

No. 72548-3-I  
COURT OF APPEALS,  
DIVISION I  
OF THE STATE OF WASHINGTON

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MARCELLUS BUCHHEIT and LISA BUCHHEIT-EKDAHL,

Respondents,

v.

CHRISTOPHER GEIGER

Appellant.

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REPLY BRIEF OF APPELLANT

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## I. INTRODUCTION

This case is nothing but a property dispute dressed up as a harassment claim. The Respondents' (Buchheits) brief attempts to paint the Appellant (Christopher Geiger) as an angry and intimidating person, relying exclusively on a litany of self-serving and unsubstantiated claims made by the Buchheits before the trial court – none of which the trial court adopted or endorsed in findings of fact or otherwise. In fact, the trial court expressly said that “the pivotal issue right now is how does this easement, if there is one, question get resolved.” RP (8/26/2014) p 13. The order itself provides that it may be vacated if the property dispute is resolved in Mr. Geiger’s favor: “In the event that [Mr. Geiger] establishes his legal right to an easement over [the Buchheits’] property for access to and from Lake Stevens, this Court will entertain a motion by [Mr. Geiger] to vacate this order.” CP 11.

## II. ARGUMENT IN REPLY

**1. The standard of review for the issues raised on this appeal is de novo.**

The Buchheits argue that “[t]he standard of review for an appeal of a lower court’s ruling on an anti-harassment petition is ‘abuse of discretion.’” Br. Resp. p. 8. This oversimplifies and misstates the applicable standard of review, which depends not on the nature of relief

sought by the Buchheits below (i.e., issuance of a civil harassment order), but on the issues raised on appeal.

In this case, the trial court issued the civil harassment order based on its conclusion of law that “the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority ....” CP 8. Although this conclusion is preceded by the words, “the court finds”, it has the legal significance of making Mr. Geiger subject to restraints on his actions. Therefore, despite its incorrect denomination as a finding, it is subject to review as a legal conclusion. *Woodruff v. McClellan*, 95 Wn.2d 394, 396, 622 P.2d 1268 (1980). As such, it is subject to de novo review. *Dumas v. Gagner*, 137 Wn.2d 268, 280, 971 P.2d 17 (1999). A conclusion of law must be supported by findings of fact that “are sufficiently specific to permit meaningful review.” *In re Dependency of K.R.*, 128 Wn.2d 129, 143, 904 P.2d 1132 (1995). In the present case, the closest the trial court came to making a finding of fact was stating that its legal conclusion was “[b]ased upon the petition, testimony, and case record ....” CP 8. It is difficult to see how that catch-all phrase can be characterized as sufficiently specific to permit meaningful review. In any event, as discussed in Part 4 below, the Buchheits have pointed to no evidence in the record that supports the trial court’s conclusion of law.

The other two issues before this court are matters of statutory interpretation. The first is whether RCW 10.14.080(8) deprives the trial court of authority to prohibit Mr. Geiger from the use and enjoyment of the east 23 feet of the Buchheits' property because he has a cognizable claim for an easement over that property. More specifically, the issue turns on the interpretation of the term "cognizable claim" under RCW 10.14.080(8). This is a question which this court reviews de novo. *Price v. Price*, 174 Wn.App. 894, 903, 301 P.3d 486 (2013).

The second issue of statutory interpretation is whether RCW 10.14.080(6) authorizes the trial court to restrain a person from going onto property that is neither the residence nor the workplace of the petitioner. The statute authorizes the court to "requir[e] the respondent to stay a stated distance from the petitioner's residence and workplace ...." RCW 10.14.080(6)(c). Whether the statutory phrase "residence and workplace" includes vacant land owned by the petitioner is a matter of statutory interpretation, subject to de novo review. The issue here is not one of the scope of relief provided, as in *State v. Noah*, 103 Wn.App. 29, 43, 9 P.3d 858 (2000), where the court stated that "[t]he statute grants broad discretion to the trial court" in the context of the trial court's determination of the distance the harasser was required to stay away from the victim's workplace. Here, the question is what does "residence and workplace"

mean? That is a matter of statutory interpretation, which is subject to de novo review. *Price v. Price*, 174 Wn.App. at 903.

