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Court of Appeals Cause No. 58296-8-I

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SEP 28 2007  
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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

City of Woodinville, Respondent

v.

Northshore United Church of Christ, Petitioner

**NORTHSHORE UNITED CHURCH OF CHRIST'S REPLY TO  
THE CITY OF WOODINVILLE'S ANSWER TO PETITION**

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TABLE OF CONTENTS

A. IDENTITY OF PETITIONER..... 2

B. COURT OF APPEALS DECISION..... 2

C. DISCUSSION ..... 2

    1. The City’s Arguments Are Not Supported  
    By The Facts ..... 3

    2. The City’s Arguments Are Not Supported  
    By The Law..... 4

        a. The TRO Was Never Wrongfully  
        Issued ..... 5

        b. The City Did Not Shorten The Life  
        of the TRO ..... 6

        c. Denial of Fees Is Supported By  
        Equity..... 7

    3. Common Sense Is Not On the City’s Side..... 8

D. CONCLUSION..... 9

TABLE OF AUTHORITIES

**Cases**

Bellevue John Does 1-11 v. Bellevue School Dist. #405,  
129 Wn. App. 832, 120 P.3d 616 (2005) ..... 9

Bowcutt v. Delta North Star Corp., 95 Wn. App. 311,  
976 P.2d 643 (1999)..... 6

Chin On v. Culinary Workers and Soft Drink Dispensers Union,  
195 Wn. 530, 81 P.2d 803 (1938)..... 7

Confederated Tribes of Chehalis Reservation v. Johnson,  
135 Wn.2d 734, 958 P.2d 260 (1998)..... 6

Cornell Pump Company v. City of Bellingham,  
123 Wn. App. 226, 98 P.3d 84 (2004) ..... 9

Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103,  
937 P.2d 154 (1997)..... 9

Kastner v. Algase, 130 Wn. 362, 227 P. 504 (1924) ..... 8

**Rules**

CR 65 ..... 6

**A. IDENTITY OF PETITIONER**

Northshore United Church of Christ (the “Church”) asks this Court to deny the City of Woodinville’s petition to review of the portion of the Court of Appeals decision designated in Part B below.

**B. COURT OF APPEALS DECISION**

The City seeks review of the portion of the July 16, 2007 order in Court of Appeals Cause No. 58296-8-I affirming the trial court’s denial of the City’s request for attorney’s fees. A copy of the entire decision was attached to the Church’s Petition for Review in Appendix A. The Church opposes the City’s request for review.

**C. DISCUSSION**

The trial court and Court of Appeals decisions on this issue are consistent with long-established Washington law, common sense and considerations of equity. Because the Court of Appeals’ decision follows black letter law with respect to awards of attorneys’ fees, review by this Court on this issue is not necessary. The City is not entitled to attorney’s fees incurred “quashing” the Temporary Restraining Order (“TRO”) at issue, and the Court of Appeals properly affirmed the trial court’s denial of the City’s request.

1. The City's Arguments Are Not Supported By The Facts

Before Tent City 4 ("TC4") made the decision to locate in Woodinville in 2006, the City filed a preemptive action against the Church and SHARE/WHEEL in King County Superior Court and petitioned the trial court for a TRO preventing TC4 from coming to Woodinville. (CP 3-19.) It is undisputed that neither the Church nor SHARE/WHEEL requested a TRO. The trial court declined to enter the City's requested form of TRO and instead *sua sponte* entered a TRO expressly allowing Tent City to move to Woodinville. (CP 72-76.) The TRO allowed TC4 to move onto the Church property by providing that the "encampment is allowed pending full hearing on plaintiff's motion for a preliminary injunction." (*Id.*) (emphasis added.)

When the City moved to turn the motion for a preliminary injunction into a multi-day evidentiary hearing the Court properly extended the TRO for the length of the hearing. (CP 77-148.) This action by the trial court was consistent with the language contained in the initial TRO and was necessary to allow the City the time to conduct the expedited evidentiary hearing that it requested.

