

FILED
SUPREME COURT
STATE OF WASHINGTON
6/28/2024 12:25 PM
BY ERIN L. LENNON
CLERK

**IN THE SUPREME COURT
OF THE STATE OF
WASHINGTON**

Case Number: 102950-1

ZACKARIAH BENNETT

Appellant

and

MELVINA MANNING

Respondent

APELLANT'S REPLY

Introduction

I, Zackariah Jeremiah Bennett, appellant, hereby reply to the response made by the Respondent, Melvina Manning, clarifying inconsistencies and pointing out the lack of supporting evidence.

Additionally, I will address a continuity of errors made by counsel for Respondent, Nancy Gass. These “errors” have persisted in a manner that evidences an intent to knowingly mislead the court.

Background

Mrs. Manning would have the courts believe the matter at hand is about anything other than the truth - while doing everything in her power to prevent me from having the courts review the case.

What Mrs. Manning has done is outrageous. It is child abuse. It is coercive control. She has robbed TB of a relationship with his loving father, siblings, and relatives.

Mrs. Manning knows the lies she’s told, the laws she’s broken, how she’s manipulated & defrauded her family, and used the courts to make it appear legal. She did all of this for reasons she refuses to answer. I was raised by her, along with my brother; her alienation of my father caused untold damage, and now she’s done even worse to my son T.B., which is why I requested a Guardian ad litem at the very beginning of the 2022 matter on appeal here.

Mrs. Manning requested renewal of the protection order on May 1st 2023 - and it would have been renewed had she followed procedure when filing. After the DVPO expired, and after I filed my brief requesting review, Mrs. Manning hired an attorney, who claimed it was suddenly moot, and shouldn’t be reviewed.

It has been stated that hiring an attorney was a serious strain on Mrs. Manning - so why did she hire one just to prevent a possible vacating of an expired DVPO, knowing she was protected by statute from imposition of costs or fines associated with my defense? To prevent review.

Mrs. Manning has made numerous unsupported false allegations against me. These are just more examples of Mrs. Manning using conclusory boilerplate

allegations to mislead the court, lacking any substantive evidence or specific details. It is libel per se; pure character bashing with generic false claims that fail to provide the factual basis necessary to support their assertions.

It is no different than what can be seen in the documents filed in 2008, and the lengths she went to so that I was not afforded the ability to speak.

Mrs. Manning is awaiting decision on her motion for summary judgement in a related civil suit against her. Again, attempting to evade judicial scrutiny of her actions.

Summary of Issues

1. Incorrect law applied.

A. As Justice Hazelrigg stated 26.50RCW was the applicable statute.

B. Ms. Gass incorrectly argues that 7.105.200(7) was effective prior to July 1st 2022.

1. [WA Laws of 2022 c 268 sec. 1] contains the amendment to RCW 7.105.010 that adds the definition of unlawful harassment (at Part 35¹) used throughout the chapter.

2. ***“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.””***²

¹ Washington Session Laws of 2022 ch.268 at page 1965

² Id at page 2051 [emphasis added]

3. Ms. Gass mistakenly asks the court to apply the effective date of a section of legislation [2022 c 268 sec.9] to an RCW [7.105.010(9)].³

4. [2022 c 268 sec. 9] is completely unrelated to RCW 7.105.200⁴

C. The initial filing papers by Mrs. Manning clearly state the controlling RCW as 26.50, as well as defines domestic violence.

1. Nothing in that filing satisfies the elements defined therein as DV.

D. The definition used by the trial court was 7.105.010(35) Unlawful Harassment. This definition was specifically defined in sec. 1 and legislated with an effective date of 07/01/2022⁵, and therefore does not legally apply to allegations from 06//2022 as that would be a retroactive application of the law.

E. The trial court, on top of using the wrong rcw, found that the main element constituting Unlawful Harassment 'did not apply', and stated so.

2. Allegation of threats with no supporting evidence despite multiple requests for such proof.

A. Mrs. Manning clearly stated, under oath, that “. . . nothing -- no threats had been made this entire time . . .”⁶, which is true.

B. Mrs. Manning's accusations are boilerplate, unspecified; no elaboration, no initial details are given. The details provided afterward shift to suit her.

