



King County Superior Court

Council House v Trummel—June 17, 2002



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

PAUL TRUMMEL,)	
___Petitioner,)	KING COUNTY CAUSE
___vs.)	No. 01-2-04698-5 SEA
STEPHEN MITCHELL,)	
___Respondent.)	
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STEPHEN MITCHELL, on)	
behalf of the residents of)	
Council House ,)	
___Cross-Petitioners,)	
___vs.)	
PAUL TRUMMEL,)	
___Respondent.)	

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REPORT OF PROCEEDINGS

June 17, 2002

BEFORE THE HONORABLE JIM DOERTY

APPEARANCES:

MR. BRAD MERYHEW,
Attorney at Law,
appeared on behalf of the Petitioner;

MS. MAUREEN MITCHELL,
Attorney at Law,
appeared on behalf of the Respondent.

DATE: June 17, 2002.

THE BAILIFF: Superior Court is again in session.

THE COURT: Good morning. Be seated, please.

This is the case of Council House versus Paul Trummel, a proceeding under Title 10, Chapter 14 of the Revised Code of Washington. The Petitioner Council House is an apartment building for senior citizens. The Respondent Paul Trummel is a former resident.

This will be the ninth or tenth time the matter has been before this Court. Factually, the case is about a mean, old man who becomes vicious and threatening when he doesn't get his own way in the chronic disputes he has with employers, landlords, building managers, and neighbors. Legally it is a case about balancing speech and the right to privacy.

Section 010 of Washington's antiharassment statute says, "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 is increasing. The legislature finds further that prevention of such harassment is an important government objective."

Section 020 of this statute says, "Unlawful harassment means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses such person and serves no legitimate or lawful purpose."

At the time of the trial on petition the Court considered the evidence of 48 witnesses for Council House. Mr. Trummel did not rebut their evidence, but he asserted that his activities at Council House did have a legitimate and lawful purpose because he has a press card and he was conducting an investigation of his fellow residents, staff and board of directors. His alleged press credentials have never been admitted into evidence. The Court held that Mr. Trummel's claim to be a bona fide representative of the press was bogus. That does not mean that freelance journalists are not protected by the press clause of the First Amendment but that Mr. Trummel's activities are not protected by his alleged press card.

It is a discussion that is neither here nor there. Even if Mr. Trummel was a salaried employee of a world class newspaper and the recipient of a Pulitzer Prize, he would not be able to behave the way he behaved at Council House. Nobody has license to behave that way, but apparently anybody can get a press card; whoever gave Mr. Trummel his should be consulting their lawyers and their insurance carriers.

One of the many issues between Council House and Mr. Trummel was about his hard-copy newsletter where he published the results of his freelance investigation of his neighbors. He targeted elderly woman residents, demanding that they come to his apartment for tape-recorded interviews under threat of being pilloried, vilified, lied about, intimidated, and humiliated in his newsletter, which he pushed under their apartment doors and posted all over the common areas of this private residence in violation of the rules that limited

postings to the notice board. When he was asked to meet with Council House management about this conduct, he refused, maintaining that as a representative of the press doing an investigation this would be a conflict of interest. Mr. Trummel prowled the halls of the building at 3:00 a.m. listening at apartment doors, investigating whether a resident might have a radio or a TV too loud or for other sounds he could write about. These are only a few of the facts found by the Court to support the original protection order issued on April 19th of last year which states:

"Paul Trummel is restrained from entering the premises known as Council House or coming within 500 feet thereof. Paul Trummel is also restrained from contacting in person, by mail, electronically, by telephone, by writing, or through any third person any resident of the Council House, any board member, staff, or employee of Council House at any location."

He was not ordered to quit writing or to quit publishing in any way.

Mr. Trummel was contemptuous of the Court's order from the beginning. He would lurk around the 500-foot limit, stalking residents who came out to walk their dog or go to the neighborhood grocery so he could investigate them some more. One such episode resulted in a 911 call and police intervention. Soon he fell upon the idea of posting names, unlisted phone numbers, home addresses, Social Security numbers, and other private information about the Petitioners on his web site, all the time claiming that this was activity protected by his alleged press credentials.