Although the City argues that the trial court abused its discretion by issuing and extending the TRO, the City expressly agreed to entry of the initial TRO entered *sua sponte* by the trial court. (CP 76.) The City

should not have approved and agreed to the TRO if it believed the trial court was exceeding its authority and abusing its discretion in entering the order. At most, the City should have approved the order only as to form. The City should not be able to now argue that the trial court abused its discretion when it did not object to the trial court's actions in a manner providing the trial court with the opportunity to modify its behavior.

The City – not the Church or SHARE/WHEEL – delayed entry of the preliminary injunction when it sought an expedited trial on all claims. The trial court's Final Order does not contain a finding that the trial court abused its discretion in either entering or continuing the TRO, or that the TRO was wrongfully issued or extended. (CP 477-83.)

Based solely on these facts, the trial court and the Court of Appeals decisions are proper.

2. The City's Arguments Are Not Supported By The Law  
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In addition to the factual matters supporting the denial of the City's fee request, Washington law does not support the request. The trial court and the Court of Appeals properly applied the governing law to the facts.

It is well-settled in Washington that attorney's fees are not available as a matter of right in a situation such as the case at bar: "The applicable equitable rule is that attorney fees *may* be awarded to a party

who prevails in dissolving a wrongfully issued injunction or, as here, temporary restraining order.” Confederated Tribes of Chehalis Reservation v. Johnson, 135 Wn.2d 734, 758, 958 P.2d 260 (1998) (emphasis in original) (denying request for fees).

a. The TRO Was Never Wrongfully Issued

The TRO and its extensions were never “wrongful” under Washington law. A TRO that expires or differs from the final decision in a case is not always wrongfully entered. The TRO was entered pursuant to CR 65(b), a rule that grants the trial court broad discretion in deciding whether to grant a TRO. See Bowcutt v. Delta North Star Corp., 95 Wn. App. 311, 976 P.2d 643 (1999)(standard of review for preliminary injunctions is abuse of discretion; the court acted within its inherent equitable power to grant a TRO under terms it deemed just in light of the circumstances. Despite a subsequent order that there was no lawful basis for the TRO, the order awarding \$427 in fees for overturning the TRO was erroneous.).

There has never been a finding that the TRO was wrongfully issued. Such a finding was not present in the trial court’s Final Order, nor did the Court of Appeals so find. The trial court did not abuse its discretion and this Court should not grant review on this issue.

b. The City Did Not Shorten The Life of the TRO

A party may be awarded fees if its efforts actually succeeded in shortening the life of an injunction. This Court has described the legal standard as follows:

... [T]he mere fact that appellants served and filed motions to dissolve does not prevent the application of the rule laid down in the Kastner Case. They did not effectively move against the restraining order, to quote the language of the Kastner Case, “until the time when it must expire without any action on their part.” Its life was not shortened one moment by anything they did, and . . . “appellants cannot be said to have expended anything in securing the dissolution of the restraining order.”

Chin On v. Culinary Workers and Soft Drink Dispensers Union, 195 Wn. 530, 535-36, 81 P.2d 803 (1938) (emphasis added) (party moving to quash TRO was not entitled to attorney’s fees where TRO expired at injunction hearing, and moving party’s efforts did not shorten the life of the TRO). See also Kastner v. Algase, 130 Wn. 362, 227 P. 504 (1924) (plaintiffs were not entitled to attorney fees expended in dissolving TRO when the TRO expired at automatically when order on temporary injunction was entered).

