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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

CLARENCE MORIWAKI
Petitioner- Appellee,
and
RICHARD RYNEARSON
Respondent-Appellant.

No. 17-2-01463-1
Motion for Reconsideration

Motion for Reconsideration

Petitioner moves this court to reconsider its order of January 10, 2018. That order vacated a protection order entered by the Bainbridge Island Municipal Court which found that conduct by the Respondent satisfied all elements of RCW 9A.46.110 (Stalking); RCW 9.61.260(1)(b) (Cyberstalking); and RCW 10.14.020 (Unlawful Harassment) as proven by a preponderance of the evidence.

Respondent appealed the Municipal Court order and a hearing was held before the Kitsap County Superior Court on December 14, 2017. At the conclusion of that hearing, the Superior Court invited the parties to offer their own Findings of Fact in lieu of the findings of the Municipal Court. Ryneason provided the Superior Court with a new set of "Proposed Findings of Fact and Conclusions of Law."

1 In vacating the order on January 10, 2018, the Superior Court relies on rewritten Findings
2 of Fact rather than on those issued by the Municipal Court. These new findings alter the
3 Municipal Court's with the addition of some facts and the omission of others. Working from
4 these re-written findings, the Superior Court misstates the Conclusions of the lower court and
5 instead adopts the language of the Respondent as provided in their Proposed Findings. Those
6 Findings selectively alter and misrepresent the conduct of the Respondent, which formed the
7 basis of the Municipal Court Conclusions and ruling.

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9 Further, in supporting its decision to vacate the Municipal Court order, the Superior
10 Court misreads the ruling of *State v. Noah*, 103 Wn.App. 29 (Div. I 2000) and follows the
11 interpretation offered by Respondent; this misreading results in the Court erroneously citing the
12 case as support for the order to vacate when in fact *Noah* supports the finding of the Municipal
13 Court and had been accurately referenced by that court. As in *Noah*, the order issued by the
14 Municipal Court granting protection to Mr. Moriwaki, was based upon the conduct of
15 Rynearson/Lee.

16 17 Authority

18 Authority for reconsideration is found in CR 59 (a) (1) Irregularity in the proceedings of
19 the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such
20 party was prevented from having a fair trial; (7) That there is no evidence or reasonable inference
21 from the evidence to justify the verdict or the decision, or that it is contrary to law; and (9) That
22 substantial justice has not been done.

23
24 Additionally, it is well settled law that the superior court shall review the decision of the
25 court of limited jurisdiction to determine whether that court has committed any errors of law.

1 RALJ 9.1(a). Regarding factual determinations, the superior court shall accept those factual
2 determinations supported by substantial evidence in the record (1) which were expressly made
3 by the court of limited jurisdiction, or (2) that may be reasonably inferred from the judgment of
4 the court of limited jurisdiction. RALJ 9.1(b) It is not within the superior court's scope of review
5 to examine the evidence de novo. *Glaefke v. Reichow*, 51 Wn.App. 613, 615, 754P.2d 1037
6 (1988), *State v. Basson*, 105 Wn.2d 314, 317, 714 P.2d 1188 (1986).

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9 **Analysis**

10 **The Superior Court has substituted its Findings of Fact for that of the Municipal Court, in**
11 **contradiction to RALJ 9.1 and case law.**

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13 The Municipal Court issued the protection order on July 17, 2017. That court's order listed 32
14 Findings of Fact based upon the evidence presented by the parties. The Municipal Court judge
15 cited to the record in support of each finding. (RP Pages 9 – 14) These findings were not
16 challenged by either party on appeal, and were accepted as verities by the Superior Court.
17 (Decision on Appeal page 9). After the hearing in front of the Superior Court on December 14,
18 2017, the Court invited the parties to submit their own Proposed Findings.

19 On January 10, 2018, in vacating the protection order issued by the lower court, the
20 superior court substantially rewrites or directly contradicts, without support, those findings of the
21 lower court, in violation of RALJ 9.1(b) and case law. While some of the changes are minor and
22 some more substantial, the end result is to present re-written findings in a manner which over-
23 states the Petitioner's non-existent political or public status, misstates the nature of the content of
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1 the exchanges between the parties, and understates or fails to recognize the conduct of the
2 Respondent which resulted in the Municipal Court ruling.

