

FILED
SUPREME COURT
STATE OF WASHINGTON
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SUPREME COURT NO. 1029501

IN THE COURT OF APPEALS
DIVISION 1
OF THE STATE OF WASHINGTON

ZACKARIAH J. BENNETT,

Petitioner,

and

MELVINA MANNING,

Respondent.

RESPONDENT'S ANSWER
TO PETITION FOR REVIEW BY THE SUPREME COURT

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SUPREME COURT OF WASHINGTON
COUNTY OF KING

Petitioner
ZACKARIAH BENNETT

And Respondent

MELVINA MANNING

NO. 1029501
COURT OF APPEALS No.
844504-DIVISION 1.

MELVINA MANNING'S
RESPONSE TO PETITION FOR
REVIEW BY THE SUPREME
COURT FOR THE STATE OF
WASHINGTON

Comes now MELVINA MANNING, by and through her Attorney of Record, NANCY A. GASS, and responds to ZACKARIAH BENNETT'S Petition for Review and Supplemental Brief.

RESPONDENT'S OBJECTION TO RELIEF SOUGHT BY APPELLANT

Issues Presented

Bennett Petition

1. Mr. Bennett seeks relief under RAP 13.4(b)(1). *Bennet Petition* at p. 1. This element indicates the Supreme Court will accept a Petition for Review "[i]f the decision of the Court of Appeals is in conflict with a decision of the Supreme Court." RAP 13.4(b)(1).
2. Mr. Bennett specifically cites *Innovation Law Labs v. Mayorkas* in his Statement of Relief Sought. *Bennett Petition* at p. 1.

Bennett Supplemental Brief

1. On issues of Law

Mr. Bennett's Supplemental brief filed with This Court on May 6, 2024 is simply a copy of Mr. Bennett's Motion to Reconsider filed with the Court of Appeals on April 1, 2024.

1 This motion for reconsideration was denied. *Court of appeals Order Denying Motion for*
2 *Reconsideration.*

3 Mr. Bennett argues, in his supplemental brief under the heading ‘On Issues of Law’ that
4 the wrong law was applied in the DVPO. *Bennett Supplemental Brief* at p. 5.
5 Specifically, Mr. Bennett claims that RCW 7.105.010 was applied to his conduct on June
6 12, 2022. He argues that this law did not take effect until July 1, 2022. Mr. Bennett is
mistaken.

7 2. *On Issues of Discretion & Evidence*

8 Spoilation

9 Mr. Bennett cites several cases with respect to spoilation of evidence, however, he
10 presents no evidence that Ms. Manning “spoiled” any evidence. In her response to Mr.
11 Bennett’s brief on appeal, Ms. Manning clearly states that the video evidence Mr.
12 Bennett claims was spoiled by Ms. Manning still exists. *Manning Response to Appeal* at
p. 8.

13 Discretion

14 Mr. Bennett claims the trial court erred in its discretion to deny his repeated requests for
15 production of the ‘security footage’ video. *Bennett Supplemental brief* at p. 8. After
16 claiming that RCW 7.105.200 should not apply to this case (*Bennett Supplemental Brief*
17 at p. 6), Mr. Bennett goes on to rely on RCW 7.105.200. *Bennett Supplemental Brief* at p.
8.

18 Privilege and Privacy

19 Mr. Bennett claims that the Domestic Violence judge erred in accepting into evidence a
20 conversation between Mr. Bennett and his then wife, Kelly. Mr. Bennett ignores Ms.
21 Mannings response in the Appellate case that shows RCW 9.73.030(2) provides an
22 exception for conversations that convey a threat of bodily harm.

23 Mr. Bennett mistakenly relies on *People v Felix* where a 3rd party revealed confidential
24 information. *Bennett Supplemental Brief* at p. 9.

25 Perjury

1 Mr. Bennett makes vague and unsubstantiated claims of perjury. These issues were
2 before the court in the domestic violence hearing. That court found Ms. Manning's
3 concerns credible.