The First Amendment of the United States Constitution refers to freedom of speech and freedom of the press in separate clauses. The Supreme Court has not distinguished between the two very often. In 1974 Justice Potter Stewart in a speech at Yale Law School offered the idea that the press is the only private business that is given explicit constitutional protection so as to create an institution outside of government as an additional check on the three branches of government. We have even come to refer to the press as the Fourth Estate, although in 1974 the majority of the U.S. Supreme Court in *Pell v. Procunier* found at 417 U.S. 817, held that the First Amendment does not guarantee the press a right of special access to information not available to the public generally. In most situations, the law continues to regard the speech and press clauses in the same way.

This is an interesting discussion that is not particularly helpful in this case. This is a state court and a proceeding under a state statute governed by the state constitution. Not being an American, perhaps Mr. Trummel has difficulty in understanding this basic principle of a federal republic.

Article 1, Section 5 of the State Constitution says, "Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."

Article 1, Section 7 of the Washington Constitution says, "No person shall be disturbed in his private affairs or his home invaded without authority of law."

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States are permitted to provide rights to their citizens that the U.S. Constitution does not. The U.S. Constitution does not have a privacy clause, for example. In this state our legislature has chosen to implement our constitutional right to privacy with the antiharassment statute I quoted a few minutes ago. That statute says further at Section 080(6) that:

"The Court in granting a civil antiharassment order shall have broad powers to grant such relief as the Court deems proper."

Even under the authority of such broad powers, this Court has never ordered Mr. Trummel to take down his web site. He has never been ordered to stop printing and distributing his newsletter. There has been no prior restraint. Paul Trummel was ordered to leave the Petitioners alone, and he hasn't been willing to do so. After a contempt enforcement proceeding on October 26th, 2001, he did take the personal information off the web site. This is a very slight infringement on his free speech. There are at least 15,000 words on that web site, and the Court's order affects less than 100 of them.

The October 26th, 2001 order, the one that he is presently in contempt of, restrains Mr. Trummel from, "Posting on the Internet or to his web site, directly or indirectly, any personal identifying information, including, but not limited to the name, address, phone number, Social Security number, or photograph of any current, former, or future staff member, resident, board member, or agent, including attorneys, of Council House. This restraint may be waived by any of the individuals described in the preceding sentence only by providing Paul Trummel with a written waiver which Paul Trummel shall file with the Court prior to posting such information."

Actually the Internet implications of this case are quite minimal. If Mr. Trummel printed his victims' names, addresses, and phone numbers in his newsletter or an article and handed it out on the street corner, it would have the same consequences. He would be in contempt of the order entered to protect the Petitioners' privacy.

The court orders in this case have been crafted to enforce the law and protect Mr. Trummel's rights to write and publish. He can write and publish in print or on the Internet, but he cannot invade the privacy of the Petitioners. If the Petitioners don't like his anti-Semitic, misogynistic, homophobic lies, they don't have to read it. And in this regard, the Court has agreed with Mr. Trummel in a statement he made here on February 27th of 2002 in defense of the contempt charge when he said, "If people are fearful of what I have written, then they should not read it."

The victims do have control over whether or not to ask for his paper or whether or not to visit his web site. But once their home addresses, private phone numbers, Social Security numbers, and other personal identifiers are out there, they are subject to further harassment in their homes, through E-mail, and by the post, and they have no choice about that. The Court has quite recently received new allegations that indeed suggest this is happening.

By statute in this state, RCW 63.30, people have a specific property right in their own name, in photographs of themselves, in images, and likenesses of themselves, and in other personality characteristics. There is no legitimate reason for this information to be published by Mr. Trummel. His claim to represent the press is a

be published by Mr. Trummel. His claim to represent the press is a self-serving fantasy; his freelance "investigation" is clearly contrary to that phrase of Article 1, Section 5 of the State Constitution requiring responsibility for the abuse of free speech.

