

NO. 17-2-01463-1

**SUPERIOR COURT OF KITSAP COUNTY
OF THE STATE OF WASHINGTON**

CLARENCE MORIWAKI, Petitioner

v.

RICHARD RYNEARSON, AKA RICHARD LEE, Respondent

BRIEF OF PETITIONER

**CLARENCE MORIWAKI, PRO SE
155 MADISON AVENUE NORTH
BAINBRIDGE ISLAND, WA 98110**

TABLE OF CONTENTS

A. Statement of the Case.....	1
1. Findings of Fact.....	1 - 5
2. Procedural History.....	5-6
3. Standard of Review.....	6
B. Argument.....	7 -12
1. Respondent engaged in conduct directed at a private citizen in an effort to coerce, intimidate, bully and intimidate his target with no lawful or free speech purpose; efforts to characterize this case as pertaining to free speech rather than to illegal conduct directed at a private figure are without basis, as is revealed by the record of the Municipal Court.	
2. Mr. Moriwaki presented sufficient evidence that the statutory provisions of RCW 9.61.260 and RCW 10.14.020 have been met as determined by the Bainbridge Island Municipal court; thereby satisfying legislative intent of protecting citizens from an invasion of privacy by acts and words showing a pattern of behavior designed to coerce, intimidate or humiliate the victim.	
3. The provisions of the protective order are narrowly crafted to protect Moriwaki from unlawful conduct.	
C. Conclusion.....	13 - 14

TABLE OF AUTHORITIES

A. Table of Cases

Washington Cases

<i>Bender v. Seattle</i> , 99 Wn.2d 582, 599, 664	8
<i>Hecker v. Cortinas</i> , 110 Wn. App. 865, 869 (2002).....	6
<i>In re Riley</i> , 76 Wn.2d 32, 33, 454 P.2d 820, <i>cert. denied</i> , 396 U.S. 972, 24 L. Ed. 2d 440, 90 S. Ct. 461 (1969).....	1
<i>State v. Lord</i> , 117 Wn.2d 829, 853, 822 P.2d 177 (1991).....	10

United States Supreme Court Cases

<i>Gertz v. Robert Welch</i> , 418 U.S. 323.	7
<i>Hustler Magazine Inc. v. Falwell</i> , 485 U.S. 46 (1988).....	11

B. Statutes

Washington State Statutes

RCW 9.61.260.....	5, 9,10,13
RCW 9A.46.110.....	9,13
RCW 10.14.020.....	5,9,11,13
RCW 10.14.150.....	10

C. Rules

Washington State Rules

RAP 10.3(a)(6).....	10
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A. STATEMENT OF THE CASE

1. Findings of Fact

The Findings of Fact are set forth in the Municipal Court record. Respondent has assigned no error to any of the Findings of Fact. It is well-established law that an unchallenged finding of fact will be accepted as a verity upon appeal. *In re Riley*, 76 Wn.2d 32, 33, 454 P.2d 820, *cert. denied*, 396 U.S. 972, 24 L. Ed. 2d 440, 90 S. Ct. 461 (1969). A brief summary is as follows:

Clarence Moriwaki is a private citizen living on Bainbridge Island. He is a volunteer director of the Japanese American Exclusion Memorial. He runs a private consulting business. CP page 9. FOF 2, 3

On November 20, 2016, a “Mr. Lee” asked Moriwaki to add him as a “friend” on Moriwaki’s Facebook page. Mr. Moriwaki had not met “Mr. Lee” but added him as a friend. CP page 10. FOF 4

Starting on December 14, 2016, and continuing over the next several weeks, “Lee” posted a series of comments on Moriwaki’s Facebook page regarding President Obama’s support of the National Defense Authorization Act (NDAA) of 2012. CP 10, FOF 6, 7

On January 24, 2017, Moriwaki noted that “Lee” was repeating a point he had already made several times, to the extent of “hijacking a comment thread” and suggested that “Lee” address his comments to “the

person and administration that can do something about it.” CP page 10.

