worked directly with.

At the first hearing, I had an attorney (while I could afford one) who brought this to the Court's attention. ("And the reason it's problematic for the Respondent... he also is working with Scott Guthrie and Alex Kipman and has regular meetings as part of his work with Scott Guthrie" *Exhibit C, Verbatim Transcript* at 8) The lower Court commissioner disregarded the unambiguous ruling by this Court in *Suggs* and *Meredith* with an apparent belief that my constitutional rights were irrelevant in his court ("I commend you for your earnest arguments on behalf of your client. All right? But this is domestic violence court. All right?" *Id* at 10). With full knowledge of the risk to my employment ("And Your Honor, with respect to contacts with third parties, particularly within the scope of his employment, Mr. Guthrie and Alex Kipman – " *Id* at 11) the

commissioner refused to modify the unlawful order to allow contact with my employer (“He can make that showing in 30 days. He can show exactly how this affects his employment...” *Id* at 11).

It took more than 30 days – losing your job at a large company takes some time – but the effect on my employment was devastating and unlawful.

4. None of my pleadings have been frivolous and I have never committed acts of domestic violence.

Cosentino argues that I am a vexatious litigant and an abuser. The sheer hypocrisy of this statement is out of scope for this Reply; however, as for my record, the Court record is unambiguously clear and Cosentino is sorely misleading this Court.

Cosentino repeatedly misrepresents to this Court that my pleadings throughout these 2 years of proceedings have been merely harassment meant to abuse her. (“His entire purpose in these filings is based in his desire to harass Ms. Cosentino”, “like the myriad of others he as filed”, “This has become a pattern”, “should not allow abuse to continue through intransigent baseless litigation”, “Cosentino has been forced to endure substantial and often unnecessary litigation” – and several more).

In the lower Court, I filed three separate motions for revision. Two motions for revision were granted in my favor – the commissioners’ complete disregard for the rule of law was clear. The third motion for revision was denied – but only because the lower Court ruled on the motion without a hearing allowing arguments. (Dkt. 137 – Order Striking Revision Hearing w/ Oral Arguments. *Id*) The judge applied the pandemic

emergency civil rule allowing motions for revision to be heard without oral argument¹, despite the rule specifically excluding family court cases and designating domestic violence hearings as mission critical. The revision judge did not even allow opportunity to provide written arguments in place of oral arguments.

Even more clearly dishonest, Cosentino tells this Court that my previous Motion for Discretionary Review to this Court and the Supreme Court was denied as abandoned. In both Courts, the review was denied because I failed to meet the incredibly high bar for interlocutory review; neither Court found the trial Court without error; both Courts expected the trial Court to correct itself without the need for interlocutory review; at no point was abandonment or failure to meet deadlines mentioned by either Court. Cosentino's attorney have blatantly lied to this Court.

It is true that I failed to appear for the oral arguments hearing before the Supreme Court. I live in the closest residential unit to the East Precinct in Seattle's Capitol Hill neighborhood. Last summer, my home was filled with tear gas on multiple occasions due to the protests against police brutality. I will never forget the intense pain of tear gas or the retching and blindness that it induced – about an hour before the hearing, my building was informed that the police expected major civil unrest that day due to the election results. I immediately started making arrangements for my daughter to stay at her mom's house, boarded up my windows, and tried to put as many things in plastic garbage bags as possible to protect from potential residual tear gas and pepper spray. In my haste, the

¹ The motion for revision was filed and served on March 2, 2020 prior to any pandemic emergency orders

email that I sent from my phone to explain to the court that I wouldn't be able to attend didn't adequately describe the situation.

Cosentino and her attorney know all of this as it has been described in previous pleadings. I obviously know the context. The people that Cosentino and her attorney are trying to deceive are the officers of this Court.

The merits of this case will overwhelmingly show that I am not the abusive party.

5. Cosentino should not be awarded fees.

Cosentino argues that I should pay her attorney fees – almost five thousand dollars according to the memorandum accompanying their response. This in addition to the tens of thousands of fees that the lower Court has awarded. Cosentino requested to be awarded fees in nearly every pleading prior to this motion to modify (and there were many) and they were denied in all instances after the initial protection order was granted, but they didn't take no for an answer and kept asking. The judge that granted revision and found me in contempt also awarded Cosentino attorney fees for that proceeding, and the many proceedings before it – including where attorney fees had already been denied by another Superior Court judge.

Here, Cosentino does the same thing. Nearly 62% of the fees that Cosentino is requesting this Court award her are from the Supreme Court proceedings. The Supreme Court explicitly denied Cosentino's request for fees.

Cosentino has a net worth of well over two million dollars and a high paying job at Amazon; I used to have a good job, but due to Cosentino's abuse I've been unemployed for over a year and am broke.

6. Dismissal of this appeal is not appropriate

I understand and appreciate that the Courts have a need to impose deadlines. I have been desperately trying to learn and understand the Court's rules and abide by them. I don't know how to force the trial Court to issue an order (grant or deny) on a motion that I've long ago filed, noted for hearing, and sent working papers for. I do not have all of the trial Court documents, and cannot afford \$0.50/page for over 2 years of proceedings.

It seems incredibly unjust to dismiss this case for failure to adhere to the rules when that failure is directly attributed to the Courts failing to adhere to the rules themselves.

RAP 1.2(a) instructs this Court to interpret the rules to promote justice; to facilitate the decision of the case on the merits; and not to determine this case on the basis of noncompliance with the rules, except in compelling circumstances.

