August 22, 2024

Case No. 851543

In the Court of Appeals Division 1 of the State of Washington

Michael Schreck Appellant

v.

City of Seattle; Seattle Restored; Andrea Porter

Appellant Motion Requesting Review by Washington Supreme Court

Michael Schreck
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Seattle WA 98107
(206) 657-9942

Petitioner is Pro Se Appellate Michael Schreck

Petitioner seeks review Opinion of Court of Appeals State of Washington Division One. Case # 851543. Opinion filed July 15, 2024.
King County Superior Court No. 22-2-15710-1.

Tables

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Issues presented for Review. RAP 13.4 (b)

(1) In conflict with US Supreme Court.

Standing under:

Larson v. Snohomish County.

Alim v. City of Seattle.

City of Longview v. Wallin.

(3) Significant questions of law under Constitution of State of Washington or United States.

Chilling Effect.

Lost Opportunity Damages.

(4) Issues of substantial public interest.

City's illegal use of BIPOC class.

Pro Se litigant treated as seasoned lawyer.

Purpose and usefulness of 12(b)(6)

Statement of Case.

From Day One I have asserted that my call to Andrea Porter was my application. Standing is a bridge, not a wall. In his Opinion J. Bowman does not even mention the Chilling Effect. He gives no notice to Lost Opportunity Damages. I am asking serious questions. In this day and age, of what value is 12(b)(6). Here is a legal instrument created for criminal law used in civil law.

Argument

(1) In conflict with US Supreme Court.

In his Opinion, J. Bowman asserts Appellant lacks standing because I did not apply for the program. He gives us Larson v. Snohomish County. "it appears beyond doubt that the plaintiff can prove no set of facts consistent with the complaint that would entitle him to relief." He then goes on to give Alim v. City of Seattle.

Next he deals with Standing. "A financial loss amounts to an injury in fact." City of Longview v. Wallin.

Standing is a Threshold matter, this I agree.
To J. Bowen that threshold is a wall. I have found a ruling of a lesser court that says the threshold is a bridge! Fluid and ever-changing with the case and circumstances.
The Court is the United States Supreme Court and the case is United States V. Students Challenging Regulatory Agency Procedures.

"In interpreting 'injury in fact' we made it clear that standing was not confined to those who could show economic harm."

If nesting birds and activists have standing then surely I do!

I cannot even add up all the ways I have suffered because of the Cities insane and illegal behavior. In Business, no one has the authority to say any endeavor is moot. J. Bowman has no crystal ball. What is most ridiculous to me is that the City cannot pay! Biannual Budget $6.8 Billion Dollars~ they can find the money.

(3) Significant questions of law under Constitution of State of Washington or United States.

Chilling Effect.

My First Amendment rights were violated by the City, OED, and Andrea Porter. The introduction of the BIPOC class would have a clear Chilling Effect on White Applications. It is perhaps too big an idea for the Appellate Court that my application represents free speech. The Chilling Effect alone clearly grants me Standing in this matter.

David L. Hudson, Jr. writing on the Chilling Effect.

Vague laws produce chilling effects because individuals do not know exactly when their expressive conduct or speech crosses the line and violates such rules. The Supreme Court explained this when examining the constitutionality of two provisions of the Communications Decency Act (CDA) that criminalized the online transmission of "patently offensive" and "indecent" communications. However, the law failed to define either term, thus creating a chilling effect.

Writing for the Court in Reno v. ACLU (1997), Justice John Paul Stevens explained:

"The vagueness of the CDA is a matter of special concern for two reasons. First, the CDA is a content based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech.

Vague laws are not the only ones that can cause chilling effects. Overbroad laws and laws that impose a prior restraint on expression also can chill expression. Justice William Brennan referred to this in his dissenting opinion in Walker v. City of Birmingham (1967) *when he wrote of "our overriding duty to insulate all individuals from the chilling effect upon exercise of First Amendment freedoms generated by vagueness, overbreadth and unbridled discretion to limit their exercise."*

Laws that chill free expression do not provide the appropriate level of breathing space for First Amendment freedoms."