Nor is this a situation, of which we had several in this court, where some private information about public officials or employees was permitted to be published on the Internet because they are public employees, and citizens have a right to know who the government hires. None of the Petitioners are public employees.

Mr. Trummel has had the opportunity to make many choices in this case, and he has made poor ones. After the earlier contempt hearing, he took the personal information back off his web site, and then he decided if he moved his Internet service provider to Europe that this Court would lose jurisdiction. His exact words to the Court were, "The previous findings of this Court apply only to the Washington site." The Court's ruling was that the Court's jurisdiction in this case is not over the Internet, it's over Mr. Trummel. And the Court observes, for the record, parenthetically, that the European Union's Data Protection Directive is far more restrictive than Internet restrictions in this country.

After all lesser sanctions and efforts failed, Mr. Trummel was sent to jail until he complies or agrees to comply with the protection order. Mr. Trummel is not in jail for something he did, but for something that he hasn't yet done. He has not removed the private information from his publications resulting in continued harassment of his victims and invasions of their right to be let alone. As recently as April 3rd of this year, Mr. Trummel continues to insist that his activities are protected by his alleged press credentials. On that date he stated in open court, "I have been wrongfully incarcerated for 36 days for my actions as an accredited member of the International Press Corps."

There have been some questions about how he can modify his web site from inside jail. Mr. Trummel has so far refused to say whether he is his own web master or uses someone else. Whichever, there are ways he can comply if he wanted to starting with giving his ISP address and passwords to his lawyer, who could make arrangements with the web master to do it. We could set him up with a laptop and a modem from jail and he can do it himself, or I could let him out jail temporarily to do it.

There has been some concern expressed because he is elderly. He is about the same age as the Vice President of the United States and many years younger than a number of his victims, at least one of whom was 86 when she died in hospice, trembling in fear of his harassment.

There has been concern expressed that he is in solitary confinement. The Department of Adult Detention made that decision because this Court placed him on phone restriction. Except for contacting his lawyer, he may not use the phone. If the phone on one of the jail dorms were turned off, it would infuriate the other inmates and Mr. Trummel might get hurt. That's why the Department of Adult Detention has him in solitary confinement.

Last week at the status conference for today's hearing between the Court and the lawyers, it was anticipated that we would address, at least insofar as we could on shortened time Mr. Trummel's motion

at least insofar as we could on shortened time, Mr. Trummel's motion to vacate the contempt finding and also to review again his compliance.

That was before the Court was aware of the new contempt allegations in the several recent declarations from Council House staff and residents.

In consideration of those and of the points that Mr. Trummel's present attorney has raised in his motion, the Court orders the following today:

1. Paul Trummel is conditionally released from jail until 1:30 this Friday, the 21st of June, at which time he will report back to jail, unless the Court has ordered otherwise.

2. Paul Trummel is ordered to come back before this Court at 10:30 a.m. on that same day, Friday, June 21st, and show cause why he should not be held in contempt. And he will also show whether or not he has used the conditional release to purge the present contempt.

3. At the June 21st hearing, the Court will consider further the issues raised by Mr. Trummel's motion noted for today, and in that regard, the Court has additional information which the bailiff will provide counsel for both sides.

4. At the June 21st hearing, the Court will consider further whether to modify the protection order based on what facts may be found from the new affidavits from the victims. Counsel should be prepared to address whether the 500-foot exclusionary zone around Council House should be extended to one mile, and Mr. Meryhew might take note of the possibility that his law office is closer than one mile to Council House.

Mr. Trummel, be advised that failure to return to court will result in a warrant for your arrest. Failure to return to custody from the conditional release can result in the conviction of a felony. A fugitive warrant may have adverse effect on your immigration status in this country and you may be deported. Be advised further that the conduct that we are concerned with can be prosecuted under the criminal stalking statute.

The certified record of this morning's proceedings will be posted on the Internet at www.metrokc.gov/kcsc later this afternoon. This court is in recess.

PROCEEDINGS ADJOURNED.

Judge James Doerty
KING COUNTY SUPERIOR COURT 