RAP 1.2(b) instructs this Court to use the word "must" rather than "should" to make it clear to parties that failure to perform the act in a timely way may result in more severe than usual sanctions; RAP 1.2(b) also differentiates between the words "will" and "may" when referring to an act of the appellate court.

RAP 18.9(b) seems to indicate that this Court may dismiss a review due to failure to comply with a sanction imposed via RAP 18.9(a), though it requires a 10-day notice.

RAP 18.9(c) appears to indicate that dismissal of a case due to abandonment requires a motion from one of the parties.

I do not know the contents of the July 25 letter; however, I can find no rules, rulings, or communication from this Court regarding that use “must” and “will” to indicate risk of the severe sanction of dismissal. I cannot find any rulings that have imposed on me sanctions for failure to act that would allow the Court to dismiss under RAP 18.9(b), nor a 10-day notice under that rule. Cosentino has not filed any motions seeking to dismiss this case.

CONCLUSION

For the reasons stated herein, Mr. Mitchell respectfully requests this Court grant discretionary review and provide relief.

Respectfully submitted this 7th day of October 2021.

A handwritten signature in black ink, appearing to be 'John Mitchell', is written over a horizontal line.

John Mitchell, *pro se*

Appendix A

CERTIFIED COPY

FILED
2019 SEP 18
KING COUNTY
SUPERIOR COURT CLERK

EXP07

CASE #: 19-2-24476-3 SEA

SUPERIOR COURT FOR
WASHINGTON COUNTY OF KING

No. **19-2-24476-3SEA**

Sarah Cosentino 8/9/79
Petitioner DOB

vs.

John M Mitchell 6/9/81
Respondent DOB

Temporary Order for Protection and
Notice of Hearing (TMORPRT)
(Clerk's Action Required)
Next Hearing Date/Time: 10/3/19, 8:30 am
At: King County Superior Court, 516 3rd Ave,
Seattle, WA 98104 Second Floor

Names of minors: No minors Involved

First	Middle	Last	Age
Sofia A		Mirza	9
Lucy A		Mirza	7

Respondent Identifiers

Sex	Race	Hair
<u>M</u>	<u>W</u>	<u>BLO</u>
Height	Weight	Eyes
<u>6'3"</u>	<u>190</u>	<u>BLU</u>

Respondent's Distinguishing Features:

Caution:

Access to weapons: yes no unknown

The court finds:

The court has jurisdiction over the parties, the minors, and the subject matter. The respondent will be served notice of his or her opportunity to be heard at the scheduled hearing. RCW 26.50.070. For good cause shown, the court finds that an emergency exists and that a Temporary Protection Order should be issued without notice to the respondent to avoid irreparable harm or injury.

The court orders:

- 1 Respondent is **restrained** from causing petitioner physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking
 petitioner the minors named in the table above these minors only:
- 2. Respondent is **restrained** from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, locations, or wire or electronic communication of petitioner the minors named in the table above only the minors listed below members of the victim's household listed below the victim's adult children listed below:

Additional no contact provisions are on the next page.

the end of the hearing, noted above.

The terms of this order shall be effective until:

including via email, text or any

<p><input checked="" type="checkbox"/> 3. Respondent is <i>restrained</i> from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by respondent's lawyer(s) with <input checked="" type="checkbox"/> petitioner <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p>
<p><input checked="" type="checkbox"/> 4. Respondent is <i>restrained</i> from going onto the grounds of or entering petitioner's <input checked="" type="checkbox"/> residence <input checked="" type="checkbox"/> workplace <input type="checkbox"/> school <input checked="" type="checkbox"/> the day care or school of <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p> <p><input type="checkbox"/> other:</p> <p><input type="checkbox"/> Petitioner's address is confidential. <input checked="" type="checkbox"/> Petitioner waives confidentiality of the address which is: 13715 NE 26th Pl, Bellevue, WA 98005</p>
<p><input type="checkbox"/> 5. Petitioner shall have exclusive right to the residence petitioner and respondent share. The respondent shall immediately <i>vacate</i> the residence. The respondent may take respondent's personal clothing and respondent's tools of trade from the residence while a law enforcement officer is present. <input type="checkbox"/> This address is confidential. <input type="checkbox"/> Petitioner waives confidentiality of this address which is:</p>
<p><input checked="" type="checkbox"/> 6. Respondent is <i>prohibited</i> from knowingly coming within, or knowingly remaining within 500 feet (distance) of: petitioner's <input checked="" type="checkbox"/> residence <input checked="" type="checkbox"/> workplace <input type="checkbox"/> school <input checked="" type="checkbox"/> the day care or school of <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p> <p><input type="checkbox"/> other:</p>
<p><input type="checkbox"/> 7. Petitioner shall have possession of essential personal belongings, including the following:</p>
<p><input type="checkbox"/> 8. Petitioner is granted use of the following vehicle: Year, Make & Model _____ License No. _____</p>
<p><input checked="" type="checkbox"/> 9. <i>Other</i>. Respondent is prohibited from posting about Petitioner on social media or any other electronic medium. Respondent is prohibited from contacting members of Petitioner's family, friends (including the Kipman family) or Petitioner's ex-husband.</p>
<p>Protection for minors:</p>
<p><input type="checkbox"/> 10. Petitioner is <i>granted</i> the temporary care, custody, and control of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p>
<p><input type="checkbox"/> 11. Respondent is <i>restrained</i> from interfering with petitioner's physical or legal custody of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p>

social media site

129

12 Respondent is *restrained* from removing from the state the minors named in the table above these minors only:

Surrender of Weapons Order

The court finds that:

- irreparable injury could result if the order to surrender weapons is not issued.
- respondent's possession of a firearm or other dangerous weapon presents a serious and imminent threat to public health or safety or the health or safety of any individual.