In these words I feel as though they are writing specifically about my case.

Lost Opportunity Damages.

As much as the Court my dislike it, Lost Opportunity Damages are a real thing. My claim of Lost Opportunity Damages are well construed in my Brief. J. Bowman does not even mention Lost Opportunity Damages in his Opinion. I do not specifically mention Lost Opportunity Damages in my Complaint or Oral Testimony. I believe this ties into issue regarding Pro Se litigant being treated as seasoned lawyer.

(4) Issues of substantial public interest.

Pro Se litigant treated as seasoned lawyer.

Purpose and usefulness of 12(b)(6)
City's illegal use of BIPOC class.

Nothing is more important than a civilians right to represent himself in a legal matter. I could not afford a lawyer in this matter and so self representation was my only choice.

RULE 2.2 Impartiality and Fairness A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.**

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

What is a reasonable accommodation? Civil litigant are guarded against "surprise." I certainly was surprised to discover that 12(b)(6) gave fact to even Hypothetical Facts in the Complaint. It should be clear from the nature of my Complaint and court transcript that I have no idea. I ask it again. What lawyer would admit his client did not apply? Judge Rogers owes me nothing. Has he ever helped a Pro Se litigant? If so, how would we know whether the help was a "reasonable accommodation" or a bias in favor of the Plaintiffs case? Where does this idea of impartiality come from? The case is Edwards v. Le Duc. The Judge practically testifies for Edwards. This case is a far cry from what I am asking for. One sentence on a piece of paper handed to my across the counter by the Superior Court Clerk would have been enough! When Judge Rogers sees my complaint it is obvious that I have no inkling of 12(b)(6). That I did not apply is not in my Complaint. It is in my oral testimony. Why does Judge Rogers not stop the proceedings immediately. It is clear I have no concept of Standing.

Nothing is more important to the people of Eastern Washington than this idea of Replacement Theory. Here the City is in effect practicing it. Laws cannot be impractical or vague. What could be more vague than 12(b)(6) and its Hypothetical Facts? What could be more vague.. help for some Pro Se but not others? When is a bias involved? When not? The court does not need to be perfect, but this is ridiculous. Both 12(b)(6) and this idea of a Pro Se litigant being treated as a seasoned lawyer are far past their usefulness. I asked for Substantive Due Process Rulings and was ignored by the Appellate Court. It is questions like these that are tailor made for the Supreme Court of Washington.

Conclusion

49.60.400

J. Bowman finding of Fact in Dismissal Hearing. City is Guilty of a Crime! It is within this atmosphere that we should proceed with this inquiry. United States Supreme Court would grant me Standing. We cannot escape the taint of Judges helping Pro Se litigants when they like the case. It is a ridiculously vague law. So is 12(b)(6). I don't remember where I ask "how many angels can dance on a pin." I wish it were my line. It perfectly describes the paradox of the Hypothetical Fact v. Idle Speculation. I ask for Substantive Due Process rulings because we need clarity. The Court should not be in the business of making laws, yet so many of your Rules have that effect. We can stretch a sentence into a line. By that many inches I lost this case. Any information from the Clerk or Judge Rogers about assertions in the Complaint having the power of Fact versus a 12(b)(6) challenge would have made all the difference.

FILED
COURT OF APPEALS
DIVISION ONE

AUG 22 2024

I am out of forms. Best I Could Do.

Division 1 Appellate Court of Washington, County of State of Washington King

~~Plaintiff(s):~~ Appellant Michael Schreck	No. 85543
v.	CERTIFICATE OF SERVICE
~~Defendant(s):~~ Respondent: Seattle Restored, City of Seattle, OED; Andrea Porter	

I certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

On August 22, 2024, I *[strike out what doesn't apply]* mailed by regular ~~and certified~~ mail U.S. Mail, postage prepaid /~~hand-delivered~~ a true copy of the

motion for review by Supreme Court of Washington

[name of paper(s) served] in the above-entitled matter to (over)

[Name of Plaintiff or Plaintiff's Attorney] at the following address:

(over)

