

No. 72548-3-I

COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

CHRISTOPHER GEIGER,

Appellant,

v.

MARCELLUS BUCHHEIT and LISA BUCHHEIT-EKDAHL,

Respondents.

BRIEF OF RESPONDENTS

Christopher L. Thayer
Ada K. Wong
Attorneys for Respondents

PIVOTAL LAW GROUP, PLLC
Christopher L. Thayer, WSBA #23609
Ada K. Wong, WSBA #45936
600 University St., Ste. 1730
Seattle, WA 98101
(206) 340-2008

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I. INTRODUCTION

Respondents Marcellus Buchheit and Lisa Buchheit-Ekdahl (“the Buchheits”) respectfully request this Court to affirm the lower court’s anti-harassment order entered against Appellant Christopher Geiger (“Geiger”) on August 26, 2014. Oral argument is requested pursuant to RAP 17.5.

This case involves a dispute between neighbors that grew heated and eventually necessitated court intervention. Specifically, Mr. Geiger appeals an anti-harassment order granted by the lower court under RCW 10.14, *et seq.*, against him in favor of the Buchheits and their minor children. The Buchheits and their minor children were harassed over a period of time by Mr. Geiger and his guests. Mr. Geiger now hopes to void the restraining order by claiming he is entitled to have an easement over a portion of the Buchheits’ property.

Mr. Geiger and the Buchheits purchased their respective properties from Laurie and Kenneth Withrow (the “Withrows”) in separate purchase and sale transactions in 2013, with Geiger acquiring Lot 1 and the Buchheits acquiring Lot 2. Prior to the closing of the purchase and sale transactions, the Withrows

executed a Declaration of Easement and Restrictions (“Declaration”). On its face and its plain language, the Declaration does not create any easement rights in favor of Lot 1 over Lot 2. Mr. Geiger argues the Declaration grants him the right to access Lake Stevens by traversing over and across the Buchheits’ property, even though the Declaration refers only to an access easement on Lot 1 and makes no reference to lake or beach access. Even if the Declaration were construed to provide Mr. Geiger with easement rights over the Buchheits’ property, Mr. Geiger has no authority or argument which would allow him to trespass on the Buchheits’ property, hold social gatherings with his friends on the Buchheits’ property, shoot off fireworks on from the bulkhead on the Buchheits’ property, affix large concrete blocks on the Buchheits’ beach, and attach a floating dock in front of the Buchheits’ beach. It was this conduct, in addition to Mr. Geiger’s abusive and threatening behavior, that justified the entry of the anti-harassment order.

II. STATEMENT OF THE CASE

1. Properties

On February 27, 2013, Mr. Geiger purchased property located at 11112 Vernon Road, Lake Stevens, Washington

(hereinafter "Lot 1"). CP 13. On March 8, 2013, the Buchheits purchased property located at 11116 Vernon Road, Lake Stevens, Washington (hereinafter "Lot 2"). CP 45, 78. The Buchheits' property abuts the southern boundary of Mr. Geiger's lot. CP 13.

A Declaration of Easement and Restrictions ("Declaration") was executed on January 9, 2013 by the previous owners of both Lots 1 and 2 (Kenneth and Laurie Withrow) granting an ingress/egress easement over Lot 1 – Mr. Geiger's lot. CP 34-40. The Declaration was recorded on February 8, 2013. CP 34.

2. Harassment

After the Buchheits acquired their property, Mr. Geiger engaged in a pattern and practice of harassing and attempted to bully the Buchheits and their children, making them feel threatened and concerned for their safety. CP 47, 127.

a. July 4th Trespassing and Loitering

In July 2013, Mr. Geiger set up and launched fireworks on the Buchheits' property without their permission. CP 125, 129. Mr. Geiger and his friends lingered on the bulkhead located on the southeast corner of the Buchheits' property. CP 125, 129. They also had a party bus, which was parked on the Buchheits' property blocking in the Buchheits' guests' vehicles. CP 125. When Mr.

Geiger finally left, he and his friends failed to clean up the area, leaving empty boxes and debris behind on the Buchheits' property. CP 125, 129.

b. Trespassing and Notice to Cease

Mr. Geiger admitted he used the beach, which is located on the Buchheits' property. CP 15. Mr. Geiger also admitted he used the floating dock – also located on the Buchheits' property. CP 16.

