

FILED
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STATE OF WASHINGTON
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NO. 1036370

SUPREME COURT
OF THE STATE OF WASHINGTON

KURT BENSHOOF,

Petitioner,

v.

NATHAN CLIBER, JESSICA OWEN,
MAGALIE LERMAN, OWEN HERMSEN,

Respondents.

Court of Appeals No. 850920 – Division I
King County No. 22-2-15958-8

**RESPONDENT NATHAN CLIBER’S ANSWER TO
PETITIONER KURT BENSHOOF’S PETITION FOR
REVIEW**

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I. INTRODUCTION

Petitioner Kurt Benshoof is a serial abuser of the state and federal court systems who has sued nearly every private person, attorney, and judge who is even tangentially related to his many state and federal lawsuits. He seeks review by this Court of the Court of Appeals' unpublished opinion affirming the dismissal of his claims under the Uniform Public Expression Protection Act ("UPEPA") and the entry of an order restricting his abusive litigation (the "ORAL"), as well as the Court of Appeals' orders denying his motion to publish and motion to stay, denying his emergency request to stay, and awarding Respondents Nathan Cliber and Jessica Owen their attorney fees and costs. This he does via an Amended Notice of Appeal that fails to demonstrate the criteria of RAP 13.4(b), much less identify them.

Instead, Benshoof asserts that there is newly discovered evidence of fraud that "is not addressed in this current motion" and that he "needs extension [sic] of time to file proper motion for reconsideration" because he is unable to file a CR 60 motion.

Then, he notifies this Court of “his intent to file a petition for review” if his motion for reconsideration is denied. Benshoof filed neither a motion for reconsideration with the Court of Appeals nor a petition for discretionary review with this Court.

There is nothing in Benshoof’s Amended Notice of Appeal to show that his case is one of substantial public importance; that the Court of Appeal’s unpublished opinion is in conflict with any decision of this Court or a published decision of the Court of Appeals; or that the Court of Appeals’ unpublished opinion and the remaining orders pose any significant question of law under the Washington or United States Constitutions. This Court should deny review.

II. STATEMENT OF THE ISSUES

Benshoof’s Amended Notice of Appeal fails to identify the underlying issues within the unpublished opinion and orders he seeks this Court to review. Accordingly, Cliber frames them within the context of RAP 13.4(b).

1. *This case is not one of substantial public importance.*

Benshoof's frivolous lawsuits and appeals affect only himself, as well as Respondents and the other parties who have had to incur significant costs appearing and responding to his baseless lawsuits. The dismissal of Benshoof's underlying lawsuit, the ORAL entered against him, and the attorneys' fees awarded against him are not of substantial public importance.

2. *The Court of Appeals' Unpublished Opinion is not in conflict with any decision of this Court or published decision of the Court of Appeals.*

Benshoof's claims clearly violate UPEPA, as they were brought against Respondents solely for their participation in prior judicial proceedings—especially so for Cliber, an attorney who represented Owen. They were dismissed pursuant to established Court of Appeals and Washington Supreme Court precedent. Likewise it is well-established by this Court and the Court of Appeals that trial courts have the authority to provide for the

orderly conduct of proceedings before them. There is no conflict of decision.

3. *The Court of Appeals’ Unpublished Opinion and the remaining orders do not pose any significant question of law under the Washington or United States Constitutions.*

The constitutionality of UPEPA and inherit power of every court of justice to control the conduct of litigants who impede the orderly conduct of proceedings are well-settled points of law. Further, the Court of Appeals has the authority to deny stay motions or award attorneys fees on appeal, especially those statutorily mandated fee awards like those found in UPEPA.

III. STATEMENT OF THE CASE

This action is one of a litany of filings initiated by Benshoof arising from a family law dispute involving Benshoof and Owen, who were formerly in a dating relationship and share a child. Opening Brief of Appellant (“Benshoof Brief”), 1. Cliber is a family law attorney who represented Owen in a single legal proceeding, a parentage action involving Owen, Benshoof,

and their child, and has since found himself entangled in Benshoof's relentless abuse of the judicial system. CP 888, ¶ 4-5. At the time King County Superior Court Judge Ferguson entered the ORAL, Benshoof had filed six lawsuits against Owens and others, though that number has grown despite the Trial Court's ORAL against Benshoof.¹ CP 419-22, 888 ¶ 2.