FOF 7

The next day, on January 25, “Lee” wrote a review on the Bainbridge Island Japanese American Exclusion Memorial Facebook Page criticizing Moriwaki for supporting President Obama and Governor Jay Inslee. CP page 10. FOF 8

On January 27, 2017, “Lee” and Moriwaki got into a series of contentious exchanges on Moriwaki’s Facebook page, Moriwaki told “Lee” that he was offended; and asked “Lee” to stop. CP page 10, FOF 8

“Lee’s” behavior continued despite Moriwaki telling “Lee” on a private message: “You have crossed a line. . . You are not conversing but trolling. . . You are clearly a passionate person but please promote your ideas and attract people to your own wall. Create your own party. Stop the bullying and attempts to hijack my party.” CP 10, FOF 10.

“Lee” replied to Moriwaki’s requests that he stop harassing him with comments including “[N]ow you are about to cross my line. I highly advise you to reconsider. . . . I promise you with everything that I am, your efforts to stifle free speech will fail you massively.” CP page 11.

FOF 14

“Lee” continued to post on Moriwaki’s Facebook page, including re-posting comments that Moriwaki had deleted from his page. CP page 11, FOF 16

Moriwaki responded, “Stop trolling. Stop it. You are harassing, bullying and relentless. Stop. . . Knock it off. . . I have asked you to stop posting on my page!” CP 11, FOF 16

On February 5, Moriwaki blocked “Lee” from posting on his personal Facebook page (CP page 12); later that day, a friend of Moriwaki’s found a post on her Facebook page from “Lee”: “I’m out on the public street now in front of [Moriwaki’s] house talking to some of his guests (our mutual neighbors) as they leave his house. . .” The friend suggested that Moriwaki call the police. CP 12, FOF 19

Minutes after blocking “Lee”, Moriwaki received a text announcing “Lee’s” new blog --
ClarenceMoriwakiBainbridgeIsland.com.

By February 5, 2017, “Lee” had published a Facebook page entitled “Clarence Moriwaki of Bainbridge Island.” The page title was later changed to “Not Clarence Moriwaki of Bainbridge Island.” CP page 12. “Lee” stated that the page “is meant to be a discussion concerning our view that public figure, Clarence Moriwaki of Bainbridge Island, President of the Bainbridge Island Japanese American Exclusion

Memorial, is unfit to be President or board member for our memorial.”

CP page 12. FOF 20

“Lee” posted a variety of memes on these pages, one bearing Moriwaki’s photo with barbed wire. CP page 12. FOF 21

“Lee” posted to these sites almost daily, and in some cases numerous times a day, until he was served with a protection order on March 15, 2017. CP page 12, FOF 22

“Lee” paid for advertising for the site and those ads appeared in the feeds of people who did not sign up to see it. CP page 13, FOF 23

Moriwaki’s original petition for a protection order stated that he feels “constant anxiety, sleeplessness, fear of potential contact, upset of impact to my reputation, intimidated.” CP page 13, FOF 24

Numerous people messaged or posted “Lee” to stop harassing Moriwaki. CP 13, FOF 25

After discovering more information about “Lee” on the internet, Moriwaki stated that he is “truly frightened for my physical safety- and life- from Richard “Lee” Rynearson III.” CP page 13, FOF 24

“Lee” has a documented history of angry, inappropriate name-calling, aggressive online comments to the point he has been banned from multiple online discussion forums. “Lee” also has a history of retaliating against those forum owners who have banned his participation through

angry comments, personal attacks, and creating memes to taunt them. CP page 13, FOF 27

“Lee” admitted that he has a car that is outfitted with bullet proof windows, armoring, electrified door handles, a smoke screen, cameras, flashing strobes, sirens and a public-address system. CP page 14, FOF 28

“Lee” is a gun owner. He served in the military for many years. He has a documented history of being disciplined over disagreeable, argumentative behavior. CP page 14, FOF 29

“Lee” has made on line statements about the Judges that ruled against him, “I have killed many foreign enemies overseas who were far better men than Judge Reavley and Southwick.” He also compared the Judges to tapeworms, saying “There isn’t enough tar and feathers in this world to sufficiently coat these two worthless deserters.” CP page 14, FOF 30

2. Procedural History

The full procedural history is documented in the Findings of Fact and Conclusions of Law issued by the Municipal Court on July 17, 2017.