2. **The Buchheits' argument that a cognizable claim is one that is undisputed is inconsistent with the plain meaning of the term cognizable, including the meaning of the term as defined by the Buchheits.**

The Buchheits acknowledge that the term “cognizable” means “[c]apable of being tried or examined before a designated tribunal; within jurisdiction of court or power given to court to adjudicate controversy.” Br. Resp. p. 17 (citing Deluxe Black’s Law Dictionary 259 (6<sup>th</sup> ed. 1990)). From this, it would seem that the Buchheits would agree that a *claim* is *cognizable* if it is capable of being tried before a court, in that it is within the court’s jurisdiction to adjudicate a controversy over the claim. But the position they actually take appears to be that a “cognizable claim” is one that is undisputed. Br. Resp. p. 19.

As described in the Brief of Appellant, Mr. Geiger claims an easement over the east 23 feet of the Buchheits’ property. However the deed conveying the easement mistakenly describes the Buchheits’ property as Lot 1, whereas in fact it is Lot 2. Mr. Geiger claims that this is the result of a scrivener’s error, and that both he and the sellers (the Withrows – who, at the time, also owned the present Buchheit property), intended the easement to be over Lot 2. Finally, Mr. Geiger also claims

that the Buchheits, successors to the Withrows, purchased their property (Lot 2) with notice of the mistake. Br. App. pp. 16-18. Under RCW 2.08.010, the superior court has jurisdiction over Mr. Geiger's claim, and may adjudicate any controversy that may exist as to such claim. Thus, Mr. Geiger's claim is cognizable, even as the Buchheits define the term.

Yet the Buchheits ignore their own cited definition of cognizable. They do so because they argue that this would undermine the purpose of the civil harassment statute "of providing victims with a speedy and inexpensive method to prevent further unwanted contact." Br. Resp. p. 18 (emphasis by the Buchheits). But this legislative objective is not an absolute. RCW 10.14.080, the core provision of the harassment statute, describes a variety of actions that may not be prohibited by a harassment order. *See*, RCW 10.14.080 (7), (8) and (9). Where the conduct sought to be restrained is described in these statutory limitations, the trial court's authority to issue a harassment order is trumped, "even where the petitioner makes the requisite showing of unlawful harassment ...." *Price v. Price*, 174 Wn.App. at 903.

It bears emphasis that the statute does not prevent a person claiming to be the victim of harassment from obtaining injunctive relief concerning the alleged harasser's use of property. As discussed in the Brief of Appellants, such relief may be obtained from the superior court

under a regular civil action brought to determine title or possession of real property. Br. App. p. 19. Of course, such a civil action is justiciable only if there is a controversy between the parties as to the claim. Thus, it is clear that a cognizable claim, as that term is used in RCW 10.14.080(8), refers to more than merely undisputed claims.

Apart from rhetorical flourish, the remainder of the Buchheits' arguments against Mr. Geiger's easement rights boil down to their claims that Mr. Geiger would not be able to prove that he is entitled to reformation of the Declaration of Easement. The Buchheits begin their discussion by citing *Aston Cnty. Port Dist. v. Clarkston Cmty. Corp.*, 2 Wn.App. 1007, 1011, 472 P.2d 554 (1970), where the court discusses the elements of proof, as well as burden of proof, that must be met by a person seeking judicial reformation of an instrument. But, as discussed above, the question here is not whether Mr. Geiger has proven that he is entitled to reformation. RCW 10.14.080(8) takes this issue out of the permissible scope of the harassment petition proceedings. The only issue for the court deciding the harassment petition is whether Mr. Geiger's claim is capable of being tried before a court, in that it is within the court's jurisdiction to adjudicate a controversy over the claim. *See*, discussion at pages 4 – 5 above.

Thus, the Buchheits' arguments that Mr. Geiger did not show that he and the Withrows had identical intentions regarding the easement (Br. Resp. pp. 20-21), that they were innocent third parties (Br. Resp. pp. 21-23), and that even a reformed Declaration of Easement would not give Mr. Geiger access to the boat ramp or to Lake Stevens (Br. Resp. pp. 23-27) may be issues the Buchheits would wish to raise in a civil action adjudicating Mr. Geiger's easement rights. They do not, however, alter the fact that Mr. Geiger has a claim to an easement over the Buchheits' property that is, under the very definition cited by the Buchheits, cognizable.

**3. The Buchheits' argument that the trial court had the authority to order Mr. Geiger not to enter the Buchheits' vacant lot is inconsistent and contrary to the express statutory limitation of stay-away restrictions to residences and workplaces.**

The trial court's authority in fashioning a civil harassment order is defined by statute. In this case, the court placed two restrictions on Mr. Geiger. First, it restrained him from making any attempts to contact the Buchheits. Second, it restrained him from entering the Buchheits' Lake Stevens property. CP 9. The authority for the latter type of restriction (stay-away) is RCW 10.14.080(6)(c), which authorizes the court to issue an order "[r]equiring the respondent to stay a stated distance from the petitioner's residence and workplace ...." In the present case, the

harassment order applies the stay-away provision to a vacant lot owned by the Buchheits, where they may someday place a manufactured home. CP 15, 45.