C. The complete messenger conversation history (2010-current)⁷, combined with supporting declarations (of Mr. Bennett, his wife, his daughter, and several other close family members), clearly evidence a relationship dynamic -

³ Answer to Petition for Review 5/22/2024

⁴ Washington Session Laws of 2022 ch.268 at page 1977

⁵ See footnote 6 above

⁶ RP at 40

⁷ [23-2-11352-7 sub# 26]

a dynamic that wholly contradicts Mrs. Manning's proffered narrative, and supports Mr. Bennett's assertion that he has never treated his mother in the manner she has alleged to the courts.

3. The withholding, spoliation, and other issues concerning the security video.

A. The appellant decried the allegations as both false & unjust, unwavering from the very start, steadfast that the full video would exonerate him of the false allegations made by Mrs. Manning.

B. The first mention of the video was by Mr. Bennett.

C. Mrs. Manning did not deny Mr. Bennett's repeated claims the video was proof of his innocence.

D. Mrs. Manning knowingly spoliated the video after Mr. Bennett requested it, and did not disclose that voluntarily.

- i. Mrs. Manning withheld the video until a deadline for disclosure prompted her attorney to compel her to hand it over.
- ii. After a hearing on 05/17/2024, postponing the hearing for Mrs. Manning's motion for summary judgment⁸, Ms. Gass provided Mr. Bennett with the 93s clip.
- iii. On 05/19/2024, after having the video analyzed, Mr. Bennett contacted Mrs. Manning's counsel [Ms. Gass] via email with results indicating that it was not the security video as requested, it was fraudulent⁹.
- iv. On 05/20/2024, Ms. Gass replied:

"We sent you the only video my client has. Her system deletes videos every 30 days. The only way she knew how to preserve the video was to record it on her cell phone. You have what you asked for to the extent my client has it in her possession."

⁸ See 23-2-11352-7 SEA

⁹ Metadata within the file identified it as a video captured on a cellphone, and that was created on 07/12/2022, nearly a month after the action was filed.

- v. On 05/22/2024 Ms. Gass submitted this conflicting statement to the court¹⁰:

2. *On Issues of Discretion & Evidence*

Spoilation

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

E. Mrs. Manning’s own statements are judicial admission of:

her interacting with me; my wife; my children; the Deputy that responded; that they took place upon her porch; and that the video evidence of them has all been deleted, with a 93-second exception.

4. Allegation of unlawful harassment is contradicted by the shifting timeline; by two eyewitness declarations; by Mr. Bennett; and by the responding deputy.

A. The Deputy was dispatched for possible DV in progress. He was obligated to investigate, and arrest (mandatory) if ANY form of DV was suspected. After Mr. Bennett departed, and after getting the details from Mrs. Manning, his log entry was:

“16:23:37 *MISC 2C67 Comment:HOME OWNER'S SON WANTED TO SEE HIS 16YO SON. HOME OWNER/GRANDPARENTS HAVE CUSTODY OF THE SON AND THE SON DID NOT WISH TO SEE HIS FATHER. FATHER DEPARTED THE SEE FREELY AND IS GOING HOME. FATHER ADVISD HE WILL FOLLOW UP WITH HIS ATTORNEY.”

16:27:35 *MISC 2C67 Comment:HOME ADVISED SHE CAN SEEK AN ORDER WITH THE COURTS IF SHE DOES NOT WANT HER SON AROUND.

16:34:39 *MISC 2C67 Comment:NO CRIME”

¹⁰ Answer to Petition for Review 5/22/2024

B. She flip-flops on the order of events, and intentionally allowed video evidence of the events to be erased.

C. Mrs. Bennett's eyewitness declaration denies the allegations of Mrs. Manning.¹¹ As does her daughter's eyewitness declaration.¹²

5. Perjury and Privelege.

The document referred to in the section labeled privilege in Respondents answer (page-7) is **fraudulent**. It is not the transcription of an audio conversation, and Mrs. Manning did not hear it. It is an email, containing parts of a Yahoo instant messenger electronic communication (text, not voice), that was intercepted¹³, and has been edited.

- Looking at the document,¹⁴ on page-1 compare: the first paragraph to the first six lines of the third paragraph; exact match, copy & paste. Another one: first page, second paragraph; exact match with the last 6-lines on page-2, and first 2-lines on page-3, again copy & paste.
- The conversation is between a "magik" and a "princess kelly", obviously screennames from an instant messenger, not an audio transcript.