Since then, Benshoof has sued nearly every attorney, judge, and otherwise involved person in his actions in state and/or federal court, including the undersigned counsel, Cliber's trial court counsel, Owen, Lerman and Hermsen's respective counsels, and both state court Judge Ferguson and federal court Judge Jamal Whitehead. All of Benshoof's litigation efforts arise

¹ Division I's unpublished opinion gives an excellent summation of the many vexatious and meritless lawsuits filed by Benshoof as of the date of its entry, as well as the procedural steps taken by the trial court. Amended Notice of Appeal, Ex. A, 1-6. Unfortunately, since that time, Benshoof's filings have only expanded, though Judge Whitehead recently entered an order in federal court declaring Benshoof a vexatious litigant on February 11, 2025. Western District of Washington Case No. 2:23-cv-1392, Dkt. 264.

out of largely the same set of “facts,” and have been summarily rejected by the courts in which they were filed.

On October 3, 2022, three weeks before the final orders were entered in the parentage action involving Owen, Benshoof filed his Complaint for the underlying action to this appeal. CP 432-43. On December 12, 2022, Cliber and the other Respondents filed their Special Motions for Expedited Relief (“Special Motion”) to dismiss Benshoof’s claims under UPEPA. CP 877-87. Cliber argued, and the lower court agreed, that Benshoof’s abuse of process claim against him was predicated upon communications that took place in judicial proceedings, and was therefore subject to dismissal under the UPEPA. *Compare id.* to CP 264-67.

As a result of the Special Motions and the notice Respondents provided Benshoof in advance of those Special Motions, discovery in the matter was stayed pursuant to the protections outlined in RCW 4.105. Benshoof sought to challenge the statutory stay in a Motion for Limited Discovery

that he filed but failed to notice in compliance with King County Local Rule 7. CP 106-112; Benshoof Brief, 14. Since he failed to comply with the local rules, the motion was not considered by the trial court. *Id.* On January 13, 2023, Benshoof attempted to amend his Complaint for a second time, also in violation of the UPEPA's stay provisions. CP 185-216. Benshoof later filed a Motion to Compel Limited Discovery, seeking the same relief, which he later filed on January 27, 2023, though the motion was mooted by the trial court's order on the Special Motions. CP 259-63, 264-67.

As a result of Benshoof's voluminous, frivolous filings, Judge Ferguson entered the ORAL against Benshoof after Respondents jointly moved for a vexatious litigant order against him. CP 1-15, 295-96. The ORAL provides that, for a period of five years, Benshoof is "ENJOINED AND RESTRAINED...from initiating any litigation whatsoever...in any Superior Court in the State of Washington Against Defendants, their attorneys, [and] their friends and family...,

unless Benshoof first obtains advanced approval from this Court.” CP 295, 1168. The ORAL also provides that “[i]f Mr. Benshoof seeks to commence a new action against Persons Covered by This Order other than a Superior Court, [he] must first bring a motion in the other court for leave to proceed with the action...Mr. Benshoof shall submit a copy of this Order with any future lawsuit he files in any court, including any federal court.” *Id.* Finally, the ORAL provides that “[i]f Mr. Benshoof fails to abide by the terms of this Order, any party may move...for a finding of contempt and sanctions.” *Id.*

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

Benshoof’s Amended Notice of Appeal, which this Court is treating as a petition for review, fails to demonstrate, yet alone raise, the criteria of RAP 13.4(b). Even if he had, neither the Court of Appeals’ Unpublished Opinion nor the remaining orders (1) involve substantial public importance, (2) are in conflict with any decision of this Court or published decision of

the Court of Appeals, or (3) involve significant questions of under Washington or United States Constitutions. RAP 13.4(b). Review is unwarranted.