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4 Examples include and are not limited to the following:

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6 **Municipal court finding #2 (partial): Moriwaki is a private citizen, not a publically elected**
7 **official.** (omitted by the Superior Court)

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10 **Municipal court finding #3, describing Moriwaki’s current and past employment status**
11 **including that he is the owner of a consulting firm, has worked for a variety of**
12 **governmental agencies over the years, but has not been employed by any government**
13 **organization since 2007.** (omitted by the Superior Court; instead, the court adds “Moriwaki
14 gives speeches and has appeared in various media outlets to discuss internment and its lessons.
15 Moriwaki regularly posts on Facebook regarding internment and related topics.” While those
16 statements are accurate, the omission of Moriwaki’s past and current employment places greater
17 emphasis on his connection to the Exclusion Memorial. The Memorial Wall was completed in
18 2011 and made a satellite unit of the National Park Service in May 5, 2009. Moriwaki is one of
19 many volunteer board members and is one of many individuals who speak on occasion regarding
20 the history of Japanese Americans during World War II. As already stated by the Municipal
21 court, Moriwaki is a private citizen and is not currently engaged in political activity or any
22 controversy on Bainbridge Island; he has no role to play in any votes or resolution of current
23 political issues, factors considered in the determination that an individual is a private citizen. *See*
24 *Gertz v. Robert Welch*, 418 U.S. 323, *Bender v. Seattle*, 99 Wn.2d 582.
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2 **Municipal Court finding #7 notes that on December 14, January 1, January 6, and January**
3 **24 Respondent posted on Moriwaki's Facebook page his (Rynearson's) opposition to**
4 **Obama's support for the NDAA; that Moriwaki pointed out that he had made his point**
5 **repeatedly to the point of dominating Moriwaki's Facebook page, and that he should direct**
6 **his comments to the "person and administration that can do something about it."** (the
7 Superior Court states only "in response to a Facebook comment by Rynearson, Moriwaki posted
8 that Rynearson was "hijacking" comment threads." In omitting the repeated contacts and
9 Moriwaki's request the re-write has the effect of diminishing Rynearson's conduct (repeated
10 posts on the same topic) and mis-representing Moriwaki's request that this conduct be altered
11 and directed to the appropriate forum. At no time does Moriwaki debate the NDAA with
12 Rynearson or the content of his thread; Moriwaki objects to the repeated posts on Moriwaki's
13 individual Facebook page
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16 **Municipal Court finding #9: On January 27, 2017, Moriwaki and Lee got into a**
17 **contentious discussion on Moriwaki's Facebook page and Moriwaki told him he was**
18 **offended.** (the Superior Court instead adopts the finding proposed by Respondent, a truncated
19 selection which presents Rynearson as attempting to discuss a political issue with Moriwaki, and
20 portrays Moriwaki as becoming immediately offended. The Superior Court writes "Moriwaki
21 told Rynearson that this response offended him." This re-write ignores the contentious nature of
22 the exchange and does not, because it is abbreviated, reveal the reason Moriwaki found the
23 exchange personally offensive – that is the constant repetition of the argument for no purpose.
24 The conclusion that Moriwaki had become offended by a single comment due to its political
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1 content is incorrectly drawn. Ironically, Moriwaki and Rynearson were not disagreeing regarding
2 the politics behind the comment but rather the conduct in addressing those politics. Moriwaki
3 does not debate the politics behind Rynearson's taunts, only the offensive conduct.)
4

5 The Municipal court does not state any finding of fact for activities for January 28. However,
6 the Respondent wrote a narrative for that date which is largely adopted by the Superior Court.
7

8 The Superior Court and the Respondent write "On January 28 Moriwaki shared a post authored
9 on behalf of the Memorial Association that contained an editorial he wrote for the *Seattle Times*
10 after September 11, 2001." Decision on Appeal, page 3. In fact, the original post shared by
11 Moriwaki on January 28th was written by a *Seattle Times* editorial columnist Kate Riley on
12 December 2, 2002, regarding the events of September 11, 2001. Moriwaki had not written the
13 editorial. This fact was incorrectly stated in the Findings written by the Respondent and adopted
14 by the Superior Court. Rynearson attempted, but did not succeed in engaging Moriwaki in a
15 debate about SB 5176 and the NDAA; Moriwaki instead deleted the posts from Rynearson from
16 Moriwaki's individual social media page. Moriwaki objected to Rynearson's relentless,
17 repetitive, unceasing, persistent, posting and reposting; Moriwaki does not address the content of
18 Rynearson's repeated posts.
19