The Respondent must comply with the **Order to Surrender Weapons Issued Without Notice** filed separately which states:

Respondent shall immediately surrender all firearms, other dangerous weapons, and any concealed pistol licenses.

(Note: Also use form number All Cases 02-030.)

The respondent is directed to appear and show cause why this temporary order should not be made effective for one year or more and why the court should not order the relief requested by the petitioner or other relief which may include electronic monitoring, payment of costs, and treatment. ***Failure to Appear at the Hearing May Result in the Court Granting Such Relief. The Next Hearing Date is Shown on Page One.***

Warnings to Respondent: A violation of provisions 1 through 6 of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW **and will subject you to arrest.** If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C. § 2261, 2261A, or 2262.

A violation of provisions 1 through 6 of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if you have at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74 RCW.

If the court issues a final protection order, and your relationship to the petitioner is that of spouse or former spouse, parent of a common child, or former or current cohabitant as intimate partner, including a current or former registered domestic partner, you may not possess a firearm or ammunition for as long as that final protection order is in effect. 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1). If you are convicted of an offense of domestic violence, you will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

Warning: A person may be guilty of custodial interference in the second degree if they violate provisions 10, 11, or 12.

Washington Crime Information Center (WACIC) Date Entry

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to Bellevue County Sheriff's Office Police Department *Where Petitioner Lives* which shall enter it into WACIC.

Service

- The clerk of the court shall also electronically forward a copy of this order on or before the next judicial day to Seattle County Sheriff's Office Police Department *Where Respondent Lives* which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.
- (Only if surrender of weapons not ordered) Petitioner has made private arrangements for service of this order.

Law Enforcement Assistance

- Law enforcement shall assist petitioner in obtaining:
- Possession of petitioner's residence personal belongings located at: the shared residence respondent's residence other:
- Custody of the above-named minors, including taking physical custody for delivery to petitioner (if applicable)
- Other _____

HENRY H. JUDSON

Dated: 9/18/19 at 11:29 a.m./p.m.

[Signature]
Judge/Commissioner

SEP 18 2019

Presented by:

COURT COMMISSIONER

[Signature]
Signature of Petitioner/Lawyer

45232
WSBA No.

Brian Edwards
Print Name

The petitioner or petitioner's lawyer must complete a Law Enforcement Information Sheet (LEIS).

Appendix B

19-2-24476-3 SEA
 COSENTINO VS MITCHELL
 Domestic Violence - Discretionary Review

[Summary](#) [Participants](#) [Documents List](#) [Events](#) [Judgments](#)