Here, the TRO expired when the trial court entered its ruling on the preliminary injunction. This is precisely when the plain language of the initial TRO said it would expire. (CP 72) (providing that the Tent City

“encampment is allowed *pending full hearing* on plaintiff’s motion for a preliminary injunction.”) (emphasis added). The City’s actions did nothing to speed the termination of the agreed TRO, but instead lengthened it. As a result, the City is precluded from recovering fees. Neither the trial court nor the Court of Appeals misapplied this standard, there is no conflict among the Courts of Appeals, and review by this Court is not necessary on this topic.

c. Denial of Fees Is Supported By Equity

The trial court’s denial of the City’s fee request and (Court of Appeals’ decision affirming that denial) is in line with the equitable purposes underlying Washington precedent:

The purpose of the equitable rule permitting recovery for dissolving a preliminary injunction or restraining order is to deter *plaintiffs* from seeking relief prior to a trial on the merits.

Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 114, 937 P.2d 154 (1997) (citations omitted) (emphasis added), cert. denied, 522 U.S. 1077, 118 S.Ct. 856 (1998). See also Bellevue John Does 1-11 v. Bellevue School Dist. #405, 129 Wn. App. 832, 120 P.3d 616 (2005) (finding that equitable rule did not compel an award of fees when injunctive relief was necessary to preserve rights pending resolution of the action); Cornell Pump Company v. City of Bellingham, 123 Wn. App. 226, 233, 98 P.3d

84 (2004) (“The purpose of this equitable rule is to discourage parties from seeking unnecessary injunctive relief prior to a trial on the merits.”).

Here, *the City* sought injunctive relief. The City filed suit before the Church even invited SHARE/WHEEL to host TC4 on Church property. The same day it filed suit, *the City* moved the trial court for a TRO preventing TC4 from coming to Woodinville. Neither the Church nor SHARE/WHEEL filed a cross-motion seeking a TRO allowing TC4 to move to Church property. Rather, the trial court entered the TRO upon the City’s request (albeit a different TRO than the one sought by the City), and the Church and SHARE/WHEEL followed the TRO’s provisions.

### 3. Common Sense Is Not On the City’s Side

The City seeks fees for “quashing” a TRO that: (a) it sought; (b) was entered by the trial court *sua sponte* and of its own volition; and (c) was explicitly “agreed to” by counsel for the City. The TRO was not “wrongfully” issued and extended, and the Court of Appeals’ decision to affirm the trial court’s denial of fees squarely follows precedent. Moreover, even if the TRO was “wrongfully” entered – which it was not – the City’s concerns go to the trial court’s *sua sponte* entry of a TRO, not to the Church and SHARE/WHEEL. Put differently, the City cannot now punish the Church and SHARE/WHEEL with attorney’s fees for the entry of a TRO that neither the Church nor SHARE/WHEEL requested.

**D. CONCLUSION**

This issue does not explore new legal ground, but instead falls squarely within established Washington precedent. The Court should deny the City's request to review the portion of the July 16, 2007 decision of the Court of Appeals rejecting the City's request for attorney's fees.

Dated this 28th day of September, 2007.

Respectfully Submitted,



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***DECLARATION OF SERVICE***

The undersigned declares under penalty of perjury of the laws of the State of Washington that on September 28, 2007, a true copy of the foregoing **NORTHSHORE UNITED CHURCH OF CHRIST'S REPLY TO THE CITY OF WOODINVILLE'S ANSWER TO PETITION** was served on counsel of record for Respondent as follows:

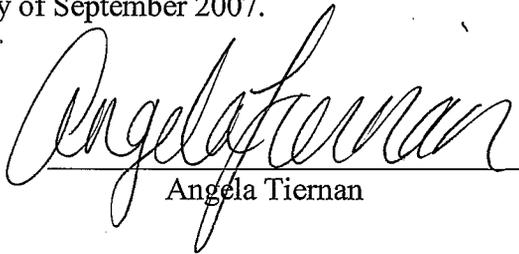
VIA HAND DELIVERY TO:

Greg A. Rubstello  
J. Zachary Lell  
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Seattle, WA 98101

WITH A COPY TO:

Sean Russel  
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Seattle, WA 98101

Dated this 28th day of September 2007.

  
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Angela Tiernan