Dated: 08-22-2024

Michael Schreck
Signature

Michael Schreck
Print or Type Name

Seattle WA
Place signed

1. Rebecca Widen
Seattle City Attorney's Office
Suite 2050
Seattle WA 98104

2. John Barry
Christie Law Group
2100 Westlake Ave N
Suite 206
Seattle WA 98109

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

MICHAEL SCHRECK, Appellant, v. SEATTLE OFFICE OF ECONOMIC DEVELOPMENT, SEATTLE RESTORED, and ANDREA PORTER, Respondents.	No. 85154-3-I UNPUBLISHED OPINION

BOWMAN, J. — Michael Schreck appeals the trial court's CR 12(b)(6) dismissal of his complaint alleging that the Seattle Office of Economic Development's (OED's) program, "Seattle Restored," is unconstitutional and violates RCW 49.60.400 because it gives preference to applicants who are Black, indigenous, or people of color (BIPOC). Because Schreck does not assert in his complaint that he actually applied for the program or that the city denied his application, we affirm.

FACTS

Seattle Restored is a program run by OED that helps artists and "pop-up shops" rent vacant storefronts around Seattle. Schreck wanted to open a "food pop-up" called "Batch" and sought assistance from the program. Schreck tried to apply for the program but "was thwarted" by technical difficulties. He then tried to

obtain technical support from OED, but "[n]othing could be done." As a result, Schreck did not submit an application.

In September 2022, Schreck sued the OED, Seattle Restored, and Seattle Restored's program director Andrea Porter (collectively City).[1] In his complaint, Schreck alleged that the program gave an improper preference to BIPOC applicants over white applicants and to artists over restaurants, which violates the equal protection and due process clauses of the United States Constitution and RCW 49.60.400. He alleged that Seattle Restored's website "claimed preference would be given to BIPOC" individuals and that Porter "verified this via phone conversation." Schreck also alleged that during a telephone call, Porter said she " 'just wanted to give the money to artists,' " and that Seattle Restored awarded no grant to restaurants. He asked for "one million dollars in damages or a halt to racial preference in [c]ity contracting and programs."

The City moved to dismiss Schreck's complaint under CR 12(b)(6).[2] It argued that because Schreck did not apply for the program, he lacked standing and could not state a claim for which the court could grant relief. It also argued that the issue was moot because the city was no longer funding grants. Schreck did not respond.

[1] Schreck also moved for an ex parte temporary restraining order (TRO), seeking to stop the city from awarding Seattle Restored grants. A King County Superior Court commissioner denied the TRO, concluding Schreck must give notice to the city unless he could show that providing notice would result in "immediate and irreparable harm."

[2] The City's motion to dismiss is not in the record.

On February 24, 2023, the court held a hearing on the City's motion. The City rested on its brief, and Schreck argued that he should prevail on the merits of his claim. The court reserved its ruling.

Three days later on February 27, the court issued an order granting the City's motion and dismissing Schreck's complaint with prejudice.[3] The court explained that Schreck "never applied for the program, according to his complaint," and that "[h]e needed to actually apply to have standing in his claim of discrimination." Or, "[p]ut another way, for him to state a claim he needed to allege some act that caused him damage, and that has to be more than simply telling the City that the racial preference was wrong."

Schreck appeals.

ANALYSIS

Schreck argues that the trial court erred by dismissing his complaint for lack of standing.[4] We disagree.

We review de novo an order dismissing a case for lack of standing under CR 12(b)(6). *Kanam v. Kmet*, 21 Wn. App. 2d 902, 909, 508 P.3d 1071 (2022). Dismissal under CR 12(b)(6) is proper where " 'it appears beyond doubt that the plaintiff can prove no set of facts consistent with the complaint that would entitle

[3] The court also concluded that his claims were moot.