Documents

∨ Documents List

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
1	09/18/2019	PTORPRT - Petition for Order for Protection		6	
2	09/18/2019	CICS - Case Information Cover Sheet		1	
3	09/18/2019	DCLR - Declaration	SARAH COSENTINO	77	
4	09/18/2019	TMORPRT - Temporary Order for Protection		4	
5	09/18/2019	ORWPN - Order to Surrender Weapon		3	
6	09/23/2019	INFO - Information	RE FIREARM	3	
7	09/25/2019	NTAPR - Notice of Appearance	RSP	1	
8	09/26/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
9	10/03/2019	NTAPR - Notice of Appearance	RSP	1	
11	10/03/2019	ORRTPO - Order Reissuing Temporary Protection Order		1	
12	10/03/2019	MINS - Minutes Hearing continued		2	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
13	10/03/2019	RTSNS - Return of Service - Not Served		2	
14	10/08/2019	DCLRNS - Declaration of Non-Surrender		1	
15	10/09/2019	ORCNTWC - Order Continuing Hearing Weapons Compliance		4	
16	10/09/2019	MINS - Minutes Motion hearing		1	
17	10/11/2019	NTIWD - Notice of Intent to Withdraw	RSP	2	
18	10/11/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
19	10/18/2019	NTAB - Notice of Absence / Unavailability		2	
20	10/18/2019	NTAPR - Notice of Appearance	RSP	2	
21	10/23/2019	ORCRH - Order Compliance Review Hearing		4	
22	10/25/2019	DCLR - Declaration	RE FEES & COSTS /BRIAN EDWARDS	4	
23	10/25/2019	VRPRC - Verbatim Report of Proceedings	BELLEVUE DIST COURT	19	
24	10/25/2019	DCLR - Declaration	OF ELIZABETH HOFFMAN	3	
27	10/25/2019	CRML - Certificate of Mailing		1	
25	10/28/2019	MINS - Minutes Motion hearing		2	
26	10/28/2019	ORRTPO - Order Reissuing Temporary Protection Order		1	
28	11/06/2019	RSPPT - Response to Petition	RESP	55	
29	11/06/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
30	11/08/2019	RPY - Reply	SARAH COSENTINO	22	
31	11/08/2019	DCLR - Declaration	BRIAN EDWARDS	5	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
32	11/12/2019	ORPRT - Order for Protection		6	
33	11/12/2019	ORWPNP - Order to Surrender Weapon-CPL Restriction		3	
34	11/12/2019	MINS - Minutes Motion hearing		2	
35	11/13/2019	JD - Judgment		1	
37	11/18/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
38	11/20/2019	ORRWSC - Order on Review Weapons Surrender Compliance		4	
39	11/20/2019	MINS - Minutes Motion hearing		1	
40	11/20/2019	PRSRW - Proof of Surrender and Receipt of Weapons		4	
41	11/22/2019	MTAF - Motion and Affidavit / Declaration		17	
42	11/22/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
43	11/22/2019	FAULTY - Faulty Document Notice	Clerk	1	
44	11/25/2019	NTWDA - Notice of Withdrawal of Attorney	RSP	2	
45	11/25/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
46	11/25/2019	NTHG - Notice of Hearing		2	
47	11/25/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
48	11/26/2019	MTRC - Motion for Reconsideration		19	
49	11/26/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
50	12/09/2019	MTRC - Motion for Reconsideration		22	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
51	12/09/2019	NTMTDK - Note for Motion Docket		2	
52	12/09/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
53	12/10/2019	ORMRC - Order on Motion for Reconsideration		1	
54	12/10/2019	LTR - Letter	RE MOTION FOR RECONSIDERATION /COURT	1	
55	12/10/2019	CRML - Certificate of Mailing		1	
56	12/12/2019	DCLR - Declaration	RSP	10	
57	12/12/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
58	12/16/2019	ORMRC - Order on Motion for Reconsideration		1	
59	12/16/2019	CRML - Certificate of Mailing		1	
60	12/18/2019	MTAF - Motion and Affidavit / Declaration	RSP	229	
61	12/18/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
62	12/19/2019	NTHG - Notice of Hearing		3	
63	12/19/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
64	12/19/2019	RSP - Response	DECLARATION	22	
65	12/19/2019	DCLR - Declaration	BRIAN EDWARDS AMENDED FEES AND COSTS	7	
66	12/19/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
67	12/19/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
68	12/20/2019	DCLR - Declaration	IN REPLY RE MTN FOR RECONSIDERATION RE FEES /RSP	16	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
69	12/20/2019	AFSR - Affidavit / Declaration / Certificate Of Service		1	
70	12/20/2019	ORASRV - Order on Assignment for Revision	JUDGE KEENAN	1	
71	01/03/2020	NTHG - Notice of Hearing		2	
72	01/03/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
73	01/08/2020	NTDRCA - Notice of Discretionary Review to Court of Appeals		7	
74	01/09/2020	CRML - Certificate of Mailing		1	
75	01/09/2020	ORMRC - Order on Motion for Reconsideration	DENIED	1	
76	01/14/2020	MTSC - Motion for Order to Show Cause	CONTEMPT AND ATTORNEY FEES	30	
77	01/14/2020	DCLR - Declaration	OF BRIAN EDWARDS RE ATTORNEY FEES	4	
78	01/14/2020	MTAF - Motion and Affidavit / Declaration	MODIFY/TERMINATE ORDER FOR PROTECTION	5	
79	01/15/2020	OR - Order	TO RESUBMIT MOTION	2	
80	01/15/2020	MTSC - Motion for Order to Show Cause	FOR CONTEMPT AND ATTORNEY FEES	37	
81	01/15/2020	ORTSC - Order to Show Cause		3	
82	01/15/2020	NTHG - Notice of Hearing		2	
83	01/21/2020	TSPR - Transcript of Proceedings		14	
84	01/21/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
85	01/21/2020	TSPR - Transcript of Proceedings		38	
86	01/21/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
87	01/22/2020	MT - Motion	FOR STAY OF ENFORCEMENT AND STAY OF PROCEEDINGS	21	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
88	01/22/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
89	01/22/2020	NTHG - Notice of Hearing		2	
90	01/22/2020	ORAU - Order Authorizing	RESPONSE TO MOTION FOR REVISION	2	
91	01/27/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
92	01/28/2020	MM - Memorandum	IN RESPONSE OF MOTION FOR REVISION	5	
93	01/28/2020	DCLR - Declaration	OF BRIAN EDWARDS RE: ATTORNEY FEES	3	
94	01/28/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
95	01/29/2020	MM - Memorandum	IN REPLY ON MOTION FOR REVISION	26	
96	01/29/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
97	01/29/2020	ORAU - Order Authorizing	ADL TIME TO FILE AMENDED REPLY	2	
98	01/31/2020	MM - Memorandum	OF BRIAN EDWARDS IN STRICT REPLY RE ORDER TO SHOW CAUSE	62	
99	01/31/2020	DCLR - Declaration	OF BRIAN EDWARDS RE ATTORNEY FEES /AMENDED	5	
100	01/31/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
101	01/31/2020	MINS - Minutes Motion hearing		1	
102	01/31/2020	NTMTDK - Note for Motion Docket	RECONSIDER	2	
103	01/31/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
105	01/31/2020	ORFR - Order on Motion for Revision of Court Commissioner's Ruling		5	
104	02/03/2020	MINS - Minutes Motion hearing		1	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
106	02/03/2020	ORMTPO - Order Modifying / Terminating Terms of Protective Order		2	
107	02/03/2020	OR - Order	FOR OPD FINANCIAL ELIGIBILITY	2	
108	02/03/2020	ORCNT - Order of Continuance		3	
109	02/03/2020	ORTSC - Order to Show Cause		2	
110	02/05/2020	RTSNF - Return of Service not Found		11	
111	02/13/2020	MTFR - Motion for Revision		3	
112	02/13/2020	NTHG - Notice of Hearing		3	
113	02/13/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
114	02/18/2020	ORASR - Order on Assignment / Reassignment	JUDGE KEENAN	1	
115	02/19/2020	ORMRC - Order on Motion for Reconsideration		6	
116	02/24/2020	ORST - Order Setting	BRIEFING SCHED RE RESP MOTION FOR EVISION	2	
117	02/24/2020	EMAIL - Email/s		8	
118	02/24/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
119	03/02/2020	MTAF - Motion and Affidavit / Declaration	FOR REVISION/ RESPONDENT	5	
120	03/02/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
121	03/02/2020	NTHG - Notice of Hearing		3	
122	03/02/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
123	03/05/2020	DCLR - Declaration	AMENDED OF BRIAN EDWARDS	5	
124	03/05/2020	DCLR - Declaration	IN REPLY SUPPLEMENTAL	58	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
125	03/05/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
127	03/10/2020	ORASRV - Order on Assignment for Revision	JUDGE KEENAN	1	
126	03/11/2020	ORST - Order Setting	ARGUMENT & BRIEFING SCHED RE MTN FOR REVISION	3	
128	03/11/2020	ORCNT - Order of Continuance		3	
129	03/16/2020	ORST - Order Setting	TELEPHONIC ARGUMENT	3	
130	03/16/2020	MM - Memorandum	IN RESPONSE ON MOTION FOR REVISION	3	
131	03/16/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
132	03/18/2020	ORH - Order for Hearing		3	
133	03/18/2020	MM - Memorandum	IN REPLY ON MOTION FOR REVISION	8	
134	03/18/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
135	03/19/2020	ORCNT - Order of Continuance	REVISION HRG	4	
136	04/03/2020	OR - Order	RE CONTEMPT HEARING & REVISION	2	
137	04/08/2020	ORSK - Order Striking	REVISION HRG W/ ORAL ARGUMENT	3	
138	05/01/2020	ORDYMT - Order Denying Motion / Petition	MTN TO REVISE DVPO	3	
139	05/01/2020	ORFR - Order on Motion for Revision of Court Commissioner's Ruling	GRANTED	10	
140	05/11/2020	MTRC - Motion for Reconsideration		4	
141	05/11/2020	NTHG - Notice of Hearing		2	
142	05/11/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
143	05/28/2020	ORMRC - Order on Motion for Reconsideration	DENIED	2	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
144	06/08/2020	MT - Motion		3	
145	06/08/2020	NTHG - Notice of Hearing		2	
146	06/08/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
147	06/11/2020	MM - Memorandum	ON MOTION FOR ENLARGEMENT	1	
148	06/11/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
149	06/16/2020	RPY - Reply	RE: MOTION FOR ENLARGEMENT OF TIME	2	
150	06/16/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
151	06/16/2020	ORDYMT - Order Denying Motion / Petition	RE ENLARGEMENT OF TIME	3	
152	06/26/2020	MTRC - Motion for Reconsideration		13	
153	06/26/2020	NTHG - Notice of Hearing		2	
154	06/26/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
155	07/07/2020	ORMRC - Order on Motion for Reconsideration	DENIED	2	
156	07/17/2020	MTRC - Motion for Reconsideration		4	
157	07/17/2020	NTHG - Notice of Hearing	RECONSIDERATION	2	
158	07/17/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
159	07/22/2020	NTMTDK - Note for Motion Docket	SHOW CAUSE	3	
160	07/22/2020	MTSC - Motion for Order to Show Cause		64	
161	07/22/2020	DCLR - Declaration	BRIAN EDWARDS AMENDED	10	
162	07/22/2020	ORTSC - Order to Show Cause		3	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
163	08/04/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
164	08/19/2020	XJCD - JIS Check Confidential Document Cover Sheet		3	🔒
165	08/20/2020	WPSL - Working Papers Submission List		2	
166	08/20/2020	MM - Memorandum	STRICT REPLY OF PETS COUNSEL RE ORDER TO SHOW CAUSE RE CONTEMPT	25	
167	08/20/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
168	08/25/2020	MINS - Minutes Hearing continued		1	
169	08/25/2020	OR - Order	FOR OPD FINANCIAL ELIGIBILITY SCREENING AND LIMITED REPRESENTATION APPOINTMENT OF COUNSEL	2	
170	08/25/2020	ORTSC - Order to Show Cause		2	
171	08/25/2020	ORCNT - Order of Continuance		2	
172	09/21/2020	XJCD - JIS Check Confidential Document Cover Sheet		3	🔒
173	09/21/2020	NTAPR - Notice of Appearance	RESPONDENT	1	
174	09/21/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
175	09/22/2020	WPSL - Working Papers Submission List		2	
176	09/22/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
177	09/23/2020	MM - Memorandum	DENY CONTEMPT	3	
178	09/23/2020	WPSL - Working Papers Submission List		2	
179	09/23/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
180	09/25/2020	MINS - Minutes Motion hearing		1	
181	10/12/2020	ORCN - Order on Contempt		3	
182	10/14/2020	MTAF - Motion and Affidavit / Declaration	WAIVE FEES	2	
183	10/14/2020	NTHG - Notice of Hearing		2	
184	10/14/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
185	10/16/2020	NTMTDK - Note for Motion Docket	REVISION	2	
186	10/16/2020	MTFR - Motion for Revision		6	
187	10/16/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
188	10/22/2020	NTHG - Notice of Hearing	REVISION	2	
189	10/22/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
190	10/26/2020	ORASRV - Order on Assignment for Revision	JUDGE BENDER	2	
191	10/26/2020	NTHG - Notice of Hearing		2	
192	10/26/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
193	10/27/2020	NTWDA - Notice of Withdrawal of Attorney		1	
194	11/05/2020	NLAP - Notice of Limited Appearance		2	
195	11/05/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
196	11/06/2020	MINS - Minutes Motion hearing		1	
197	11/17/2020	ORFR - Order on Motion for Revision of Court Commissioner's Ruling	WEBAPP GRANTED	8	