Despite the fact that the property is neither their residence nor their workplace, the Buchheits argue that to limit stay-away restrictions to a petitioner's residence or workplace "would open up the doors to harassment and threats outside of a person's living and working environment." Br. Resp. pp. 28-29. This is not true. There is no geographic limitation on a no-contact restriction under RCW 10.14.080(6)(a) (authorizing a harassment order to "restrain[ ] the respondent from making any attempts to contact the petitioner ..."). In other words, where a no-contact restriction has been included in the order, it prohibits the harasser from attempting to contact the victim *anywhere*. Even if the Buchheits' argument had some merit behind it, the statutory language plainly limits stay-away restrictions to residences and workplaces. If the Buchheits believe this limitation is problematic, their issue is with the state legislature.

Moreover, under the particular circumstances of this case, it is difficult to perceive how the Buchheits' professed concern could actually arise. In the absence of the stay-away restriction, it is hard to imagine how Mr. Geiger could come onto any portion of the Buchheits' vacant lot,

while they are present, without very likely running afoul of the no-contact restriction. If Mr. Geiger were to come onto the property while the Buchheits are dozens of miles away at their actual residence, at most they may claim that he is trespassing on their vacant lot, in which case they have the right to bring a civil action on their claim. In other words, they could present their objections to the trial court in the forum and context in which this case belongs – a civil case concerning a property dispute.

**4. The Buchheits cite no evidence that supports the trial court’s conclusion that Mr. Geiger committed unlawful harassment.**

The trial court concluded that Mr. Geiger committed unlawful harassment. CR 8. The trial court’s order characterizes this conclusion as “[b]ased upon the petition, testimony, and case record ....” CP 8.

Unlawful harassment is defined as “a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose.” RCW 10.14.020(2). The statute identifies six factors relevant to a determination of whether a course of conduct serves a legitimate or lawful purpose. RCW 10.14.030. The Buchheits argue that the record supports the trial court’s conclusion, specifically referencing portions of the record. Even if the referenced portions of the record were

deemed to be findings by the trial court, however, they do not support the conclusion that Mr. Geiger committed unlawful harassment.

**Factor 1: The Buchheits point to no facts that would justify a finding that the current contact between them and Mr. Geiger was initiated by Mr. Geiger only.** The Buchheits point to a single instance in which they claim Mr. Geiger initiated contact with them, when, in June 2013, Ms. Buchheit-Ekdahl claims that Mr. Geiger approached her and spoke in a tone she took to be angry and aggressive.<sup>1</sup> Br. Resp. 11 (citing CP 78). However, the evidence also shows that the Buchheits admit to having often initiated their contacts with Mr. Geiger. Ms. Buchheit-Ekdahl admits to initiating contact at least three times between May 26, 2014 and July 27, 2014. CP 78-81.

**Factor 2: The Buchheits point to no facts that would justify a finding that Mr. Geiger was given clear notice that all further contact with the Buchheits was unwanted.** The Buchheits point to three occasions in which they told Mr. Geiger he was trespassing or told him not to enter the property. Br. Resp. p. 12. Although this may show that they gave Mr. Geiger notice that they did not want him to enter their property,

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<sup>1</sup> In discussing the first factor, the Buchheits also make reference to Mr. Geiger having entered onto their property several times, but do not state that these entries involved any contact between the parties. In fact, the Buchheits citation to the record for this point is to CP 15-16, from a declaration signed by Mr. Geiger in which he describes his use of the easement. The only contacts between the Buchheits and Mr. Geiger that are described therein were initiated by Ms. Buchheit-Ekdahl. CP 16.

it is a far cry from providing clear notice that all further contact was unwanted. In fact, as the above discussion of Factor 1 shows, it was generally the Buchheits who initiated contact with Mr. Geiger.

**Factor 3: The Buchheits point to no facts that would justify a finding that Mr. Geiger engaged in a course of conduct designed to alarm, annoy, or harass them.** The Buchheits point to two types of alleged conduct. First, they refer to Mr. Geiger coming onto and using their property. Br. Resp. pp. 12-13. This conduct, of course, is not designed to alarm, annoy, or harass the Buchheits. It is designed, instead, to enjoy the easement rights that Mr. Geiger claims.

