

65395-4

COURT OF APPEALS
DIVISION ONE No. 65395-4-I

65395-4

SFP 09 2011

**COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION ONE**

MAUREEN MCCASLIN, *Appellant*

v.

KATHLEEN CAROVANO, *Respondent*

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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REPLY BRIEF

Maureen McCaslin
P.O. Box 257 PMB 3167
Olympia, Wa., 98507-0257

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OBJECTIONS TO FACTS AS STATED BY RESPONDENT

On page 5 of the respondent's brief, she claims that "The court made no finding as to whether or not Ms. McCaslin's violation of the protection order was in inadvertent or in bad faith." In fact, on Page 14, lines 4-6 of the transcript of the hearing of 12.15.08 from a hearing in the court of Commissioner Carlos Velategui, the court made specific findings that Ms. McCaslin's actions were not in bad faith.

ARGUMENT

1. THE RESPONDENT DID NOT HAVE STANDING TO BRING THE MODIFICATION OF A PROTECTION ORDER.

On page 10 of the respondent's brief, it is claimed an "interested party" can petition the court for a petition of protection order. However, RCW 74.34.163 restricts the modification of a protection order to either a guardian or a vulnerable adult who has not been adjudged to be fully incapacitated. The Respondent is not a legal guardian and does not have standing to bring a modification of a protection order. Therefore both the trial court and the appellate court lack jurisdiction to sustain the modified order. It is well established that a party may challenge a court's subject

matter jurisdiction at any time. See, e.g., Boeing Co. v. Sierracin Corp., 108 Wash. 2d 38, 49, 738 P.2d 665 (1987); McIntosh v. Nafziger, 69 Wash. App. 906, 910 n.4, 851 P.2d 713 (1993). Moreover, a judgment rendered by a court lacking jurisdiction is void ab initio and is legally no judgment at all. Wesley v. Schneckloth, 55 Wash. 2d 90, 93-94, 346 P.2d 658 (1959).

2. THE RESPONDENT HAS NOT ADEQUATELY ADDRESSED MCCASLIN'S ARGUMENT THAT SHE IS IMMUNE FROM LIABILITY FOR MAKING REPORTS TO GOVERNMENT AUTHORITIES UNDER RCW 74.34.050.

The respondent repeats the mistake of Commissioner Watness in concluding that Ms. McCaslin welfare check was filed “without reasonable cause.” That is not the standard. The only standard that is given in 74.34.050 is whether the complaint is made in good faith. There has been no finding that any of the complaints by the appellant were not made in good faith.

The respondent seeks to avoid this problem by claiming that there were other reasons for modifying the order citing to vague comments by Commissioner Watness about Ms. McCaslin’s “behavior in the home and

its disruptiveness there” and a continuing “campaign that is not in Wanda Bell’s best interest.”

The problem of relying on these two vague findings is that it is impossible to determine what he is referring to here. The respondent has set out a laundry list of actions that she considers harassing. The petitioner has proffered legitimate reasons why she has engaged in those actions which was to document evidence that her mother was being mistreated. So what did the court conclude? The respondent of course would like to argue that the court agreed with the petitioner on everything, but there is no finding that says that. Even if it did, this court should reverse if the evidence shows that Ms. McCaslin was only trying to provide documentation for her complaint to the police.

In general, a trial court must make findings of fact and conclusions of law sufficient to suggest the factual basis for its ultimate conclusion. **Groff v. Dept. of Labor & Indus.**, 65 Wn.2d 35, 40, 395 P.2d 633 (1964). The degree of particularity required in these findings depends on the circumstances of the particular case, the basic requirement being that the findings must be sufficiently specific to permit meaningful review.' **In re Dependency of C.B.**, 61 Wn. App. 280, 287, 810 P.2d 518 (1991) (citing

In the Detention of Labelle, 107 Wn.2d 196, 218, 728 P.2d 138 (1986).

The purpose of the requirement of findings and conclusions is to insure the trial judge 'has dealt fully and properly with all the issues in the case before he decides it and so that the parties involved and this court on appeal may be fully informed as to the basis of his decision when it is made.' **Labelle**, **id.**

That has not been done here.

3. THE RESPONDENTS HAVE NEVER ARTICULATED A VALID BASIS FOR THEIR AWARD OF ATTORNEY FEES.

The respondent cites to a number of facts that were before the court when it makes its award of attorney fees. While many of these “facts” obtained through hearsay by Detective Finkel may be seen in support of the court’s finding that there was no reasonable cause for her complaints, they cannot be used for attorney fees because the court did not address these issues specifically and therefore we do not know if they were used to support an award for attorney fees. There were insufficient findings to determine what the court used as a basis. Also, Commissioner Velategui made a specific finding that the appellants actions were not in bad faith. If Commissioner Watness was going to reverse this finding, he

should have done so and stated specifically why he did and what actions taken by the appellant were used to support the new finding.

The respondent concedes that the action of asking for a welfare check, did not fall within the conduct that was forbidden by Judge Erlick's order. If this is true, then that only reinforces the appellants argument that her good faith actions should not have been subject to an award of attorney fees at all

The arguments that the respondent has raised on the immunity issue are nonsense. The respondent attempts to make the argument that since the appellant did not make her complaints to both the police and the department, that her action was not protected, but cites to no authority for that proposition. The appellant may very well have decided that since the police were already reporting to the department, that such an action was unnecessary. Or it may have been that the appellant considered her reporting in this case to be that of a permissive reporter and therefore covered under RCW 74.34.050(6). Either case, as long as her actions were in good faith she was covered by RCW 74.34.035. The respondents would like to claim that the court awarded fees against her because her actions

were not in good faith, but the court found just the opposite on December 15, 2011, which was a finding that was never reversed.

Also, the respondent has not shown the actions of Judge Erlick were not prior restraints. The order was not carefully crafted to comply with the statute, because it drafted a new standard as to what constituted a legitimate complaint, which meant the appellant had to have reasonable cause as opposed to good faith belief.

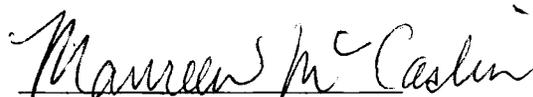
The difference between these two standards is easily seen which is why the order fails for vagueness. The respondent points out, Maureen McCaslin supposedly filed 7 reports that were unsubstantiated. The respondent has cited reports to the King County Ombudsman and APS as being made by McCaslin of which there is not proof. Reports to an Ombudsman and the Adult Protective Services (APS) reports are confidential. Does the new order mean that she could have been sanctioned in each of those cases because the complaints were not sustained, even though all of them might have been brought in good faith? The respondents point to several incidents that they consider "harassment".

Which one of those did the court rule as harassment? We don't know because the court never made proper findings. Is it up to the respondent to define what harassment may or may not be after the fact? We don't know, and from the language of the order it is impossible to determine what is forbidden and what is not. That is why it fails for vagueness.

CONCLUSION

For the reasons given in this brief, the order modifying the protection order and the order awarding attorney fees should be reversed.

Dated this 8th day of September, 2011


Maureen McCaslin, pro se

I hereby certify that on September 8th, 2011, I caused to be served a copy of this document by first class mail, postage prepaid

John S. Palmer
11911 NE 1st St., Suite B204
Bellevue, WA., 98005


Maureen McCaslin, pro se