Sub Number	Date Filed	Document Name	Additional Information	Page #	Seal
198	11/17/2020	AFSR - Affidavit / Declaration / Certificate Of Service		2	
199	11/30/2020	MTRC - Motion for Reconsideration		7	
200	11/30/2020	NTHG - Notice of Hearing		2	
201	11/30/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
202	12/01/2020	NTHG - Notice of Hearing		2	
203	12/01/2020	MT - Motion	FOR FEES	17	
204	12/01/2020	AFSR - Affidavit / Declaration / Certificate Of Service		1	
205	12/14/2020	ORMRC - Order on Motion for Reconsideration	DENIED	2	
206	12/14/2020	AFSR - Affidavit / Declaration / Certificate Of Service		2	
207	12/15/2020	ORCN - Order on Contempt		4	
208	12/15/2020	AFSR - Affidavit / Declaration / Certificate Of Service		2	
209	01/13/2021	NTDRCANF - Notice of Discretionary Review to Court of Appeals – No Fee		9	
210	01/22/2021	LTR - Letter	RE MOTION OF INDIGENCY /SUPREME COURT	1	
211	03/09/2021	NTAB - Notice of Absence / Unavailability		2	
212	03/15/2021	NTDRCA - Notice of Discretionary Review to Court of Appeals		9	
213	04/01/2021	CROF - Certificate of Finality	80944-0-I /REVIEW DENIED	3	

