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**WASHINGTON STATE COURT OF APPEALS, DIVISION II**

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Jonathan J. Arras  
Respondent

v.

Laura G. McCabe  
Appellant

68454-0-I

2012 JUL 31 AM 11:49  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
*LM*

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King County Superior Court Cause Number 0-93-04793-0 SEA

The Hon. Joan E. Dubuque

**REPLY BRIEF**

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**I. AUTHORITIES CITED**

**Washington Statutes**

RCW 10.14.030 ..... 5, 6, 9  
RCW 10.14.080 ..... 6

**Washington Cases**

*In re Marriage of Susan C. and Sam. E.*, 114 Wn. App. 766  
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## **II. SUMMARY OF THE CASE**

The relevant facts are set out and cited in Appellant Laura McCabe's opening brief. To summarize:

Ms. McCabe and Respondent Mr. Arras divorced in 2009. In their dissolution settlement, she relinquished any claim to their former marital home. However, her mother Jordan continued to live downstairs, having paid the entire down payment in exchange for a life-interest in the "mother-in-law" unit. For years, Jordan paid Mr. Arras 20% of shared utility costs based solely on his undocumented requests. After she learned Mr. Arras was overcharging her daughter for shared childcare costs (a fact later proved in family court), Jordan began to suspect he was overcharging her too. When she asked her ex-son-in-law to see the bills, he refused.

Jordan decided to request documentation directly from the City of Bellevue. Frustrated by the City's automated answering system, she asked her daughter for help. The Appellant called the City on her mother's behalf. It is undisputed that the City's agent resolved the call by (1) removing the name "Laura Arras" from the account, (2) forwarding electronic copies of past bills, and (3) adding Jordan's PO Box as a secondary address for future bills. Mr. Arras' receipt of bills was undisturbed. RP 7; Decl. of C. Shortridge.

Several months later, the family court granted Ms. McCabe a substantial money judgment against Mr. Arras, compensating her for wrongful overcharges on shared childcare bills. Order filed Jan 27, 2012. The next business day, Mr. Arras filed a police report and commenced this proceeding for unlawful harassment.

A hearing was held in the superior court on February 28, 2012, before the Honorable Joan E. Dubuque. The only disputed fact was whether Ms. McCabe improperly claimed to be Mr. Arras' *current* wife and a *current* resident of the property when she called the City for her mother. RP 10. Ms. McCabe testified that she believed it was lawful for her make the call on her mother's behalf, and that Jordan had a right to receive copies of the bills. RP 7-8. She denied using the name "Mrs. Arras" or misleading the agent. RP 7, 10. The court told Ms. McCabe that she was not permitted to dispute the agent's claim that she had improperly identified herself. RP at 10.

In her statement, the City's agent acknowledged that she removed the name "Laura Arras" entirely from the account, but does not explain why she did so, if the Appellant impersonated a current account holder.

Unless Mr. Arras gave her mother falsely inflated numbers, the City could not have provided damaging or private information. Mr. Arras did not allege any ulterior motive for his ex-wife's call, nor did he suggest

how her request for old utility bills was harmful or distressing. RP 8-9. If he had truthfully reported the amounts her mother owed, the City's documents could only be mundane and duplicative.

The court refused to consider the family court's judgment against Mr. Arras, or that he might have filed his complaint in retaliation. RP 10-11, 15. The court rejected as immaterial all aspects of Mr. Arras' property dispute over Jordan's \$115,000 property interest, and any legitimate interest she might have in obtaining the utility information. RP 12, 13. The court refused Ms. McCabe's request to present testimony from Jordan. RP 13. The court also refused to consider the parties' Parenting Plan, which already limited contact to written exchanges about their children. RP at 16.

At the hearing, Mr. Arras made unsupported accusations, not alleged in his petition, that Ms. McCabe had also called other utility companies and pretended to be his current wife. When Ms. McCabe objected, the court stated it would base its ruling solely upon the single documented call to the City of Bellevue. RP 5. But when the court granted Mr. Arras' petition, Ms. McCabe requested clarification of the conduct constituting a "pattern." Then, the court ruled that it was also relying on Mr. Arras' undocumented new claims about other calls. The Appellant was

not allowed to object, question the testimony, or respond to the new accusations. RP 17.