Mr. Geiger has repeatedly parked his vehicle on the Buchheits' property. CP 126. Mr. Geiger and his friends frequently loitered and trespassed on the Buchheits' property. CP 126, 131-32. In April 2014, when Mr. Buchheit arrived on his property, he saw Mr. Geiger and his dog trespassing on the Buchheits' dock. CP 102.

In May, June, and July 2014, the Buchheits discovered dog feces left by Mr. Geiger's dog on their property. CP 45, 49-50, 79.¹ On May 31, 2014, Mr. Geiger and his female guest were trespassing on the Buchheits' property. CP 52-54, 79. Mrs. Buchheit-Ekdahl advised Mr. Geiger and his friend they were trespassing. CP 79. She asked Mr. Geiger to remove his floating

¹ Please note the district court incorrectly attached Mrs. Lisa Buchheit-Ekdahl's exhibits as referenced in her declaration to Mr. Marcellus Buchheit's declaration.

boat dock he had affixed to their property without permission. CP 79. Mr. Geiger refused. CP 79.

On June 8, 2014, Mrs. Buchheit-Ekdahl found that Mr. Geiger had unchained his dock from the Buchheits' bulkhead, placed two large concrete blocks in the lake in front of their bulkhead, and affixed his dock to the blocks. CP 56-58; 79. Mr. Geiger continued trespassing on the Buchheits' property to access and use his dock. CP 79-80.

On July 4, 2014, despite prior complaints and requests to keep his dog on his property, Mr. Geiger's dog trespassed onto the Buchheits' property again. CP 60; 80.

On July 27, 2014, Mr. Geiger and a guest walked across the Buchheits' property to the waterfront. CP 62-68, 80. The Buchheits and their children were present. CP 80. Mrs. Buchheit-Ekdahl advised Mr. Geiger and his guest they were trespassing but she was ignored. CP 80-81. Mrs. Buchheit-Ekdahl resorted to calling the police. CP 81. During the discussion with the police officer, Mr. Geiger admitted to trespassing. CP 46, 81. Later that day, Mrs. Buchheit-Ekdahl saw Mr. Geiger and his friend surveilling her. She felt threatened and left her property. CP 81-82.

c. Threats and Fear for Safety

Mr. Geiger's threatening and unpleasant interactions with Mrs. Buchheit-Ekdahl made her hesitant to enter her own property and to take her minor children there. CP 83. Mrs. Buchheit-Ekdahl would be on the property alone or with her children without her husband present and felt very uncomfortable and worried about what Mr. Geiger would do or say to her. CP 83. Mr. Geiger is much bigger than Mrs. Buchheit-Ekdahl physically and she worried about her and her children's safety. CP 83. Mr. Buchheit also felt uncomfortable on his own property and worried about his and his family's safety. CP 47. Mr. Buchheit told Mr. Geiger and his guests to not enter his property but they refused to listen. CP 47.

In June 2013, Mr. Geiger approached Mrs. Buchheit-Ekdahl on her property and confronted her in an angry and aggressive tone. CP 78. He threatened Mrs. Buchheit-Ekdahl that, if the Buchheits blocked his view of the water, he would be "very angry." CP 78. Mr. Geiger had purposefully waited for Mrs. Buchheit-Ekdahl to be alone that day to corner and threaten her. CP 78.

3. Restraining Order

On August 26, 2014, the lower court entered an order restraining Mr. Geiger from making any attempts to contact the

Buchheits and their children, restraining Mr. Geiger from entering or being within the premises of the Buchheits' property located at 11116 Vernon Rd., Lake Stevens, Washington, for Mr. Geiger to remove the floating dock on or before September 2, 2014, and all items/personal property Mr. Geiger owns and/or placed on the Buchheits' parcel, and awarding the Buchheits' attorney's fees in the amount of \$770.00. CP 8-10. The court went on to state that in the event Mr. Geiger establishes his legal right to an easement over the Buchheits' property for access to and from Lake Stevens, the court will entertain a motion by Mr. Geiger to vacate the order. CP 11.