The Court of Appeals properly rejected each and every one of Benshoof's arguments, affirming the dismissal of his claims under UPEPA, the corresponding stay, and the entry and propriety of the ORAL. It was likewise correct in awarding attorneys' fees and costs to Respondents, which are statutorily mandated under UPEPA. Finally, the Court of Appeals rightly denied Benshoof's various motions seeking stays and publication, RAP 17.2, and Benshoof failed to move modify those orders. *See* RAP 17.7.

First, this case is not one of substantial public importance. Benshoof's frivolous lawsuits and appeals affect only himself, as well as Respondents and the other parties who have had to incur significant costs appearing and responding to his baseless lawsuits. The dismissal of Benshoof's underlying lawsuit pursuant to UPEPA, the ORAL entered against him, and the

attorneys' fees awarded against him are not of substantial public importance. That the Court of Appeals issued its opinion in unpublished form, and rejected Benshoof's motion to publish, is further confirmation of this case's lack of public importance.

Second, the Court of Appeals' Unpublished Opinion is not in conflict with any decision of this Court or published decision of the Court of Appeals. Benshoof's claims clearly violate UPEPA, as they were brought against Respondents solely for their participation in prior judicial proceedings—especially so for Cliber, an attorney who represented Owen. RCW 4.105.010(2)(a) (UPEPA applies to a complaint or cause of action when it is asserted against a person based on the person's “[c]ommunication in a legislative, executive, judicial, administrative, or other governmental proceeding.”). They were dismissed pursuant to statutory mandate, which has been confirmed via Washington precedent. *See Jha v. Khan*, 24 Wn. App.2d 377, 387, 520 P.3d 470 (2022). Likewise it is well-established by this Court and the Court of Appeals that trial

courts have the authority to provide for the orderly conduct of proceedings before them. *See Yurtis v. Phipps*, 143 Wn. App. 680, 693, 181 P.3d 849 (2008), review denied, 164 Wn.2d 1037, 197 P.3d 1186 (2008) (“In Washington, every court of justice has inherent power to control the conduct of litigants who impede the orderly conduct of proceedings.”). There is no conflict of decision.

Third, the Court of Appeals’ Unpublished Opinion and the remaining orders do not pose any significant question of law under the Washington or United States Constitutions. The constitutionality of UPEPA and inherent power of every court of justice to control the conduct of litigants who impede the orderly conduct of proceedings are well-settled points of law. *Jha*, 24 Wn. App.2d at 387; *Yurtis*, 143 Wn. App. At 693; *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387, 131 S. Ct. 2488, 180 L. Ed. 2d 408 (2011). Likewise, is the Court of Appeals’ ability to deny stay motions or award attorneys’ fees on appeal, especially those statutorily mandated fee awards like those found

in UPEPA. RAP 17.2; *Judges of the Benton & Franklin Counties Super. Ct. v. Killian*, 195 Wn.2d 350, 363, 459 P.3d 1082 (2020) *see* RCW 4.105.090.

None of RAP 13.4(b)'s criteria are present here. Review is unwarranted.

V. CONCLUSION

Benshoof's Amended Notice of Appeal fails to satisfy 13.4(b), much less identify its requirements. This case is not one of substantial public importance; the Court of Appeal's unpublished opinion is not in conflict with any decision of this Court or a published decision of the Court of Appeals; and the Court of Appeals' unpublished opinion and the remaining orders do not pose any significant question of law under the Washington or United States Constitutions. This Court should deny review.

This document contains 1,874 words, excluding parts of the document exempted from the word count by RAP 18.17.

DATED this 20th day of February, 2025.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I am an employee of Gordon Rees Scully Mansukhani LLP, over the age of 18 years, not a party to nor interested in the above-entitled action.

On February 20, 2025, I caused a copy of the foregoing to be delivered via Appellate Portal to the following:

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Comments:

Respondent Nathan Cliber's Answer to Petition Kurt Benshoof's Petition for Review

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