On that date, the court issued a non-expiring Order for Protection – Stalking, finding by a preponderance of the evidence that “Lee” had engaged in a course of conduct directed at Moriwaki violating RCW 9A.46.110; RCW 9.61.260 (1)(b); and RCW 10.14.020. CP 15, COL 3

In issuing the Order, the court noted that Rynearson's acts had been done with the intent to harass, embarrass, intimidate and torment Moriwaki and to cause damage to Moriwaki's reputation; that Moriwaki in fact did feel threatened and intimidated and frightened; and that those reactions are reasonable under the facts and circumstances of this matter. CP page 15 – 16, COL 4, 5

The Court found that "Lee" has no lawful or free speech purpose. CP 15, COL 6. The Court found that Moriwaki was not a public figure; and that he had the right to limit contact with any person who he finds offensive. CP 15, COL 6

The Court found that "Lee's" true purpose of his course of conduct was to harass, intimidate, torment and embarrass Moriwaki and to cause harm to Moriwaki's community reputation; CP 15, COL 7; and that Lee did so in retaliation to being limited, rejected, and eventually blocked from Moriwaki's personal Facebook site. CP 16, COL 7

"Lee" filed a notice of appeal on August 11, 2017

3. Standard of Review

Appellate courts review the issuance of protection orders for abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869 (2002)

B. ARGUMENT

1. Respondent engaged in conduct directed at a private citizen in an effort to coerce, intimidate, bully and intimidate his target with no lawful or free speech purpose; efforts to characterize this case as pertaining to free speech rather than to illegal conduct directed at a private figure are without basis, as is revealed by the record of the Municipal Court.

Respondent argues that Moriwaki is a public figure and that his harassment of Moriwaki is an exercise of free speech. Respondent's position is without merit in at least two regards:

The determination of a public figure has been addressed in *Gertz v. Robert Welch*, 418 U.S. 323.

Petitioner has long been active in community and professional affairs. He has served as an officer of local civic groups and of various professional organizations, and he has published several books and articles on legal subjects. Although petitioner was consequently well known in some circles, he had achieved no general fame or notoriety in the community. None of the prospective jurors called at the trial had ever heard of petitioner prior to this litigation, and respondent offered no proof that this response was atypical of the local population. We would not lightly assume that a citizen's participation in community and professional affairs rendered him a public figure for all purposes. Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life. *Id.* at 351

Clarence Moriwaki was actively involved in the creation of the Japanese American Exclusion Memorial located on Bainbridge Island. The Memorial was dedicated in 2011. Outside the circle of residents who followed that effort, he has no general fame or notoriety; he has no pervasive involvement in other civic affairs. *See* CP 9, FOF 2, 3

Rynearson attempts to justify his portrayal of Moriwaki as a public figure and his threatening behavior towards Moriwaki under the guise of a matter of public interest and concern regarding the National Defense Authorization Act (NDAA) of 2012. However, “to be considered a public figure, courts usually require the plaintiff to voluntarily seek to influence the resolution of public issues.” *Bender v. Seattle*, 99 Wn.2d 582, 600, 664 P.2d 492 (1983)

Clarence Moriwaki has no role to play in the resolution of any matter related to the NDAA; he has no position of public influence in that matter. As he told Rynearson in the earlier stages of their exchanges, after Rynearson continued to dominate discussion on Moriwaki’s Facebook page, “Direct it to the person and administration that can do something about it.” CP page 10.

As found by the Municipal Court, Rynearson’s assertion that his focus on Moriwaki is as a “public figure” rather than as a personal attack

fails. The Court found it significant that there are many other directors and volunteers of the Japanese American Exclusion Memorial Association and only Moriwaki is mentioned by Ryneerson. BIMC Transcript of Proceedings, page 44. The court concluded “[T]his really is a personal thing against Mr. Moriwaki because he did not reciprocate his interest in developing a friendship and – and having the kind of relationship that they were going to have on his Facebook page according to what Mr. Ryneerson wanted to do.” BIMC Transcript of Proceedings, page 45.

Second, Ryneerson tries to portray his harassment of Moriwaki as an argument over content. However, it is not content which has garnered the Protection Order; it is Ryneerson’s conduct. Had Ryneerson expressed disagreement with Moriwaki and not engaged in persistent harassing behavior for no purpose, even after Moriwaki requested him to stop and expressed his feelings of being bullied, the need for a protection order would not have arisen. RCW 10.14 is clearly written to address behavior, not the content of speech.