III. SUMMARY OF THE ARGUMENT

The lower court was within its authority to enter an order restraining Mr. Geiger from harassing the Buchheits and their minor children and to prevent Mr. Geiger from trespassing on the Buchheits' property. There is sufficient evidence to support the lower court's finding that Mr. Geiger engaged in unlawful harassment pursuant to RCW 10.14, *et seq.*, including Mr. Geiger's threats to Mrs. Buchheit-Ekdahl. Mr. Geiger alleges the lower court lacked authority to restrain him from entering the Buchheits' property because he has a "cognizable" right to access the

Buchheits' property via a purported easement established by the Declaration. However, the Declaration grants an ingress/egress easement over Mr. Geiger's property—not the Buchheits' property.

Even if this Court were to find the Declaration contains a scrivener's error, reformation is not warranted because the poorly drafted Declaration contains contradictory language and other inconsistencies which are beyond reformation. Furthermore, the Buchheits had no actual or constructive notice of any easement granting lake access or shared beach rights to Mr. Geiger. The Buchheits are bona fide/innocent purchasers, and a court may not reform an agreement if it will unfairly affect innocent third parties.

Even if this Court were to find in favor of a reformation, the scope of Mr. Geiger's actions and threatening behavior towards the Buchheits is well beyond what even a strained interpretation of the Declaration would allow. The lower court's decision to restrain Mr. Geiger was supported by sufficient facts to demonstrate unlawful harassment and the lower court should not be reversed.

IV. ARGUMENT

1. Standard of Review

The standard of review for an appeal of a lower court's ruling on an anti-harassment petition is "abuse of discretion". See, e.g.,

Trummel v. Mitchell, 156 Wn.2d 653, 669-70, 131 P.3d 305 (2006) (*en banc*) (resident of a housing complex filed anti-harassment action against housing administrator, who cross-petitioned for anti-harassment order against resident). “The abuse of discretion standard again recognizes that deference is owed to the judicial actor who is better positioned than another to decide the issue in question.” Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (*en banc*) (internal quotations and citations omitted). A lower court’s decision will only be overturned if “its decision is based upon a ground, or to an extent, clearly untenable or manifestly unreasonable.” Id. at 671 (internal quotations and citations omitted).

Abuse of discretion is a high standard and decisions are not to be overturned unless it can realistically be said that “no reasonable person would take the position adopted by the trial court.” State v. Marks, 90 Wn. App. 980, 989, 955 P.2d 406 (1998) (citations omitted). “Accordingly, if a trial court’s ruling is based upon tenable grounds and is within the bounds of reasonableness, it must be upheld.” Showalter v. Wild Oats, 124 Wn. App. 506, 510, 101 P.3d 867 (2004) (internal quotations and citations omitted)

(court addressing standard of review for lower court's ruling on a motion to vacate a default judgment for an abuse of discretion).

Mr. Geiger cannot show that the lower court abused its discretion in light of the evidence presented below. There was sufficient evidence presented to the lower court to support its finding that Mr. Geiger engaged in unlawful harassment and behavior pursuant to RCW 10.14 *et seq.* (hereinafter "the Anti-harassment Statute"). To the extent there is a disagreement over the interpretation of this evidence, such disagreement does not rise to the level of an abuse of discretion and the lower court's decision should stand.

2. The evidence supports the lower court's finding that Mr. Geiger engaged in unlawful harassment pursuant to RCW 10.14 *et seq.*

The court below found Mr. Geiger committed unlawful harassment pursuant to the Anti-harassment Statute. CP 8-12. "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). Course of conduct "means a pattern of conduct composed of a

series of acts over a period of time, however short, evidencing a continuity of purpose.” RCW 10.14.020(1).

The Anti-harassment Statute provides six factors a court may consider in evaluating whether a respondent’s course of conduct serves any legitimate or lawful purpose. RCW 10.14.030. These factors “are not definitional—they are guidelines.” Shinaberger ex rel. Campbell v. LaPine, 109 Wn. App. 304, 308, 34 P.3d 1253 (2001). The trial court considers the factual, case-by-case basis when considering whether to grant an order of protection. Id. at 208-09.

First, the court may consider whether “[a]ny current contact between the parties was initiated by the respondent only or was initiated by both parties.” RCW 10.14.030(1). Here, Mr. Geiger approached Mrs. Buchheit-Ekdahl on her property in June 2013 and spoke to her in an angry and aggressive tone. CP 78. He also waited for her to be alone to corner and threatened her about blocking his view of the water. CP 78. Mr. Geiger has initiated contact with the Buchheits verbally. Physically, Mr. Geiger has entered the Buchheits’ property multiple times in 2013 and 2014, and he admitted he used the easement, the beach located on the Buchheits’ property, and the floating dock. CP 15-16.