Second, they argue that Mr. Geiger's conduct included watching and monitoring the Buchheits. Br. Resp. p. 13. The conduct they cite includes two occasions. The first refers to July 4, 2014, when Ms. Buchheit-Ekdahl claims that Mr. Geiger and his guests stood on Mr. Geiger's balcony "watching us and our guests and taking photographs of us while we were on the Buchheit Property." CP 80 (cited at Br. Resp. p. 13). The second refers to July 27, 2014, when Mr. Geiger drove out of his carport onto a shared driveway (on his property) in front of Ms. Buchheit-Ekdahl, who was also driving out on the driveway, then drove away upon reaching the public street. CP 82 (cited at Br. Resp. p. 13). But the trial court expressly stated: "[I]t seems to me the surveillance part just hasn't

been established.” RP (8/26/2014) p. 15. The order does not include any surveillance provision. CP 9.

**Factor 4: The Buchheits ignore the fact that Mr. Buchheit was acting in accordance with his constitutional rights to protect his property interests.** As noted in the Brief of Appellant, the intent of this factor, in part, is to consider whether the conduct complained of consists of lawful conduct to protect property interests. Br. App. pp. 9-10. Therefore, Mr. Geiger’s use of the property in accordance with his claimed easement rights should be considered.

**Factor 5: The Buchheits point to no facts that would justify a finding that Mr. Geiger engaged in a course of conduct that has the purpose or effect of creating an intimidating, hostile, or offensive living environment for them.** The Buchheits admit that they do not live on the property. Br. Resp. p. 14. Indeed, as pointed out at pages 7 – 8 above, the property is a vacant lot where the Buchheits may someday place a manufactured home. Therefore, regardless of what their objections to Mr. Geiger’s conduct may be, that conduct does not affect their living environment.

**Factor 6: The Buchheits admit that contact by Mr. Geiger had not been limited in any manner by any previous court order.** The

Buchheits admit that “no previous court order had been sought or issued.”

Br. Resp. p. 15.

The Buchheits argue that the foregoing factors “are simply guidelines.” Br. Resp. p. 15, citing *Shinaberger ex rel. Campbell v. LaPine*, 109 Wn.App. 304, 308, 34 P.3d 1253 (2001). *Shinaberger* does state that the factors “are not definitional – they are guidelines.” *Id.* But in the next sentence it clarifies that they are, at least, guidelines that must be considered (“As worded, the statute merely directs the court to consider [the specified] factors, in determining whether a lawful purpose existed for the course of conduct.” *Id.*). In any event, other than a final paragraph providing a rhetorical restatement of the arguments they made in discussing the six factors, the Buchheits point to no other evidence that they believe would support the trial court’s finding of unlawful harassment.

There is one matter that the Buchheits overlook. For the trial court, Mr. Geiger’s easement rights were “the pivotal issue”. RP (8/26/2014) p. 13. In explaining why he decided to issue the order, the commissioner stated:

Okay, well, well, well cutting to the chase, it seems to me the pivotal issue right now is how does this easement, if there is one, question get resolved. And at this point it is not clear that the respondent, in my opinion, has an easement. I mean it is contradictory, it is internally

inconsistent and I cannot interpret it in this forum, in this context and make a ruling one way or the other. Other than to say, it doesn't appear to grant Mr. Geiger access across the petitioner's property. I am going to grant the unlawful harassment protection order .... Now, I would preserve his right to come back to court if this easement matter is resolved in his favor and he has this matter reviewed. At this point, he has no right to use their property.

*Id.* The commissioner was correct where, in his above statement, he acknowledged that he could not interpret the easement in the forum of a harassment petition proceeding; unfortunately, he went ahead and did just that.

### III. CONCLUSION

It is significant that in announcing his decision, the commissioner acknowledged that the harassment order was being issued because he did not believe Mr. Geiger held easement rights over the Buchheits' property. *See*, passage from transcript quoted immediately above. This brings us full circle back to the opening sentence of this reply brief: This case is nothing but a property dispute dressed up as a harassment claim.

DATED this 5<sup>th</sup> day of May, 2015.

THE GILLETT LAW FIRM



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Certificate of Service

I, MICHAEL B. GILLETT, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am the attorney-of-record for Appellant Christopher Geiger in the above-entitled matter. I am over 18 years of age, knowledgeable of the matters stated herein, and competent to testify as to the same. On this day, I caused to be served on the persons indicated below, a copy of the Reply Brief of Appellant. Service was made by messenger service with instructions to serve not later than May 6, 2015:

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