4 ANALYSIS

5 1. *Mootness*

6 The Decision of the Court of Appeals is not in conflict with a decision of the Supreme
7 Court. Mr. Bennett mistakenly relies on *Innovation Law Lab v. Mayorkas* and *United*
8 *States v. Munsingwear*. *Bennett Petition* at pp. 1 & 2. Both cases address the issue of
9 appellate decisions when the case becomes moot pending review by a higher court.
10 *Innovation Law Lab v. Mayorkas*, 5 F.4th 1099 (9th Cir. 2021); *United States v.*
11 *Munsingwear*, 340 U.S. 36, 71 S. Ct. 104, 95 L. Ed. 36 (1950). This case is
12 distinguishable from *Innovation Law Labs* and *Munsingwear* in that the DV Protection
13 order expired on August 5, 2023. Mr. Bennett's brief was filed with the Court of Appeals
14 on October 3, 2023, several months after the DV Protection order has expired. *Appeals*
15 *Court order granting Manning's Motion to Dismiss* at p. 3. The case was moot before it
16 was pending a review by a higher court. The Appeals Court looks at such cases only
17 when they present issues that are of substantial and continuing interest. *Blackmon v.*
18 *Blackmon*, 155 Wn. App. 715, 230 P.3d 233 (2010). As the Appeals Court decision says
19 "The issuance of the DVPO is a private matter between Manning and Bennett" *Court of*
20 *Appeals decision* at p. 4. Thus, the Appellate Court decision was in keeping with
21 Washington Law.

22 2. *On issues of Law*

23 Mr. Bennett mistakenly argues that the wrong law was applied in the DV Protection
24 order hearing. He claims he should have been subject to RCW 26.50. *Bennett*
25 *Supplemental Brief* at p. 5. While it is true that much of RCW 7.105.010 did not take
26 effect until July 1, 2022, the law was particularly concerned with protecting victims of
domestic violence. *Exhibit A* at p. 2. Consequently, the sections relating to domestic
violence became effective on March 31, 2022 prior to the incident in question in this
matter which occurred on June 12, 2022.

1 RCW 7.105.010(9)(b) defining domestic violence is one of the provisions that became
2 effective on March 31, 2022. *Id.* at p. 1; RCW 7.105.010(9)(b). This definition includes
3 "...the infliction of fear of physical harm, ... unlawful harassment..." RCW
4 7.105.010(9)(b). The court hearing the domestic violence matter did not err in applying
5 RCW 7.105.010(9)(b) to the matter in question as it became effective prior to the
6 incident on June 12, 2022.

7
8 *3. On issues of Discretion & Evidence*

9 *Spoilation*

10 Once again, Mr. Bennett is making unsubstantiated claims against Ms. Manning. In her
11 response to Mr. Bennett's brief on appeal, Ms. Manning clearly states that the video
12 evidence Mr. Bennett claims was spoiled by Ms. Manning still exists. *Manning Response*
13 *to Appeal* at p. 8. He is simply repeating old allegations despite being informed of the
14 truth of the matter.

15 *Discretion*

16 Mr. Bennett first argues that RCW 7.15.010 et. seq. does not apply to him, Then quotes
17 the law in his supplemental brief. Mr. Bennett quotes specific areas of RCW 7.15.200 et
18 seq but fails to show any abuse of discretion by the court that heard the domestic
19 violence protection proceedings. The law explicitly indicates that "Prehearing discovery
20 ... is **disfavored** [emphasis added] and only permitted if specifically authorized by the
21 court for good cause." RCW 7.15.200 (7). Mr. Bennett fails to show that he followed the
22 procedures required by RCW 7.15.200 (7) or, if he did so, why it was an abuse of
23 discretion for the court to deny his request. *Id.*

24 *4. Privilege and Privacy*

25 *Privilege*

26 Mr. Bennett alleges that the document transcribing a conversation between Mr. Bennett
and his then wife Kelly was illegally obtained by Ms. Manning. As discussed in Ms.
Manning's response filed with the appeals court, Ms. Manning was in the room with
Kelly when she was having the conversation with Mr. Bennett. She gave Ms. Manning
permission to download a transcription of the conversation. This was not a privileged
conversation as Mr. Bennett claims.