Second, the court may consider whether “[t]he respondent has been given clear notice that all further contact with the petitioner is unwanted.” RCW 10.14.030(2). Here, Mrs. Buchheit-Ekdahl advised Mr. Geiger and his female guest on May 31, 2014 they were trespassing on her property and for Mr. Geiger to remove his dock that was affixed to her property without permission. CP 52-54, 79. On July 27, 2014, Mr. Geiger and his guest walked through the Buchheits’ property to the waterfront and Mrs. Buchheit-Ekdahl yelled several times they were trespassing but was ignored. CP 62-68, 80. Mrs. Buchheit-Ekdahl resorted to calling the police. CP 81. Mr. Buchheit has told Mr. Geiger and his guests to not enter his property but they refused to listen. CP 47. Mr. Geiger was given clear notice that his presence and actions on the Buchheits’ property were unwanted. CP 45-47, 78-81, 83-84.

Third, the court may consider whether “[t]he respondent’s course of conduct appears designed to alarm, annoy, or harass the petitioner.” RCW 10.14.030(3). Here, Mr. Geiger has no right to trespass on the Buchheits’ property, and his threatening interactions with Mrs. Buchheit-Ekdahl made her hesitant to enter her own property and fear for the safety of her children. CP 83. In July 2013, Mr. Geiger set off fireworks on the Buchheits’ property

without permission, leaving their spent fireworks and debris behind. CP 125, 129. Mr. Geiger and his friends have repeatedly loitered and trespassed on the Buchheits' property. CP 126, 131-32. Mr. Geiger also used the Buchheits' dock without permission. CP 102. In July 2014, Mr. Geiger kept a close watch over the Buchheits, their children, and guests. CP 80. Mrs. Buchheit-Ekdahl witnessed Mr. Geiger and his friend monitor her actions. CP 81-82. The Buchheits are worried about their safety and the safety of their children. CP 47, 83.

Fourth, the court may consider whether “[t]he respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to protect property or liberty interests; enforce the law; or meet specific statutory duties or requirements.” RCW 10.14.030(4). Here, Mr. Geiger has no such statutory authority—exercising his purported easement rights, is not statutory authority. Mr. Geiger has confirmed he does not cite to statutory authority. Brief of Appellant, p. 10.

Fifth, the court may consider whether “[t]he respondent’s course of conduct has the purpose or effect of unreasonably interfering with the petitioner’s privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for

the petitioner.” RCW 10.14.030(5). Here, although the Buchheits do not live on the property, Mr. Geiger’s conduct has unreasonably interfered with their privacy and has the purpose or effect of creating an intimidating living environment. Mr. Geiger continuously trespassed on the Buchheits’ property and used their dock. CP 79-80. He repeatedly allowed his dog to trespass on the Buchheits’ property. CP 60, 80. The Buchheits and their children felt scared and harassed every time Mr. Geiger entered their property, and Mr. Geiger resorted to bullying tactics to gain access over the Buchheits’ property. CP 127. Mr. Geiger has maintained surveillance on the Buchheits, their minor children, and guests. CP 80. Mrs. Buchheit-Ekdahl was so scared she no felt she had no other option but to leave their property when Mr. Geiger and/or his friends trespassed on her property. CP 127. The Buchheits’ property was no longer a peaceful place for the Buchheits and their minor children because of Mr. Geiger’s actions and behavior. CP 47.

Lastly, the court may consider whether “[c]ontact by the respondent with the petitioner or the petitioner’s family has been limited in any manner by any previous court order.” RCW

10.14.030(6). Here, no previous court order had been sought or issued. CP 96.

The lower court did not have to find all six factors are met to grant a protection order in favor of the Buchheits—these factors are simply guidelines. Shinaberger, 109 Wn. App. at 208. In addition, RCW 10.14.080(6) provides the court “broad discretion to grant such relief as the court deems proper.”