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STATE OF WASHINGTON, COUNTY OF KING
KING COUNTY SUPERIOR COURT

SARAH COSENTINO, . Case No. 19-2-24476-3
Petitioner, .
v. . Seattle, Washington
JOHN MITCHELL, . Thursday, October 3, 2019
Respondent. . 9:39 a.m.
. VOLUME I OF II

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LEONID PONOMARCHUK
KING COUNTY SUPERIOR COURT COMMISSIONER

APPEARANCES:

For the Petitioner: Mckinley Irvin
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1 SEATTLE, WASHINGTON, THURSDAY, OCTOBER 3, 2019, 9:39 A.M.

2 THE CLERK: -- Sarah Ann Cosentino v. John Martin
3 Mitchell, cause number 19-2-24476-3 SEA.

4 THE COURT: Good morning.

5 MR. EDWARDS: Good morning, Your Honor.

6 THE COURT: Counsel, please make your appearances.

7 MR. EDWARDS: Brian Edwards, here on behalf of
8 Petitioner, Sarah Cosentino to my left.

9 THE COURT: Good morning.

10 MS. MOUNT PENNER: And Elizabeth Mount Penner on
11 behalf of Mr. Mitchell, Your Honor.

12 THE COURT: Thank you. Where is Mr. Mitchell?

13 MS. MOUNT PENNER: Mr. Mitchell is not present today.
14 This is the first return hearing, and he had scheduled plans
15 to be away, so I'm appearing on his behalf.

16 THE COURT: You're going to testify for him?

17 MS. MOUNT PENNER: No, Your Honor. The parties are
18 both seeking a reissuance. The only issue is one of the
19 provisions of the temporary order.

20 THE COURT: So you're asking for a reissuance, Mr.
21 Edwards?

22 ARGUMENT FOR THE PETITIONER BY MR. EDWARDS

23 MR. EDWARDS: Well, that's about half true. When
24 counsel came on, we agreed that we would reissue it. We
25 agreed on a date. But then she said she wanted to argue

1 about other provisions that she wanted taken out of the
2 temporary order. I said, "Well, I guess I've got some, I'll
3 argue about two," namely that he has a website up in my
4 client's name, that is just her name dot com, which has gone
5 up since the -- and remained up. They're making this sort of
6 cute argument that it's not a new posting, so it's not a
7 violation of the order, but it remains up.

8 And so if we were going to argue about those things,
9 I'd assume he'd be here. Given that he's not, I don't know.
10 We'd rather enter a full order, or we don't change anything,
11 or we change to minimal things. I don't know where that
12 leaves us.

13 THE COURT: All right. So all right. So Ms. Penner,
14 why don't you go ahead and make your argument for
15 continuance?

16 ARGUMENT FOR THE RESPONDENT BY MS. MOUNT PENNER

17 MS. MOUNT PENNER: Yes, Your Honor. I was recently
18 retained on this case, and there are some significant legal
19 issues. I have requested a continuance in order to provide a
20 response. I had insufficient time to allow that to occur
21 once Mr. Mitchell retained our office. My understanding is
22 that October 28th is the next realistic available for
23 Petitioner's counsel due to trial schedule and other
24 scheduling issues.

25 So we're -- or I am requesting that October 28th date

1 be taken into consideration, Petitioner's counsel's schedule.
2 I would only need -- in order to prepare a response, I would
3 only be asking one to two weeks to complete that and allow
4 time for a reply. But due to Petitioner's counsel's
5 schedule, we have both consulted our calendars, and it looks
6 like October 28th is the next realistic available date.