Mr. Arras sought to prevent Ms. McCabe from visiting her mother in her apartment, but the court denied his request. RP 14. The court granted Mr. Arras an order protecting him from being kept “under surveillance,” and admonished Ms. McCabe for helping her mother: “I suggest that it’s not something for you to intervene in. ... So I’m going to grant [the] anti-harassment order.” RP 14; RP 16.

This order is the subject of this appeal.

### **III. ARGUMENTS IN REPLY**

#### **1. THE EVIDENCE IS INSUFFICIENT TO ESTABLISH UNLAWFUL HARASSMENT.**

Mr. Arras does not deny that the Appellant’s mother paid him an agreed percentage of shared bills, yet he claims that Ms. McCabe gained access to personal financial records belonging solely to him (Brief of Respondent [“BR”] 1), and that she had no legitimate reason to seek utility billing information. BR 2, 4, 5. Mr. Arras does not dispute that Jordan McCabe owns a life-interest in the mother-in-law unit, but he suggests that the family court divested Jordan of her interest when it awarded him the house in his divorce from the Appellant. This is wrong.

This Court should ignore the damaging, unsupported accusations Mr. Arras leveled against the Appellant for the first time in his response brief: that she previously attempted to defraud Jordan (BR 2); that she planned to seek other financial information (BR 4), and that she acted with criminal intent to “test the waters” as part of a major identity theft scheme (BR 4-5).

The single call Mr. Arras alleged in his petition does not constitute a “course of conduct” as contemplated by the harassment statute. At the hearing, Mr. Arras attempted to establish a course of conduct by alleging additional calls, without supporting evidence. BR 4. The Appellant was not allowed to object. The court should not have admitted this testimony.

Next, Mr. Arras mischaracterized the call as “directed” at him. BR 4. To the contrary, the purpose of the Appellant’s conduct was to help her mother bypass Mr. Arras after he refused a reasonable request for the bills, in a manner that had should not have impacted him.

Mr. Arras claimed to be “distressed,” as required by the statute, and suggested that the Appellant’s conduct was so unreasonable as to have created “an intimidating, hostile, or offensive living environment” for him. BR 6, citing RCW 10.14.030(5)(a). It was error for the trial court to accept this hyperbolic recitation of the statute as fact.

The trial court erred in entering a protection order without evidence of the statutory requirements. The Court should reverse the trial court and vacate the order.

2. THE ORDER IS OVERBROAD AND VIOLATES THE FIRST AMENDMENT.

Mr. Arras does not address the constitutional implications of this order. An anti-harassment order may not prohibit the free exercise of constitutionally protected speech. RCW 10.14.080(7).

The Order constitutes a vague, overbroad warning not to assist her mother (a senior citizen without any other adult family members in the United States), in any impending litigation against Mr. Arras. “I suggest that it’s not something for you to intervene in... So I’m going to grant your anti-harassment order.” RP 14; RP 16. Judge Dubuque refused to allow Jordan, who was present in the courtroom and represented by private counsel, to testify.

Conduct is not harassment where the respondent’s action was reasonably necessary to protect property or liberty interests or enforcing the law. RCW 10.14.030(4)(a), (b). Here, it is undisputed that Ms. McCabe acted with the protected purpose of safeguarding her mother’s property interests. Ms. McCabe acted as her mother’s agent in response to a legitimate concern about Mr. Arras’ suspicious refusal to document his demands for payment.

The Court should vacate the order because it is vague and overbroad, and it prohibits constitutionally protected conduct.

3. THE HEARING LACKED THE APPEARANCE OF FAIRNESS.

Mr. Arras does not address Ms. McCabe's contention that no reasonably prudent and disinterested observer would conclude that she obtained a fair, impartial, and neutral hearing. *See, e.g., State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995).

The court refused to allow Ms. McCabe to present a crucial witness, and refused to listen to her testimony. RP 6, 10, 12, 14. By contrast, the court accepted Mr. Arras' undocumented testimony regarding claims not mentioned in his pleadings. Ms. McCabe was not allowed a fair opportunity to respond to new accusations. RP 17.

A ruling is inherently unreasonable when the court relies on unsupported facts or takes an erroneous view of the law. *See State v. Hudson*, 150 Wn. App. 646, 652, 208 P.3d 1236 (2009). Here, the court's findings cannot be said to rest on "substantial evidence" because the judge rejected relevant documentary evidence from one party and in favor of speculation and undocumented allegations from the other.