Taking Mr. Geiger’s course of conduct and actions over time, the Buchheits presented sufficient evidence justifying the issuance of the protection order. The evidence demonstrated Mr. Geiger engaged in a knowing and willful course of conduct which seriously alarmed, annoyed, harassed, and/or was detrimental to the Buchheits and served no legitimate or lawful purpose. He repeatedly trespassed on their property despite several warnings. He engaged in intimidating behavior and made the Buchheit family concerned for their safety and the safety of their minor children. As such, the lower court properly granted a no-contact and stay-away order restraining Mr. Geiger from entering the Buchheits’ property and harassing them.

3. The lower court was within its authority to restrain Mr. Geiger from entering the Buchheits' property because Mr. Geiger has no cognizable claim to the Buchheits' property

The Anti-harassment Statute provides that a court “shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a cognizable claim” unless certain exceptions apply. RCW 10.14.080(8). Mr. Geiger does not have a cognizable claim to the Buchheits' property. The argument that Mr. Geiger could potentially seek to have the Declaration reformed based on an alleged scrivener's error does not give rise to “a cognizable claim to property”. The Declaration does not provide Mr. Geiger with lake access over the Buchheits' property.

a. Mr. Geiger's narrow interpretation of RCW 10.14.080(8) should be rejected

The purpose of the Anti-harassment Statute is to protect victims of harassment, and Mr. Geiger's narrow interpretation of the Statute and the phrase “cognizable claim” should be rejected. RCW 10.14.010 sets forth the legislative intent of the Anti-Harassment statute:

The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature

further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil anti-harassment protection orders preventing all further unwanted contact between the victim and the perpetrator.

RCW 10.14.010 (emphasis added). Adopting Mr. Geiger's proposed broad definition of "cognizable" in this context would preclude a wide range of petitioners who are the victims of harassing and potentially dangerous behavior from obtaining relief under the Anti-harassment Statute. This would be contrary to the purpose of this statutory scheme as recognized by the Legislature in RCW 10.14.010.

Black's Law Dictionary defines "cognizable" as "[c]apable of being tried or examined before a designated tribunal; within jurisdiction of court or power given to court to adjudicate controversy." Deluxe Black's Law Dictionary 259 (6th ed. 1990).

Mr. Geiger's interpretation of a "cognizable claim" should be interpreted as a claim that would survive a motion to dismiss under CR 12(b)(6) is not tenable. Such a wide-open standard would require the trial court, in considering an anti-harassment petition where a respondent alleges it is possible that facts can support a cognizable property interest, to not only evaluate the merits of the

petition, but also consider whether these possible facts and possible claims would survive a motion to dismiss. This puts an unnecessary burden on the trial court and defeats the Anti-harassment Statute's purpose of providing victims with a speedy and inexpensive method to prevent further unwanted contact. Moreover, with such a low threshold, much more unwanted, harassing and potentially dangerous conduct would go unchecked – while the victims await trial on a substantive claim that has little to no legal or factual bases.

There is only one reported Washington case which addresses the term “cognizable claim” in the context of anti-harassment proceedings, and it favors the Buchheits. In Price v. Price, Veronica Price held a 5/6th interest as a tenant in common in a beachfront property. 174 Wn. App. 894, 896, 301 P.3d 486 (2013). Petitioners owned a 1/30th interest and obtained an anti-harassment order precluding Ms. Price from accessing the property after a heated confrontation. Id. The Court of Appeals reversed the trial court, noting:

As a 5/6 owner of the property, [Ms. Price] had a ‘cognizable claim’ of interest in the property; therefore, she was entitled to possession of the entire property on equal footing with [the petitioners].

Id. at 904. The court stated “because [the petitioners] were also joint owners, they also have a cognizable claim of interest in the property.” Id. In Price, it was undisputed Ms. Price, had partial ownership of the property, and as such, the lower court lacked authority under RCW 10.14.080(8) to enter the restraining orders. Id. at 905.