7 THE COURT: All right. So next, if you -- your
8 request, I see now you proposed -- you want me to strike
9 section 9?

10 MS. MOUNT PENNER: Correct, Your Honor.

11 THE COURT: And for the record, Section 9 says,
12 "Respondent is prohibited from posting about Petitioner on
13 social media or any other electronic medium. Respondent is
14 prohibited from contacting members of Petitioner's family,
15 friends, including the Kipman family, or Petitioner's ex-
16 husband." Please tell me why you're making this kind of
17 request.

18 MS. MOUNT PENNER: Yes, Your Honor. The restriction
19 is a violation of Mr. Mitchell's First Amendment right to
20 free speech. The provision in Section 9 does not restrict
21 his contact with the Petitioner directly, but includes
22 protected speech, including postings about the Petitioner.
23 Exhibit K to the petition is a copy of the webpage, the first
24 sentence of which reads, "This page is my attempt to
25 understand and heal from a damaging relationship."

1 It's clearly protected speech for him to be able to
2 talk about the relationship. There is a legitimate purpose
3 to that speech, and the provision therefore as a prior
4 restraint must be narrowly tailored to serve a compelling
5 interest. I plan to fully address this in my briefing with
6 respect to the final entry of a domestic violence protection
7 order in this matter, but in the interim, the restriction
8 remains a violation of Mr. Mitchell's right to free speech.

9 It encompasses quite a bit of protected speech,
10 contains no limit to simply unprotected speech such as libel
11 or threatening speech. There's been no accusation by the
12 Petitioner that any of the statements are libelous or that
13 they are true threats, which would be unprotected speech.
14 And there's no limit to contact with the Petitioner directly.

15 With respect to the request that has been previewed
16 by the Petitioner to take down the website, I'd just indicate
17 that the website remains as it was, untouched. No additional
18 posts have been made since the entry of the temporary
19 protection order.

20 THE COURT: And I want to make sure that I read this
21 correctly. The parties were in an intimate relationship that
22 ended.

23 MR. EDWARDS: Yes.

24 THE COURT: And she told him to stay away from her,
25 and he now owns a website that has her name on it?

1 MS. MOUNT PENNER: Correct, Your Honor.

2 MR. EDWARDS: Further than that, Your Honor, she
3 sought a domestic violence protection order in the district
4 court, Bellevue. That was denied, but I pursued the audio
5 and we'll be providing a transcript of the full hearing. But
6 the Court said, "Do you want to have any more contact with
7 her?" And this is briefed in her petition as well. "No. I
8 don't need any more contact with her." He then contacted her
9 right away.

10 The Court also said, "Well, if you do contact her and
11 she comes back here, I'm going to give her an order." I'm
12 paraphrasing, but that is what they said. And so it took him
13 about two days to contact her. Then he put up a site in her
14 name. And they're saying, "I can't see anything wrong with
15 this. He's just grieving."

16 THE COURT: Okay. Go ahead, Ms. Penner.

17 MS. MOUNT PENNER: Yes, Your Honor. And the Bellevue
18 District Court did deny that protection order, and the only
19 thing that did change was that subsequent non-hostile
20 contact. The Respondent does have a First Amendment right to
21 speech, including the right to express his feelings about the
22 relationship, so long as that speech is not libelous, so long
23 as that speech is not threatening. And there are no limits
24 in this provision to simply unprotected speech, so the
25 restraint is not narrowly tailored to serve a compelling

1 interest.

2 And it's also not limited to contact with the
3 Petitioner directly, which the courts have upheld. The other
4 provision, which is the provision on third-party contact, is
5 not a limitation on contact with the Petitioner via third
6 parties, but is a limitation on contact of third parties
7 generally, which is not supported by statute. These are not
8 minors who are living within the home. There are adults who
9 have not sought a protection order and who are not party --

10 THE COURT: Now, who are you referring to and
11 specifically?

12 MS. MOUNT PENNER: All of the Petitioner's friends
13 and family, including --

14 THE COURT: Now, help me out here, counsel, because a
15 standard boilerplate that the legislature's adopted says
16 contacting through third persons.

17 MS. MOUNT PENNER: Correct, Your Honor. We're not
18 objecting to the provision that indicates that there's not to
19 be third-party contact with the Petitioner via a third
20 person. This provision goes beyond that, and restricts
21 contact with third parties without the contact to the
22 Petitioner piece of that. And the reason it's problematic
23 for the Respondent in this case is that he is actually the
24 member of the same social club as the Petitioner's ex-
25 husband, who's one of the listed individuals.

1 And he also is working with Scott Guthrie and Alex
2 Kipman and has regular meetings as part of his work with
3 Scott Guthrie. Those contacts have nothing to do with the
4 Petitioner. There's already a limitation on third-party
5 contact. He would not be authorized, without Section No. 9,
6 to have contact with them or have contact with the Petitioner
7 through them. And that third-party contact restriction,
8 we're not opposing. It's the provision that specifically
9 protects individuals who are not parties to this protection
10 order action that we are opposing.

11 Additionally, Your Honor, the Respondent is not aware
12 of all the individuals that would constitute the Petitioner's
13 friends, and that provision is vague and potentially
14 unenforceable, but also vague in that he would need some
15 clarification as to who these individuals are that he would
16 not be allowed to contact. Again, the provision itself
17 should be stricken. The third-party contact provision should
18 remain. The legislature's standard language, we have no
19 objection to.