Legal Standard

In Washington State, attorneys and parties are required to ensure that their claims and defenses are well grounded in fact and law. If it is found that claims/defenses are made without proper evidence or are intended to harass, the court can impose sanctions, including fines and payment of the opposing party's legal fees, adverse judgement, et cetera.

¹¹ CP at page 42

¹² Id at page 45

¹³ Violating rcw 9.73.030(1)

¹⁴ CP at page 87

Argument

Mrs. Manning continues to mislead and outright lie to the court with impunity. Boldly making false allegations, using an improperly obtained past default judgement (obtained in violation of Rule 60(b)(3)) to try and mislead the court and evade review her mala fide actions.

Ms. Gass has not only made statements on behalf of her client that due diligence would've shown to be false, she has:

- ◆ Declined to withdraw statements made known to her to be false.
- ◆ Repeatedly made conclusory allegations, after being informed they were unfounded, and objecting to Mr. Bennett's discovery requests for evidence substantiating the allegations.
- ◆ Made intentionally misleading and or grossly negligent filings with the court.
- ◆ Ms. Gass has gone so far as to boldly state:

“Mr. Bennett seeks to incorporate what he claims is new evidence that is an email from Ms. Manning's counsel to Mr. Bennett regarding a video recording provided to Mr. Bennett through a Superior Court Case discovery process. Bennett Motion to strike Ex. A.; King County Superior Court cause number 23-2-11352-7 SEA. This evidence is related to that case and not relevant to this case.”

- ◆ Contrary to that statement, the video recording is not only relevant, it is MATERIAL in this matter. It is the only remainder of the the security video of the encounter that spawned the initial action on appeal here. It is the very video that Mr. Bennett repeatedly requested from the very beginning of this cause, claiming it would not only prove him innocent, but condemn Mrs. Manning at the same time, and was recently discovered to be spoliated.

Conclusion

The respondent is expending considerable resources to evade review of this matter, more than she can afford according to her counsel, as well as a strong effort to have the courts treat the matters individually, sans context, while blatantly misrepresenting both the facts of the matters involved and the applicable laws.


The attempts by Ms. Gass to intentionally mislead the courts and evade review are highly unfair, and absolutely unethical.

Request for Relief

The Appellant requests the Court to reverse the trial court decision and remand with order vacate.

I, Zackariah Jeremiah Bennett,

Do certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Zackariah Bennett


06/25/2024

At Goldendale, WA

1951 words

Exhibit A

IN THE

SUPERIOR COURT OF

THE STATE OF WASHINGTON

Case Number: **23-2-11352-7**

ZACKARIAH BENNETT

Plaintiff

and

MELVINA MANNING

Defendant

PLAINTIFF'S OPPOSITION TO DEFENDANT'S

MOTION FOR SUMMARY JUDGMENT

Introduction

Plaintiff, Zackariah Bennett, respectfully submits this Opposition to Defendant Melvina Manning's Motion for Summary Judgment. There are genuine disputes of material fact which preclude the entry of summary judgment, and Defendant is not entitled to judgment as a matter of law. This Opposition includes a closer analysis of the alleged fraudulent editing in John Manning's declaration and the nature of the conversation.

Statement of Facts

Consistent Contact Attempts with the Child: Plaintiff has consistently attempted to maintain contact from 2008-2019. These efforts included phone calls, attempted visitation, letters, videos, and even the efforts of other family members on behalf of Mr. Bennett, contradicting Defendant's abandonment claim.

Contradictory Drug Use Claims: Social media messages show Defendant previously acknowledged no drug issues among her children (Facebook Message).

Spoliation and Privileged Communications: Defendant illegally obtained and used privileged communications and admitted to spoliation of video evidence, compromising her credibility (Declaration of John Manning, Email Correspondence).

Legal Standard

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law (CR 56(c)).

Argument

Contradictory Statements:

A. **Drug Use:** Defendant's assertion (under oath) regarding Plaintiff's drug use is contradicted by her own social media statements, where she indicated relief that none of her children, including the Plaintiff, have had issues with drugs (Facebook Message), as well as a signed handwritten letter to WA-DOC in 2015 clearly stating Mr. Bennett had no issues with drugs. This undermines her claims, and evidences perjury.