Here, the opposite is true – there is no evidence Mr. Geiger has any ownership, use or possessory interest in the Buchheits’ property – as more fully set forth below. Considered in light of the broad discretion granted to lower courts in RCW 10.14.080(6) and the purpose of the Anti-harassment Statute in protecting victims, the lower court did not abuse its discretion in entering an order restraining Mr. Geiger from entering the Buchheits’ property and harassing them.

b. Mr. Geiger’s claim for a reformation based on an alleged scrivener’s error does not give rise to a cognizable claim

Even if this Court were to adopt Mr. Geiger’s strained interpretation of what constitutes a “cognizable claim” under RCW 10.14.080(8), Mr. Geiger fails to assert any fact supporting a cognizable claim for reformation based on a scrivener’s error. First, reformation must not unfairly effect innocent third parties, which the

Buchheits are. Second, any alleged “deficiency” in the Declaration is not merely a scrivener’s error, and thus not subject to reformation.

i. A court may not reform a document if reformation will unfairly affect innocent third parties

A party seeking reformation of an instrument:

must prove, by clear, cogent and convincing evidence, (1) both parties to the instrument had an identical intention as to the terms to be embodied in a proposed written document, (2) that the writing which was executed is materially at variance with that identical intention, and (3) innocent third parties will not be unfairly affected by reformation of the writing to express that identical intention.

Aston Cnty. Port Dist. v. Clarkston Cmty. Corp., 2 Wn. App. 1007, 1011, 472 P.2d 554 (1970) (citations omitted) (emphasis added).

Here, Mr. Geiger failed to identify facts to the lower court supporting the required three elements necessary to support a bases for reforming the Declaration at issue.

First, there was no evidence presented to the lower court indicating the Withrows and Mr. Geiger had identical intentions for Mr. Geiger to have an easement to access the lake through the Buchheits’ property, to affix concrete blocks, to build a floating dock, to use the Buchheits’ dock, to allow dogs to defecate on the

Buchheits' property, to have a shared beach, to throw parties, to loiter, to litter, to use the boat ramp, or to harass the Buchheits.

Mr. Geiger stated when he purchased his property, it was important for him to have a "view and lake access". CP 13-14.

However, the Declaration makes no reference to lake access:

1.1 Purpose of Easement. The easement granted herein shall be (i) a non-exclusive easement for vehicular and pedestrian access, ingress, egress, turnaround maneuvering, parking and other driveway and related purposes upon, over and across the real property above described; and (ii) an easement to perform any and all maintenance, repairs, replacements and other work as reasonably necessary in connection with the ownership, operation, management, maintenance, repair, and replacement of the easement...

CP 35. If Mr. Geiger truly believed that most of the value of his property is from lake access, this intent was not captured in the material terms of the Declaration as it makes no reference to lake access, shared access to the beach, or dock usage. CP 13-14, 35.

Most importantly, the Buchheits are innocent third parties that would be unfairly affected by reformation of the Declaration. A bona fide purchaser of land who has no actual or constructive knowledge of an easement generally takes title free of the burden of the easement. Wilhelm v. Beyersdorf, 100 Wn. App. 836, 846, 999 P.2d 54 (2000) (the court found the easement was properly

filed and the record supported the conclusion that the Beyersdorf were on notice of the easement's existence over their land, and thus concluded the trial court did not abuse its discretion in reforming the easement to reflect its actual use). If the purchaser had knowledge of facts sufficient to excite the purchaser's inquiry, the courts generally presume the purchaser had constructive knowledge of all the inquiry would have shown. Id. In Biles-Coleman Lumber Co. v. Lesamiz, the Washington Supreme Court held:

Since respondents are subsequent bona fide purchasers for value, without prior notice of the claim of ownership of the appellant, there can be no reformation of appellant's deed to include the disputed area.

49 Wn.2d 436, 442, 302 P.2d 198 (1956) (citations omitted). The Biles-Coleman court also stated: "[t]he burden of establishing that a purchaser had prior notice of another's claimed right or equity rests upon the one who asserts such prior notice."² Id. at 439 (citations omitted).

Here, the Buchheits are innocent third parties and are subsequent bona fide purchasers for value. The Declaration

² In Biles-Coleman, the trial court found the appellant company had not established the respondents had notice or knowledge of appellant's claim of the property in dispute and evidence of tax contributions did not establish such notice of appellant's claim of ownership. Id. at 441.

provides an easement over easterly 23 feet of Lot 1 (Mr. Geiger's property) for ingress and egress purposes. The Buchheits are not held to the standard of guessing whether the Withrows intended to grant Mr. Geiger access to the beach and the right to attach a floating dock—and the recorded Declaration makes no reference to such access or use. In addition, the Buchheits were not informed by the Withrows—or anyone else—that there was an easement over their property in favor of Mr. Geiger for lake access or what Mr. Geiger asserts is a “shared beach”. CP 102, 127. There is no record that would put the Buchheits on notice of any burden over their property that would excite their inquiry for lake access. CP 102, 127. The Declaration makes no mention of the words “lake”, “lake access”, “beach”, “dock”, or “boat ramp”—it is simply creates ingress/egress easement over Lot 1 (Geiger's property). CP 34-40.