20 **Municipal Court findings #10, #11, #12 and #13** continue to document the repeated requests
21 by Moriwaki that Rynearson stop attempting to dominate Moriwaki's individual Facebook page,
22 stop trying to draw Moriwaki into a discussion of the NDAA and instead post his thoughts on
23 that issue on his own page. (The Superior Court does not specifically address these findings.)
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1 **Municipal Court Finding #13** reports a long comment by Ryneerson on Moriwaki's personal
2 Facebook page regarding Inslee and Obama and the NDAA and stating that Moriwaki is unable
3 to accept diversity. The Municipal Court finds, "Lee then posted five other comments
4 immediately thereafter complaining about Moriwaki not being interested in Lee's point of view."
5 Ryneerson continues his repeated posts and demands to have Moriwaki discuss the NDAA and
6 his (Moriwaki's) failure to take a political position on that issue, leaving lengthy posts on
7 Moriwaki's individual page and, via personal private message, sending veiled threats: "Now you
8 are about to cross my line. I highly advise you to reconsider. My line is one of diversity and
9 free speech. I promise you with everything that I am, your efforts to stifle free speech will fail
10 you massively."

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13 The Superior Court's revised presentation of this same time frame gives the impression that
14 Ryneerson was engaging in political discourse rather than attempting to draw Moriwaki into a
15 conversation in which Moriwaki had no interest.)

16
17 **Municipal Court Findings #15 and #16** continue to present the efforts of Ryneerson to use
18 Moriwaki's personal Facebook page for Ryneerson's own political views.

19
20 **Municipal Court Findings #17:** On February 5, Moriwaki blocked Ryneerson from posting on
21 his personal Facebook page. The evidence shows, (Respondent's Exhibit Vol. 1 pages 140 –
22 168) that Moriwaki blocked Ryneerson after receiving over 21 Facebook posts from him in 30
23 minutes, while simultaneously receiving nearly 20 private messages via Facebook.

1 **Municipal Court Finding #18:** Once Moriwaki “blocked” Ryneerson, making it impossible for
2 Ryneerson to contact him via Facebook, Ryneerson immediately (estimated at less than two
3 minutes) texted Moriwaki on his cell phone, posing as a reporter. Moriwaki blocked Ryneerson
4 from this form of contact.

5
6 **Municipal Court Finding #19:** Ryneerson then proceeded immediately to contact Moriwaki’s
7 Facebook friends with posts denigrating Moriwaki.

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10 For the following five weeks until the Temporary Protection Order was issued, on March 15,
11 Moriwaki received numerous messages, phone calls and personal interactions from friends
12 and complete strangers informing Moriwaki that Ryneerson/Lee had begun unwelcome and
13 repeated contacts and communications, hijacking their personal and community Facebook pages
14 with attacks and shaming of Moriwaki. **(Municipal Court Findings #25, #26)**

15
16 **Municipal Court Finding #20.** Later that same day, after being blocked, Ryneerson created the
17 Facebook page “Clarence Moriwaki of Bainbridge Island.” The page is devoted to the position
18 that Moriwaki is “unfit to be President or board member for our memorial.”

19
20 **Municipal Court Finding #21.** The page title was changed to Not Clarence Moriwaki of
21 Bainbridge Island. These pages contain a variety of memes, many bearing Moriwaki’s photo.
22 One has his photo with barbed wire.
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1 **Municipal Court Finding #22.** Rynearson posted almost daily, sometimes numerous times a
2 day, until he was served the protection order. (The Superior Court expands on this finding,
3 drawing from language proposed by Rynearson. Decision on Appeal page 7).

4
5 Dozens of friends and total strangers contacted Moriwaki via Facebook messaging, posts, phone
6 calls and personal interactions, informing Moriwaki of their posts challenging Rynearson to
7 leave Moriwaki alone and making the Facebook page with Moriwaki's name, community and
8 image without his permission, and also sharing with him their reports to Facebook and
9 complaints demanding the removal of Rynearson's "Clarence Moriwaki of Bainbridge Island"
10 and the "Not Clarence Moriwaki of Bainbridge Island" Facebook pages. Municipal Court