B. **Abandonment:**

1. Plaintiff has provided the entire record of his Facebook conversations with the defendant (2010-2019) discussing phone calls and visits, reflecting his continuous engagement with his son from 2008-2019, directly disputing Defendant's narrative.

2. In 2008 the Defendant falsely alleged abandonment in order to gain emergency temporary (and later full) custody of TB, while simultaneously requesting need of a protection order to prevent either of TB's parents from bringing him home to Colorado - specifically stating "both parents threaten to remove [TB] from Washington". This contradicts Defendants claims of abandonment.

3. Mrs. Manning picked up TB (in March) in Colorado. In mid-april Mr. Bennett requested TB be brought home and revoked the consent given. From then, until Mrs. Manning received a temporary custody order, Mrs. Manning unlawfully withheld TB from his biological - and custodial - parents, in violation of the UCCJEA and RCW 9A.40.060.

Lack of Substantial Evidence: Defendant's claims rely on vague assertions without sufficient corroborative evidence.

Inconsistent Legal Applications: Defendant misapplied legal definitions relevant to the case (RCW 26.50.010 vs. RCW 7.105.010(35)(a), see effective date for Laws of 2021 c 268).

False Statements Under Oath: Defendant has knowingly lied, under oath.

A. told this court I attempted no contact from 2008-2019 (false).

B. Told this court I had a lifetime protection order (false), for “beating” my ex wife (false).

Contradictory Statements on Protection Order:

A. **Strategic Withdrawal:** Ms. Manning claims she chose not to renew the DVPO out of hope that Mr. Bennett would leave her alone. However, her request to renew was e-filed despite knowing it required in-person presentation, implying an attempt to sidestep proper legal procedures (See Exhibit E).

B. **Misleading Frame:** By portraying the decision as based on hope rather than procedural avoidance or misstep, Ms. Manning attempts to mislead the court about her intentions and actions.

Child’s Best Interests: In Mrs. Manning’s 2013 Communication Agreement it was stated that maintaining a relationship with Mr. Bennett was in the child’s best interest, a concept that WA State has expressed agreement with, and which Mrs. Manning has acted against for over a decade now, instead choosing to alienate TB from his father. Parental Alienation is child abuse.

Civil Rule 11 Compliance:

A. **Evasive and Insufficient Responses:** Ms. Manning asserts that all her filings were in direct response to Mr. Bennett’s actions and none were frivolous or fraudulent. However, her responses have been evasive and insufficiently addressed core issues, questioning her adherence to Rule 11.

B. Insufficient Investigation: Ms. Gass failed to conduct a reasonable investigation into the facts and the law before filing.

C. Misrepresentations and False Statements: Ms. Gass continues to misrepresent not only the facts in this matter, but the laws as well. The manner in which this is being done strongly suggests a focused effort to evade judicial review of her clients actions.

D. Evading Judicial Review: attempting to evade judicial review can be considered unethical. Ethical rules for attorneys generally require them to act with integrity and fairness in their practice of law. Here are some key points on why evading review can be unethical:

1. **Duty of Candor:** Lawyers have a duty of candor to the court, meaning they must be honest and forthright in their representations. Attempting to evade review undermines this duty.
2. **Fairness to Opposing Party and Counsel:** Ethical rules, such as those in the American Bar Association (ABA) Model Rules of Professional Conduct, require lawyers to be fair to opposing parties and their counsel. Evading review can be seen as an attempt to gain an unfair advantage.
3. **Administration of Justice:** Lawyers are expected to assist in the fair administration of justice. Efforts to evade judicial review can hinder this process and are therefore unethical.
4. **Rule 11 Violations:** As mentioned earlier, Civil Rule 11 requires that filings be made for proper purposes and with a reasonable basis in law and fact. Attempts to evade review often involve violations of this rule, making such actions sanctionable.
5. **Obstruction of Legal Process:** Any actions that intentionally obstruct or delay legal proceedings can be considered unethical and potentially subject to disciplinary action.

Spoliation and Suppression of Evidence:

A. Spoliation: Defendant's admission of deleted video recordings is a clear example of spoliation, undermining the judicial process (Email Correspondence). Defendant insists that she preserved video evidence of Mr. Bennett on her front porch by recording it with her cell phone. However, questions arise as to why the original surveillance footage was not submitted directly.