Even if this Court were to find a scrivener's error existed and agree that reformation was appropriate by changing the reference from terms “Lot 1” to “Lot 2” in paragraph 1 of the Declaration, such reformation would not provide Mr. Geiger with an easement over the Buchheits' property for lake access. Nor would it have authorized him to engage in the conduct that was central to the underlying anti-harassment proceedings (launching fireworks,

storing his surfboard, attaching a floating dock, etc.). CP 78, 79, 125.

At most, a reformation of the Declaration would provide for a 23-foot ingress/egress easement in favor of Mr. Geiger and burdening the Buchheits' property – but no lake access. CP 34-40. As the Declaration makes no reference to lake access, it can hardly be argued to have put the Buchheits on notice of a potential easement burdening their property for a shared beach, dock access, or lake access.

Moreover, “[c]ourts are not at liberty, under the guise of reformation, to rewrite the parties’ agreement and ‘foist upon the parties a contract they never made.’” Seattle Prof’l Eng’g Employees Ass’n v. Boeing Co., 139 Wn.2d 824, 833, 991 P.2d 1126 (2000) (quoting Seattle Prof’l Eng’g Employees Ass’n v. Boeing Co., 92 Wn. App. 214, 963 P.2d (1998) (other citations omitted) (the court found there was no mistake of fact and the parties did not have the same intentions)). To reform the Declaration to include a shared beach, lake access, dock usage, and boat ramp would essentially re-write the Declaration to provide for usage not initially intended or agreed by the parties – including the Buchheits.

ii. Any alleged “deficiency” in the Declaration is not a mere scrivener’s error

Even if this Court could possibly find the Buchheits were not innocent third parties adversely affected by a reformation of the Declaration, any “deficiency” is beyond a mere scrivener’s error, and could not be cured by reformation.

The party seeking reformation has to show the parties agreed to accomplish a certain objective and the instrument is sufficient to execute their intention but for the isolated scrivener’s error. Saterlie v. Lineberry, 92 Wn. App. 624, 628, 962 P.2d 863 (1998) (the parties in Saterlie were aware prior to execution of the deed that there was a discrepancy between the easement shown on the short plat map and the description of the easement in the deed and researched the discrepancy but signed the closing agreement anyway. The court reformed the deed.); Wilhelm, 100 Wn. App. at 844.

Mr. Geiger claims the purported scrivener’s error can be cured by simply replacing “Lot 1” in paragraph 1 with “Lot 2”. This is not merely a scrivener’s error as Mr. Geiger alleges, because the Declaration is otherwise deficient and would fail to accomplish the claimed objective (lake/beach access) – even if reformed. There

are many deficiencies, confusing terms and apparently contradictory provisions throughout the entire Declaration which would not be addressed by a mere chance of the purported scrivener's error identified by Mr. Geiger. For instance:

- Para 1.2 provides that Grantee shall be responsible for paving, pavement, curbs, curb cuts, etc. The easement Mr. Geiger claims to have is dirt and/or gravel – there is no pavement.
- Para. 1.3 provides that Grantee shall indemnify Grantee from any and all liability, loss, cost, damage or expense. It would appear this is an error, but unclear which term is incorrect.
- Para. 3 provides that if the Grantee shall fail to perform any of the obligations under the easement, Grantee shall have the right to perform such obligations and to collect from Grantee the cost thereof. It appears at least one reference should be “Grantor” instead of “Grantee”, but unclear which term is incorrect.
- Para. 7.4 refers to “the last surviving incorporator of the Association”. The terms “incorporator” and “Association” are undefined and unclear who or what the terms are referring to as no incorporator or association is known to exist.
- Para 7.8 refers to “the benefit of the heirs, successors and assigns of Declarant, the Developer, the Members and the Owners.” The Developer, Members, and Owners are not defined in the easement.

CP 35-39.