11 **Finding #25. (omitted by the Superior Court)**

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14 The Superior Court presents those Municipal Court findings by quoting from Respondents
15 proposed findings, "Rynearson did not Facebook message, text message, email, telephone, or
16 otherwise contact Moriwaki after February 5th. There is no evidence Rynearson has posted on
17 Moriwaki's Facebook page after being blocked." This statement offered by Rynearson and
18 adopted by the court fails to provide context for the exchanges between the parties, and fails to
19 acknowledge that Rynearson, in fact, could NOT Facebook message, post, call or text after that
20 date. Instead of ceasing out of respect for Moriwaki's request, Rynearson stopped using forums
21 not open to him and switched instead to creating pages, and purchasing advertisements, to
22 continue his attacks.
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1 The remaining Finding of Facts issued by the Municipal Court document Moriwaki's decision to
2 seek a protection order, and providing context for Moriwaki's anxiety regarding Ryneerson's
3 actions including the disruption Ryneerson has caused Moriwaki and his friends, **Findings #22**
4 **to #30.**

5
6 These Findings are not included or discussed in the Superior Court's findings, but are omitted.

7
8 This rewriting of the facts is in direct violation of RALJ 9.1 and *Glaefke v. Reichow*. No
9 challenges were made to facts following the ruling of the Municipal Court; they are therefore
10 accepted as verities on appeal. The Superior Court provided no authority for its invitation to the
11 parties to write their own findings as part of the appeal process. The result of the rewriting is to
12 alter the context of the exchanges between the parties, to misrepresent Moriwaki's status as a
13 citizen volunteer, and to understate the nature of the conduct exhibited by Ryneerson. The
14 Superior Court has substituted its judgement for that of the Municipal Court. Reconsideration is
15 called for.
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18 **The Superior Court misstates the basis for the Municipal Court's decision, drawing from**
19 **the impermissible rewriting of the Findings of Fact.**
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21
22 The Superior Court decision states, "The trial court determined that stalking, cyberstalking, and
23 unlawful harassment occurred based upon the following findings:" The Superior Court then
24 lists selected findings proposed by Ryneerson, ignoring the findings of the Municipal Court. The
25 findings stated by the Superior Court are not, in fact, the basis for the conclusions of the

1 antiharassment order, excluding consideration of the protected speech and picketing.” *Id.* at 38 –
2 39. The court found Noah’s course of conduct to be knowing and willful, that it alarmed,
3 annoyed, or harassed Calof and caused substantial emotional distress to him. *Id.* at 39. “We hold
4 an antiharassment order may place enforceable limits of first Amendment rights as needed to
5 enforce the no-contact provisions of the order. We affirm the antiharassment order and his
6 conviction for contempt.” 103 Wn.App. at 33.

7
8 In other words, while picketing is not, per se, unlawful and cannot, standing alone, be the
9 basis for an antiharassment order, when combined with other harassing behavior, the right to
10 picket can be curtailed. *Id.* What the Superior Court appears to miss is that, in fact, Noah was
11 prohibited from picketing in front of the Calof’s office. *Id.*

12 Had Rynearson simply expressed his thoughts on the NDAA and, ultimately, respected
13 Moriwaki’s requests to move on to other topics when on Moriwaki’s personal page, or create his
14 own separate page, Moriwaki would have no basis for an antiharassment order.

15 Instead, in the present case, the facts reveal on-going, disturbing contacts by Rynearson
16 despite repeated requests by Moriwaki that he stop. The Municipal Court found this conduct to
17 be designed to be offensive. As in *Noah*, the antiharassment order is property issued.

18 There is no lawful legitimate purpose for the knowing and willfully annoying conduct of
19 Rynearson. The exchanges between the parties were not based on exchanges of legitimate public
20 concern but rather on the manner in which Rynearson was dominating Moriwaki’s private page
21 rather than creating his own. The request that Rynearson stop doing so in no way inhibited
22 Rynearson’s right to free speech – it could continue in a vast array of other forums unabated.
23

24 While the Superior Court writes that Rynearson was addressing matters of public
25 concern, in fact he was haranguing Moriwaki on Moriwaki’s personal Facebook page on a topic

1 that was better addressed elsewhere. Moriwaki is not a spokesperson for Inslee, Obama, SB
2 5176 or the NDAA. Moriwaki has no role to play in any on-going political controversy.
3 Rynearson’s refusal to move on to other forums for his political message rather than focusing on
4 Moriwaki is clearly guided by a motivation to harass rather than engage in political discourse on
5 matters of public concern.