1 Ms. Manning heard the entire conversation, and thus the contents of the conversation fall
2 under ER 801(d) Statements which are not hearsay.

3 Mr. Bennett cites RCW 9.73.030 in his argument that the conversation should not have
4 been admitted into evidence. However, he ignores the exception for threats of bodily
5 harm under RCW 9.73.030(2). In the conversation in question, Mr. Bennett clearly
6 indicates that he will take [TB] and run rather than go to prison. He further indicates that
7 he will declare war and shoot anyone that tries to stop him, even his own blood.
8 *Manning response* at p.7. Given such statements and his erratic behavior on June 12,
9 2022 at the Manning residence, it is not surprising that Ms. Manning and TB were
10 frightened of Mr. Bennett. Mr. Bennett's claims of violation of privilege and privacy are
11 without merit in this case.

12 *Perjury*

13 Mr. Bennett's vague claims of perjury are conclusory and unsupported by evidence. The
14 cases he cites in reality support the issuance of the protection order. For instance, he
15 quotes the Juarez court that indicates "... we trust our judges to take the time and
16 conduct a hearing sufficient to arrive at the truth ..." *Bennett Supplemental Brief* at p. 9.
17 For some unstated reason, Mr. Bennett asks that we not trust our judges in this matter.

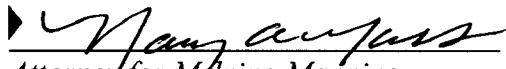
18 **Conclusion**

19 Mr. Bennett tried to force a child for whom he has no custodial rights to bend to his will.
20 The child was frightened and suffered an anxiety attack over Mr. Bennett's attempts to
21 force him to comply with Mr. Bennett's desires. *Ex. B*.

22 Mr. Bennett has a history engaging in violent acts against family members. The minor
23 child asked his grandmother to seek a protection order so that he could feel secure in his
24 home. The court found adequate cause to issue Domestic Violence Protection Order. Mr.
25 Bennett is now seeking to avoid the consequences of his bad behavior.

26 Ms. Manning respectfully requests this Court to deny Mr. Bennett's Petition for Review.
Ms. Manning is not a wealthy woman and the constant need to respond to Mr. Bennett's
seemingly never-ending filings is causing not only a financial strain on her and her
family but is taking an emotional toll as well.

I certify that this brief contains 1549 words in compliance with RAP 18.17(c)(1).


Attorney for Melvina Manning

Nancy A. Gass WSBA # 49685
Print name and WSBA No.

5/22/24
Date

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EXHIBIT A

EXCERPT FROM RCW 7.105.010

- (IV) Contact local or federal agencies based on actual or suspected immigration status;
- (F) Exerting control over the other party's identity documents;
- (G) Making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety; or
- (H) Engaging in sexual or reproductive coercion;
- (ii) Causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;
- (iii) Depriving the other party of basic necessities or committing other forms of financial exploitation;
- (iv) Controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, child care, or school-based extracurricular activities;
- (v) Engaging in vexatious litigation or abusive litigation as defined in RCW 26.51.020 against the other party to harass, coerce, or control the other party, to diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or
- (vi) Engaging in psychological aggression, including inflicting fear, humiliating, degrading, or punishing the other party.

(b) "Coercive control" does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

(5) "Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.

(6)(a) "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. "Course of conduct" includes any form of communication, contact, or conduct, including the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) In determining whether the course of conduct serves any legitimate or lawful purpose, a court should consider whether:

- (i) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;
- (ii) The respondent has been given clear notice that all further contact with the petitioner is unwanted;
- (iii) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;
- (iv) The respondent is acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to:
 - (A) Protect property or liberty interests;
 - (B) Enforce the law; or
 - (C) Meet specific statutory duties or requirements;
- (v) The 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; or
- (vi) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

(7) "Court clerk" means court administrators in courts of limited jurisdiction and elected court clerks.