As a result of all the confusing and contradictory language throughout the Declaration, any purported error or deficiency is

beyond the scope of a mere scrivener's error which might allow for a simple reformation. Moreover, in balancing the equities, reforming the Declaration would unfairly affect the Buchheits, who are innocent bona fide purchasers.

Even if a court were to find a scrivener's error to exist in the Declaration and agreed that reformation was appropriate, the reformed document would only replace "Lot 1" with "Lot 2" in paragraph 1, providing an access easement in favor of Mr. Geiger's property over the Buchheits' property for the easterly 23 feet for the purpose of ingress, egress, turnaround maneuvering, parking, and other driveway and related purposes. The reformed Declaration would still not allow Mr. Geiger to: use the dock, use the boat ramp, attach a floating dock to the Buchheits' property, linger and/or loiter, throw a July 4th party, set up lawn chairs and shoot fireworks, leave his paddleboards, allow his dog to leave fecal matter on the Buchheits' property, leave trash behind, and survey the Buchheits and their children—which is exactly what Mr. Geiger was doing to prompt the request for an anti-harassment order. Thus, even if a court were to grant Mr. Geiger's request for a reformation, it would not have authorized the conduct at issue.

iii. The lower court was within its authority to restrain Mr. Geiger from entering or being on the Buchheits' property

RCW 10.14.080(6)(c) states: "The Court, in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order [r]equiring the respondent to stay a stated distance from the petitioner's residence and workplace." (emphasis added). Such discretion allows the court to restrain a perpetrator from entering a victim's property even if the property is not a "residence" *per se*. The purpose of the Anti-harassment Statute is to prevent unwanted contact between the victim and the perpetrator. RCW 10.14.010.

The Anti-harassment Statute "grants broad discretion to the trial court in devising an order that protects the victim. That determination of how much is enough or is too much is a case-by-case determination." State v. Noah, 103 Wn. App. 29, 43, 9 P.3d 858 (2000) (the trial court believed 300 feet of distance was necessary distance from the petitioner's home and business and the respondent had trespassed on the property).

If this Court were to limit restraining orders to petitioners' workplace and residence, such a ruling would open up the doors to

harassment and threats outside of a person's living and working environment. Furthermore, the term "including" is not intended to be inclusive but to provide guidance to the court on what orders can be entered. Also indicative that the Anti-harassment Statute was not intended to be restrictive or limiting is the box on the form order provided by the Washington state courts, which states:

Stay Away: Respondent is restrained from entering or being within ____ (distance) of Petitioner's [] residence [] place of employment [] other: _____.

CP 9.

To adopt Mr. Geiger's restrictive interpretation of RCW 10.14.080 would defeat the purpose of the Anti-harassment Statute because courts will have no authority to restrain perpetrators from harassing and bullying their victims if it is at a location outside of the victims' private residence or workplace. This is contrary to the express intent and purpose of the statute, as set forth in RCW 10.14.010.

V. CONCLUSION

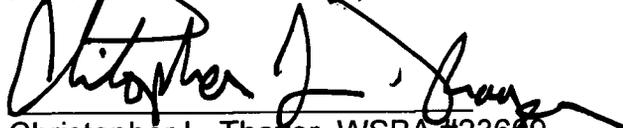
This case is about Mr. Geiger's harassing and annoying conduct directed towards the Buchheits and their minor children. Mr. Geiger had no right to be on the Buchheits' property and no

right to bully, threaten, and intimidate the Buchheits. Mr. Geiger purports to have a “cognizable claim” to use of a portion of the Buchheits’ property, pursuant to the Declaration signed by his predecessor in interest. But even if a Court were to find he has a cognizable claim based on the Declaration, Mr. Geiger’s behavior and actions exceed the scope of the rights conceivably granted in the Declaration – when he used the Buchheits’ dock, which is beyond the 23-foot “easement”; when he used the boat ramp, which is not provided for by the Declaration; and when he and his friends host parties and linger on the Buchheits’ property, which is beyond the intended purpose of ingress and egress that arguably are reserved by the Declaration.

The Buchheits respectively ask this Court to affirm the lower court and to leave the protective order in place. The Buchheits also ask this Court to grant reasonable attorney’s fees and costs for the appeal.

Respectfully submitted this 6 day of April, 2015.

PIVOTAL LAW GROUP, PLLC



Christopher L. Thayer, WSBA #23609

Ada K. Wong, WSBA #45936

Attorneys for Respondents