The recorded footage was not reviewed by the court originally. Mrs. Manning's explanation about the auto-delete feature appears conveniently timed and raises credibility concerns.

B. Privileged Communications: The inclusion of illegally obtained privileged communications in the court filings is both a legal and ethical violation. This evidence should not be considered, and its presence further questions the legitimacy of her motion (Declaration of John Manning).

C. Suppression of Evidence: The Defendant has made multiple claims about TB concerning his development, and even a mental health diagnosis - yet she has withheld, and objected to discovery of, all materials related to TB's physical & mental health during that time, as well any record of the information she has provided about TB's life prior to her unlawful gaining of custody.

Inconsistencies Regarding Video Evidence: Defendant insists that she preserved video evidence of Mr. Bennett on her front porch by recording it with her cell phone. However, questions arise as to why the original surveillance footage was not submitted directly. The recorded footage was not reviewed by the court originally. Ms. Manning's explanation about the auto-delete feature appears conveniently timed and raises credibility concerns

Analysis of John Manning's Declaration:

A. Nature of Conversation: Evidence suggests the conversation was text-based via Yahoo! Messenger, supported by the presence of screen names, contradicting Mrs. Manning's claim of it being an audio call transcription. Screen names typically indicate a text-based communication platform such as Yahoo! Messenger.

B. Potential Fraudulent Editing: Sections on pages 1 and 2 show signs of being copied and pasted. The logical flow and context of the document suggest disruptions characteristic of tampered documents, indicating possible fraudulent editing. Upon comparison, discrepancies in fonts, sizes, and formatting are also evident. Specific examples include abrupt changes in formatting and inconsistencies in the conversation's flow, and exact repetition of word groups that align more with cut-and-paste editing rather than a seamless transcription.

C. The Document: The document is an email, not an attachment. The email was not part of, nor generated by, a separate program or transcriber. The document is a manual

entry (typed), or copy and paste, and likely from a spyware program (i.e. FlexiSPY, SpyAgent, StealthGenie, etc.). The document originated from John Manning's personal email, days after the conversation took place.

D. No True Threat: Nothing in the document meets the threshold of a "true threat": true threats are "statements in which a speaker expresses a "serious" intent "to commit an act of unlawful violence to a particular individual or group of individuals."" [Black, 538 U.S. at 359.]

Legal Justification

The Defendant's repeated filing of contradictory statements, and outright lies, have not only prejudiced the Plaintiff but has also degraded and undermined the integrity of the legal system. This conduct should be sanctioned under relevant local rules or statutes, which empower the court to maintain order and respect for court proceedings.

Conclusion and Relief Sought

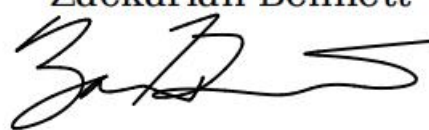
Plaintiff's opposition highlights inconsistencies, fraudulent editing, perjury, and misleading statements, reinforcing the necessity for a trial to resolve these factual disputes authentically.

Therefore, Plaintiff respectfully requests the Court deny Defendant's Motion for Summary Judgment due to genuine disputes of material fact requiring trial resolution. Additionally, Plaintiff requests that this Court recognize the undue burden placed on Plaintiff, and impose appropriate sanctions on the Defendant and/or her counsel as they are justified to deter future misconduct and to uphold the integrity of the court.

The Plaintiff respectfully requests that this Court award attorney fees and legal costs to Plaintiff, and grant any other relief the Court deems just and proper.

I, Zackariah Jeremiah Bennett,

Do certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Zackariah Bennett


06/23/2024

At Goldendale, WA

1639 words

ZACKARIAH BENNETT - FILING PRO SE

June 28, 2024 - 12:25 PM

Transmittal Information

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

The following documents have been uploaded:

- 1029501_Answer_Reply_20240628122352SC684556_8454.pdf
This File Contains:
Answer/Reply - Reply to Answer to Motion for Discretionary Review
The Original File Name was supreme reply.pdf

A copy of the uploaded files will be sent to:

- carnationlaw@comcast.net

Comments:

Sender Name: Zackariah Bennett - Email: zackjbennett@gmail.com
Address:
17 Old Mountain rd
Goldendale, WA, 98620
Phone: (541) 300-8792

Note: The Filing Id is 20240628122352SC684556