(8) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

~~*~~ (9) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or

~~*~~ (b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

(10) "Electronic monitoring" has the same meaning as in RCW 9.94A.030.

(11) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes, but is not limited to, clothing, cribs, bedding, medications, personal hygiene items, cellular phones and other electronic devices, and documents, including immigration, health care, financial, travel, and identity documents.

(b) A single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) A malicious and intentional threat as described in RCW 9A.36.080(1)(c); or (ii) the presence of a firearm or other weapon.

(37) "Vulnerable adult" includes a person:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (b) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360;

or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from a person under contract with the department of social and health services to provide services in the home under chapter 74.09 or 74.39A RCW; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

[2022 c 268 § 1; 2022 c 231 § 8; 2021 c 215 § 2.]

NOTES:

Reviser's note: *(1) Chapter 11.92 RCW was repealed in its entirety by 2020 c 312 § 904.

(2) This section was amended by 2022 c 231 § 8 and by 2022 c 268 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(3) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective dates—2022 c 268: "(1) Except for sections 9 through 14, 37, and 47 of this act, this act takes effect July 1, 2022.

(2) Section 37 of this act takes effect July 1, 2023.

(3) Sections 9 through 14 and 47 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 31, 2022]." [2022 c 268 § 49.]

Effective date—2022 c 231 §§ 8, 9, 11, 13, and 15: "Sections 8, 9, 11, 13, and 15 of this act take effect July 1, 2022." [2022 c 231 § 19.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

P.2



EXHIBIT B

DECLARATION OF TIMOTHY EDWARD BENNETT

**Superior Court of Washington
For King County**

No. 22-2-09380-3

Melvina Catherine Manning

05/13/1959

Petitioner

DOB

vs.

Zackariah Jeremiah Bennett

01/07/1981

Respondent

DOB

Declaration of

Timothy Edward Bennett (Name)

(DCLR)

(Optional Use)

(Clerk's Action Required)

This declaration is made by:

Name: Timothy Edward Bennett

Age: 15

Relationship to the parties in this action: Grandson (Melvina), Son (Zackariah)

I declare,

I do not want to see or speak with my father (Zackariah Bennett). When he first showed up and tried luring me out of the house on 6/23/2019, I thought he was a kidnapper and I felt threatened. He was honking his horn and someone was pounding on the front door. I didn't know it was him until I called my Nana (Melvina Manning). Then Zackariah made his second appearance at our home on 6/12/2022, he demanded that I speak to him. I came up to the front door, and politely told him "I don't want to see you at this time." And he responded by becoming agitated and aggressive, and demanding I meet my siblings. I felt threatened and went back to my room to continue playing video games. A few hours after he left, I had a panic attack that was caused by the incident that had occurred. The whole time he was there, he was yelling at my Nana. Ever since his appearance, I have felt threatened and I've been paranoid that he may show up again.

Your Honor, I stand with my Nana, and I request that a protection order is issued so I feel safe at home and at school.

(Attach additional single-sided pages if necessary and number them. Use form DVSTMT, Statement.)

Declaration (DCLR) - Page 1 of 2

WPF DV-7.040 (07/2011) - RCW 26.50.130

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Carnation (city) WA (state) on 8/01/2022 (date).


Signature of Declarant

Timothy Bennett II
Print or Type Name

O.W. HOLLOWELL & ASSOCIATES

May 22, 2024 - 10:42 AM

Transmittal Information

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Appellate Court Case Number: 102,950-1
Appellate Court Case Title: Melvina Manning v. Zackariah Jeremiah Bennett

The following documents have been uploaded:

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A copy of the uploaded files will be sent to:

- carnationlaw@comcast.net
- zackjbennett@gmail.com

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