[4] Schreck also assigns error to the commissioner's denial of his motion for an ex parte TRO, the conduct of the King County Superior Court Clerk's Office, and the actions of a superior court bailiff. But he fails to support his assignments of error with meaningful legal citations or analysis, so we do not address those claims. RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (we consider argument in an opening brief waived if it is unsupported by reference to the record or citation to authority).

him or her to relief.' " *Id.* at 910 (quoting *Larson v. Snohomish County*, 20 Wn. App. 2d 243, 263, 499 P.3d 957 (2021)). We take the plaintiff's allegations in the complaint as true and can consider hypothetical facts outside the record. *Id.* But if a claim remains legally insufficient even under proffered hypothetical facts, dismissal under CR 12(b)(6) is appropriate. *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 851, 474 P.3d 589 (2020).

" 'Standing is a party's right to make a legal claim or seek judicial enforcement of a duty or a right.' " *Kanam*, 21 Wn. App. 2d at 908-09[5] (quoting *State v. Link*, 136 Wn. App. 685, 692, 150 P.3d 610 (2007)). " 'The kernel of the standing doctrine is that one who is not adversely affected by a statute may not question its validity.' " *Alim*, 14 Wn. App. 2d at 851-52 (quoting *Walker v. Munro*, 124 Wn.2d 402, 419, 879 P.2d 920 (1994)). We apply a two-part test to determine whether a party has legal standing. *Nelson v. Appleway Chevrolet, Inc.*, 129 Wn. App. 927, 939, 121 P.3d 95 (2005), ***aff'd***, 160 Wn.2d 173, 157 P.3d 847 (2007). First, we ask "whether the interest asserted is arguably within the zone of interests protected by the statute or constitutional right at issue." *Id.* Second, we determine "whether the party seeking standing has suffered an injury in fact, economic or otherwise." *Id.* A financial loss amounts to an injury in fact. *City of Longview v. Wallin*, 174 Wn. App. 763, 782, 301 P.3d 45 (2013). But a plaintiff lacks standing if their injury is merely conjectural or hypothetical. *Trepanier v. City of Everett*, 64 Wn. App. 380, 383, 824 P.2d 524 (1992).

[5] Internal quotation marks omitted.

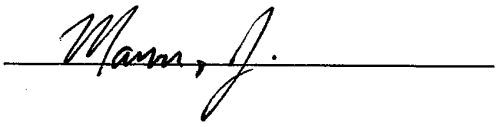
Schreck's complaint alleges that "Seattle Restored is a [c]ity program from the OED" and that the program "claimed preference would be given to BIPOC" individuals, which Porter "verified . . . via phone conversation." Schreck explains that Porter told him that "she 'just wanted to give the money to artists.' " And he asserts that the program is unconstitutional and violates RCW 49.60.400,[6] which entitles him to "one million dollars in damages or a halt to racial preference." But Schreck does not assert in his complaint that he actually applied to the program or that Seattle Restored denied his application. As a result, Schreck does not show that he was harmed by the program, and he lacks standing to sue. *See Trepanier*, 64 Wn. App. at 383 (conjectural injury confers "no standing").

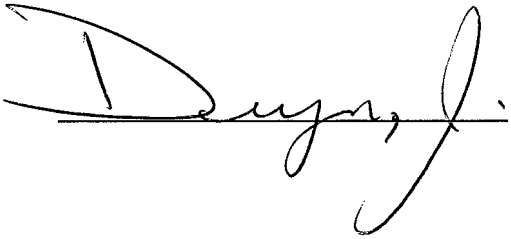
Still, Schreck argues that because he is a pro se plaintiff, the court should have helped him better understand the law and civil procedure so that he could avoid dismissal for lack of standing. But the court had no such duty. Pro se litigants are bound by the same rules of procedure and substantive law as attorneys. *Westberg v. All-Purpose Structures Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997). And courts must treat pro se parties just like lawyers. *Edwards v. Le Duc*, 157 Wn. App. 455, 464, 238 P.3d 1187 (2010); *see also In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993) (trial court "under no obligation to grant special favors" to pro se party).

[6] RCW 49.60.400(1) provides, "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

Because Schreck does not allege that he applied for and was denied assistance by the City, the trial court did not err by dismissing his complaint under CR 12(b)(6). We affirm.[7]

WE CONCUR:





[7] Because we hold that Schreck lacks standing, we do not reach his argument that the court erred by dismissing his complaint as moot.