6 The Superior Court follows Rynearson down a path of discussion of the First
7 Amendment and Constitutional rights. However, as noted by Moriwaki in his first court
8 appearance, this effort to create a First Amendment controversy is being waged against the
9 wrong person on the wrong issue.

10 The Superior Court writes, “Rynearson’s internet postings qualify as public debate and
11 therefore his criticisms of Moriwaki regarding his position with the Memorial Association and
12 challenges to stated political opinions are permissible under the First Amendment. (Decision on
13 Appeal page 13)

14 There is nothing in the ruling of the Municipal Court that challenges the public debate.
15 Instead, the Court addresses Rynearson’s conduct. At no time is the content of his posts
16 challenged by the court or by Moriwaki.

17 This distinction between conduct and content, as found by courts and addressed in *State*
18 *v. Noah*, is expanded upon in additional case law.

19 In *Trummel v. Mitchell*, 156 Wn.2d 653, an antiharassment order was issued to a public
20 housing resident, Paul Trummel, based on his behavior against the housing administrator and
21 residents which included writing a newsletter and verbally accosting the administrator and
22 residents. 156 Wn.2d at 657. Trummel appealed the order, claiming protected activities including
23 publishing and speech. *Id.* at 666. The housing administrator successfully appealed, arguing that
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1 the court had correctly relied on Trummel’s behavior and not on the content of his newsletters.
2 Id. at 666 – 667. The Trummel court further explores the idea that “courts have broad powers to
3 address harassing conduct, not limited to a narrow reading of the statutory provisions.” *Id.* at
4 664. The Trummel court references *Noah* and notes “In issuing the order, the trial court
5 considered the impact of the protestor’s behavior on the petitioner as well as on the patients who
6 were not parties.” *Id.*

7
8 As in *Trummel* and *Noah*, the Municipal court based its ruling on Rynearson’s conduct,
9 not on content.

10 The misplaced reliance of the Superior Court on *Noah* has further significance as the
11 court uses it to circumvent analysis of Moriwaki as a public figure, a finding of the Municipal
12 Court, and states: “Even if Moriwaki is not a limited public figure, Rynearson’s postings are still
13 protected under *Noah*.” Decision on Appeal page 12. As Dr. Calof was a private individual, the
14 Court reasons, and picketing by Noah was allowed (a misreading), then Rynearson must also be
15 operating under First Amendment protections. Decision on Appeal page 13. The Court then
16 pursues an analysis of First Amendment cases. As the protection order was based on conduct
17 alone, First Amendment issues are not pertinent to resolution of this case.

18 19 20 **Conclusion and Prayer for Relief**

21 Petitioner Clarence Moriwaki respectfully requests that the Superior Court reconsider its
22 decision to vacate the protection order issued by the Bainbridge Island Municipal court on July
23 17 in that:

- 24 1) the decision to vacate was based upon a re-writing of the Findings of Fact in
25 contradiction of RALJ 9.1

1 2) the decision to vacate was based upon conclusions not found by the Municipal Court

2 3) the decision to vacate was based upon a misreading of case law, specifically *State v.*
3 *Noah*, 103 Wn. App. 29.

4 4) the decision ignores Ryneerson's harassing conduct – consistent, repetitive contacting
5 of private citizen Moriwaki for no purpose after being asked repeatedly to stop.

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8 Dated this 22nd day of January, 2018

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10 Respectfully submitted,

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14 Clarence Moriwaki

15 Pro Se
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IN THE SUPERIOR COURT OF WASHINGTON
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CLARENCE MORIWAKI
Petitioner/Appellee,
and
RICHARD RYNEARSON aka RICHARD LEE
Respondent/Appellant.

No. 17-2-01463-1

Notice of Issue

CLERKS ACTION REQUIRED

TO THE ABOVE ENTITLED COURT
AND TO: ALEXANDER SAVOJNI, Attorney for Respondent
AND TO: EUGENE VOLOKH, (Admitted pro hac vice)

PLEASE TAKE NOTICE that the undersigned will bring on for hearing:

NATURE OF MOTION: Motion for Reconsideration

The hearing is to be held:

TIME: 1:30 pm
DATE: March 2, 2018
AT: Judge Hull Calendar
PLACE: Kitsap County Superior Court
Port Orchard, WA

Court Reporter Requested (x) no
Electronic Recording Acceptable (x) yes
Court Commissioner may hear this motion (x) yes

Dated this 22nd day of January, 2018


CLARENCE MORIWAKI
Petitioner/Appellee