There was no evidence, nor even any allegation by Mr. Arras, that Ms. McCabe called the City for any reason other than to help her mother.

Nor did Mr. Arras suggest any personal interest his ex-wife might have in his old utility bills, two years after their divorce settlement.

Meanwhile, there are several fairly obvious motives Mr. Arras could have had for filing a wrongful complaint: retribution for her costly win in family court only days before; to bar her from visiting her mother's apartment (subject of a potential six-figure property dispute), or to protect evidence of his fraudulent overcharges while negotiating a settlement with Jordan (before the disputed utility bills inevitably become part of that trial record). Cryptically, Mr. Arras stated that if Jordan obtained accurate billing information, it would somehow "undermine the nature of [his] career [as a fraud analyst for T-Mobile]" (BR 6).

The remedy is to vacate the order.

4. THE PETITIONER ENGAGED IN FORUM SHOPPING BY AVOIDING THE PRIMARY JURISDICTION OF THE FAMILY COURT.

Mr. Arras does not explain why he did not complain about Ms. McCabe's conduct to the family court. Where another court has previously considered the case, its continued jurisdiction is favored. *In re Marriage of Susan C. and Sam. E.*, 114 Wn. App. 766, 776, 60 P.3d 644 (2002). Here, the family court issued an order adverse to Mr. Arras just days before he filed this petition. See Order filed Jan 27, 2012.

Further, the superior court was required to consider whether contact between these parties had been limited in any manner by any previous court order. RCW 10.14.030(6). The Parenting Plan already restricted all contact between the parties to writings directly related to their children. The court erroneously refused to consider this provision before ordering new restrictions. RP 14-15.

Mr. Arras had no legitimate reason to bring this action in a different forum, other than to obfuscate the retaliatory implications of his filing immediately after suffering an adverse judgment.

5. THE ERRONEOUS ORDER IS NOT HARMLESS.

The Order itself does not inhibit Ms. McCabe's freedom in any practical way: it forbids conduct she has never engaged in (keeping Mr. Arras "under surveillance"), duplicates the no-contact provisions in the parties' parenting plan, and expressly allows her to freely visit her mother's home (Mr. Arras previously threatened to prosecute her for trespassing if she visited her mother). However, the Order is nevertheless extremely prejudicial to Ms. McCabe's credibility, her standing in her community, and her career.

The Order is damaging to Ms. McCabe's professional and social credibility: Mr. Arras has informed their children's teachers, doctors, guidance counselors, friends' parents, school principal, and day-care

providers about the Order, which has made it difficult for her to maintain credibility as a co-parent. The Order could damage Ms. McCabe's credibility with the family court in the future. Ms. McCabe's profession and licensure requires her to maintain her good reputation as an honest, law-abiding citizen.

The Court should vacate the order and dismiss the action.

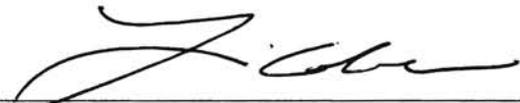
#### **IV. CONCLUSION**

The record does not support the court's finding of unlawful harassment, or its conclusion that a protection order was appropriate.

The Order wrongly prevents the Appellant from engaging in lawful and constitutionally protected conduct. The trial court failed to ensure the appearance of fairness and abused its discretion in granting the petition.

This Court should vacate the order and dismiss the action.

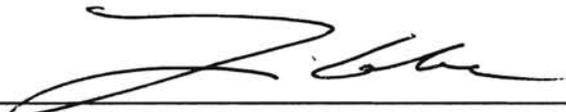
Respectfully submitted, this 30<sup>th</sup> day of July, 2012,

  
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Laura G. McCabe, Pro Se

**CERTIFICATE OF SERVICE**

On July 30, 2012, Laura McCabe deposited a copy of this Reply Brief in the U.S. Mail, first class postage prepaid, addressed to:

**Jonathan Arras  
1026 151st Avenue S.E.  
Bellevue, WA 98007**

A handwritten signature in black ink, appearing to read 'Laura McCabe', written over a horizontal line.

Laura G. McCabe, Appellant