20 THE COURT: And once again, this website does what?

21 MS. MOUNT PENNER: The website is a website that he
22 posted about the relationship from --

23 THE COURT: Their relationship.

24 MS. MOUNT PENNER: Yes, from his perspective. And
25 the relationship was posted, and indicates, you know, issues

1 that he felt were present in the relationship, describes the
2 relationship, describes the attempt by the Petitioner to get
3 an anti-harassment order which failed, or protection order
4 which failed in district court, and also contains some of the
5 description of the communications between the parties during
6 the relationship.

7 And it may be unadvisable for him to do that. Would
8 I have a website such as that myself? No, but it is
9 protected speech nonetheless. Lots of things are protected
10 speech which may be undesirable, or ill advised, or
11 potentially inappropriate. But nonetheless, he has the right
12 to First Amendment free speech.

13 And when the Court issues a provision which restricts
14 that right of free speech in advance, that is a prior
15 restraint and the case law is clearly -- the case law clearly
16 requires that such a prior restraint be narrowly tailored to
17 serve a compelling interest, and it is not narrowly tailored
18 to serve a compelling governmental interest because it
19 encompasses within its scope protected speech and is not
20 limited to unprotected categories of speech such as true
21 threats or libel, which I agree that the Court would have the
22 authority to restrict.

23 COURT'S RULING

24 THE COURT: Ms. Penner, I commend you for your
25 earnest arguments on behalf of your client. All right? But

1 this is the domestic violence court. All right? And so when
2 I hear about free speech in the domestic violence realm, this
3 is quite not as egregious, but the same argument as someone
4 who would say, "I have free speech to yell 'fire' in a
5 crowded theater." Okay? This website says, "Sarah
6 Cosentino." If I was looking up Sarah Cosentino and then I
7 hear your client's vitriol against her, I would find that to
8 be negative.

9 Now, he has a right to his own opinion. He doesn't
10 have the right to broadcast it to the world regarding their
11 personal issues. So to that extent -- and I am a fervent
12 advocate of free speech. Frankly, I am very appalled by what
13 the students in Berkeley do to the right-wing nuts, shutting
14 them down. I am offended when people smack people that wear
15 those red hats. I am offended by that as an old liberal. At
16 the same time, when it comes to domestic violence, the Court
17 will not open the door to allow somebody under the guise of
18 free speech to continue to harass someone. I am signing the
19 order that's reissuing it, and strike -- and then this
20 website will be taken down immediately.

21 MS. MOUNT PENNER: And Your Honor, with respect to
22 the contacts with third parties, particularly within the
23 scope of his employment, Mr. Guthrie and Alex Kipman --

24 THE COURT: He can make that showing in 30 days. He
25 can show exactly how this affects his employment, and most

1 certainly the Court will then listen to that. And you need
2 to be prepared on that.

3 MR. EDWARDS: Okay.

4 THE COURT: At this point, given the fact that this
5 website was set up so he can complain about her -- this Court
6 by a preponderance assumes that he will be bad-mouthing her
7 and thereby harassing her through these third persons. The
8 order stays in place.

9 MR. EDWARDS: I have just two procedural questions,
10 Your Honor. One, with the Respondent not here, is his
11 counsel accepting service?

12 MS. MOUNT PENNER: I would accept service, Your
13 Honor.

14 THE COURT: Thank you. So I'll check the box and
15 make private arrangements for service or counsel will accept
16 it.

17 MR. EDWARDS: Okay.

18 THE COURT: Okay?

19 MS. MOUNT PENNER: Yes.

20 THE COURT: Thank you very much, counsel.

21 MS. MOUNT PENNER: That would --

22 MR. EDWARDS: And then the second question is, with
23 respect to the addition of taking down the website, I've
24 included it in the reissuance order.

25 THE COURT: I know.

1 MR. EDWARDS: I just didn't know if the Court felt we
2 needed a modification or if what I've done would suffice.

3 THE COURT: No. In a reissuance, this Court has the
4 authority to tweak an order.

5 MR. EDWARDS: Thank you.

6 MS. MOUNT PENNER: And Your Honor, with respect to
7 the argument regarding free speech --

8 THE COURT: Yes.

9 MS. MOUNT PENNER: -- I assume that, that argument
10 will be heard without prejudice upon briefings submitted by
11 the Respondent. There was insufficient time for that to
12 occur.

13 THE COURT: I agree with you.

14 MS. MOUNT PENNER: I just wanted to make clear the
15 record.

16 THE COURT: I'm open minded, counsel. Okay? But
17 this has to be done in the context not of the global free
18 speech movement; it has to be done in the context of domestic
19 violence because that's what this Court's going to be looking
20 at. Okay?

21 MS. MOUNT PENNER: I will do that. Thank you.

22 THE COURT: Thank you.

23 MR. EDWARDS: Thank you.

24 (Hearing adjourned at 9:53 a.m.)

25

STATE OF WASHINGTON, COUNTY OF KING
KING COUNTY SUPERIOR COURT

1		.	
2		.	
3		.	Case No. 19-2-24476-3
4	SARAH COSENTINO,	.	
5	Petitioner,	.	
6	v.	.	Seattle, Washington
7	JOHN MITCHELL,	.	Thursday, October 3, 2019
8	Respondent.	.	9:39 a.m.
9	VOLUME I OF II

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Erica L. Ingram

January 7, 2020

Signature

Date

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