2. Mr. Moriwaki has presented sufficient evidence that the statutory provisions of RCW 9.61.260 and RCW 10.14.020 have been met as determined by the Bainbridge Island Municipal court; thereby satisfying legislative intent of protecting citizens from

repeated invasions of personal privacy by acts and words showing a pattern of harassment designed to coerce, intimidate or humiliate the victim. RCW 10.14.150

Rynearson's efforts to challenge the statutory findings of the Municipal Court are unsupported or simply erroneous.

He states that RCW 7.92.020 is limited to fear of physical harm. There is simply no support for this position, nor does Rynearson offer any. Arguments without legal support need not be considered. RAP 10.3(a)(6); *State v. Lord*, 117 Wn.2d 829, 853, 822 P.2d 177 (1991).

Similarly, Rynearson attempts to define "contact" and then argue Rynearson did not "contact" Moriwaki, so that RCW 7.92.020(3)(c) is not applicable. Again, he provides no legal support for this position and fails to note that the Municipal Court was ruling under RCW 9.61.260(1)(b), which is clearly applicable to the facts of this matter.

A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party: anonymously or repeatedly whether or not conversation occurs. RCW 9.61.260(1)(b)

The statute does not address content.

Even if the court finds that the cyberstalking statute as written is unconstitutional, the Municipal Court, in issuing the protection order, also cited to RCW 10.14.020 – Unlawful Harassment. Here again, Rynearson on appeal makes no substantive legal argument to refute the Findings of the Municipal Court, nor is he able to factually support his claims of lawful “intent.” His position is without merit.

3. The provisions of the protective order are narrowly crafted to protect Moriwaki from unlawful conduct.

Rynearson argues that the protection order constitutes a prior restraint of protected speech. (Opening Brief of Appellant, page 17) However, he fails to support this claim with pertinent facts. Repeated citation to *Hustler Magazine Inc. v. Falwell*, 485 U.S. 46 (1988) is without purpose as that case involves public figures. It is not analogous.

Again, Rynearson wants the court to believe the Protection Order addresses content, but in fact it addresses conduct. As stated by the court, “Because the Court finds that “Lee” has stalked Moriwaki by repeatedly contacting, stalking, cyberstalking and harassing Moriwaki, it is reasonable to place limits on his contact and conduct to towards Moriwaki as outlined in the Protection Order.” CP page 16, COL 9

Rynearson overstates the burden placed upon him by the Order. Moriwaki requested a 500' distance. The 300' distance was requested by the Respondent and is the distance from the perimeter of Moriwaki's property line to Rynearson's residence. While the distance requirement limits Rynearson's access to some downtown businesses, the core of the business district does not fall within the limits imposed. An alternate path to the ferry is not onerous simply because he claims it is so; the provision that Rynearson is restrained from using an easement in close proximity to Moriwaki's home is likewise not onerous. A review of the City Map (Declaration of Respondent, Exhibit 16) indicates both parties live in a relatively congested part of the city with multiple options for routes to destinations.

The court has made a finding of unlawful conduct and a finding that Rynearson/Lee is likely to continue his actions. CP 16, COL 10. The Protection Order is narrowly crafted to protect the Petitioner from the conduct determined to be unlawful.

C. CONCLUSION

Rynearson seeks to create a case in which to challenge the constitutionality of Washington States statutes on Cyberstalking. The facts of the current matter clearly meet the provisions of the statutes addressing unpermitted conduct against a citizen. Rynearson has chosen the wrong individual and the wrong set of factors on which to engage the courts.

The Bainbridge Municipal Court, after a review of extensive documentation and exhibits, has found by a preponderance of the evidence, that the Respondent is guilty of unlawful conduct under RCW 9A.46.110 (Stalking), RCW 9.61.260(1)(b) (Cyberstalking), and RCW 10.14.020 (Unlawful Harassment). Based on those findings, the Court has issued a Protection Order addressing that conduct and reflecting the legislative intent as stated:

RCW 10.14.010 - Legislative finding, intent.

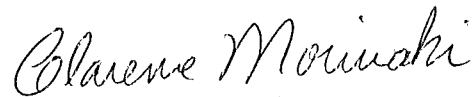
The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of

obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator. RCW 10.14.010

Clarence Moriwaki respectfully requests that the Permanent Protection Order remain in place as entered.

Dated this 24th day of October, 2017.

Respectfully submitted,

A handwritten signature in cursive script that reads "Clarence Moriwaki".

Clarence Moriwaki