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| DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6190 | ▲ COURT USE ONLY ▲ <hr/> trial court case No. 99 DR 3717 Div. 9 / Hon. Jack Berryhill |
| In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN HARRINGTON | |
| Sean L Harrington P.O. Box 351855 Westminster, CO 80035 | |
| MOTION FOR DECLARATORY JUDGMENT AND FOR CASE MANAGEMENT ORDER | |

COMES NOW, Respondent Sean L. Harrington (“father”), and respectfully submits the within Motion and in support thereof, states as follows:

INTRODUCTION

1. Doubtless, opposing counsel will argue that, “*the father has resumed his habit of filing a flurry of pleadings when unrepresented by counsel.*”¹ Yet, this Motion would not be necessary but for opposing counsel’s conduct, as set forth below.

2. This matter is before the court on its [September 17th 2008 Order to set](#), wherein the Court directed the undersigned to issue a Notice to Set.

3. Father issued a [Notice to Set](#) on September 29th 2008 and contacted the Clerk of the Court on October 8th to obtain trial dates. Father then sent both a facsimile and an email to opposing counsel, Madeline Wilson (atty. Reg. 24060) indicating these available dates. A copy of father’s communiqué is attached hereto and made part hereof by reference as [Exhibit “A.”](#)

¹ See e.g., [February 13, 2007 responsive pleading](#) (ICON Event ID # 444). The Court of Appeals in 07CA0379 specifically ruled that the Motion at issue was not frivolous. [May 29, 2005 opinion](#) (not published pursuant to C.A.R. 35(f)) at 8.

4. Rather than reply to the email or reply *via* facsimile, Ms. Wilson contacted the Clerk of the Court today (October 9th), claiming that the undersigned is disallowed from contacting her and asking the Clerk to convey Wilson's availability.

5. The Clerk of the Court contacted the undersigned and did convey Wilson's availability, but also expressed her desire not to be utilized as an administrative assistant.

6. For the reasons more fully set forth hereinbelow, Ms. Wilson's continuing involvement and manipulation of the court's staff is deceitful and inappropriate. Her representations were disrespectful of the truth and, based on these misrepresentations, she has sought a contempt citation against the undersigned in an effort to vex and harass. She is now creating complications that impede the orderly administration of justice. Accordingly, father now moves this Court for declaratory judgment concerning the "no contact order" that Wilson refers to and for a protective Order preventing Wilson from filing any further contempt citations on this issue.

THE ORDER IN QUESTION

7. The Order in question is § 3.3 of this a November 6th 2001 Stipulated/ordered Agreement ("*Agreement*").² The provision provides:

The parties agree that the Petitioner's attorney, Madeline Wilson, will dismiss the restraining order she obtained and which is currently in effect against the Respondent. The Respondent will agree to a no-contact order between the Petitioner's counsel and the Respondent, enforceable in this action through contempt proceedings if necessary.

² ICON Even ID # 218. Father requests that the Court take Judicial Notice of the same.

8. Wilson did not provide the Court with a proposed order or otherwise apply for or obtain the “no-contact order” described. Thus, the terms of the no-contact order are unknown.

9. Based upon an alleged violation of § 3.3 of the Agreement, Wilson filed in the instant case an “[Emergency Verified Motion for Contempt of Court Order to be served by a Private Process Server](#)” on May 1st 2007, the day prior to a hearing that was to take place in Texas.³ When she was unable to obtain a magistrate’s signature in time, she requested that Texas counsel cause the undersigned state on the record his home address for the purpose of effecting service for her contempt citation. Wilson failed in this endeavor, because no testimony was taken that day.

10. Wilson’s contempt Motion (ICON Event ID # 457) concerned communications that she had received between November, 2004 through July, 2006 pertaining to pending litigation, grievances or other First Amendment protected petitioning activities to which Wilson was a party or respondent.

11. Wilson *invited* father to contact her on a number of occasions:

- ✓ In a [December 8th 2004 responsive pleading](#), she argued, “*The mother's attorney has requested over and over that any and all correspondence between she and the father be handled by facsimile only.*” That was a judicial admission of informed consent.

³ District Court, Wise County, No. 07-04-274 (*In the Interest of S.H., a minor child*). Wilson is a defendant in that case for aiding and abetting the concealment of a minor child under Tex.Fam.Code § 42.003).

- ✓ In a December 1st 2004 fax to the undersigned, she requested, “*Please fax the form to my office and I will forward it to [my client].*”
- ✓ In June 10th 2004 fax to the undersigned, she asked (expecting an answer), “*It is my understanding you already have Christy's address. Do you have her phone number?*”
- ✓ In June 1st 2004 fax, she wrote, “. . . *please forward your cancelled check, front and back to me.*”

12. Although Wilson claims that Harrington’s contact is neither lawful nor wanted, she has waived any such objection under the theories of license, waiver, acquiescence and “assumption of risk.”

13. The obvious problem here is best illustrated by the following example: On May 29th 2001, Wilson sent father’s counsel a fax in which she wrote nothing other than: “*Please make him stop. Is he bi-polar or not? He is violating the restraining order [that] I have against him by sending me this stuff.*” The alleged violation that she alleged was that she had been served with an amended complaint in a collateral action, mailed to Wilson pursuant to C.R.C.P. 5. However, Judge Tidball had issued an order in this case on July 27th 2000, which stated:

[Mr. Harrington] failed to comply with C.R.C.P. 121, § 1-15, which requires a copy of all motions and briefs to be served on all other parties. In the interest of time, the Court is forwarding to Petitioner's counsel a copy of Respondent's Request of Court Clerk to Forward Visitation Request With Child to Opposing Counsel Because of No Contact Order. . . . In the future, however, the Court will not consider any pleadings unless they are filed with a certificate of mailing, in compliance with C.R.C.P. 121, § 1 - 15. [Mr. Harrington], not the Court, is responsible for service on the other parties.⁴

⁴ ICON Even ID # 122.

14. Because of Ms. Wilson’s obstreperous conduct, this Court is now required —once again and needlessly— to address this reoccurring problem.

ABUSE OF PROCESS HISTORY

15. The Colorado Court of Appeals characterized Ms. Wilson’s conduct in this case in its [December 30th 2004 opinion](#) in case N^o 03CA1825 (not published pursuant to C.A.R. 32(f)), noting, “[W]e do not approve of [the] mother’s attorney’s apparent manipulation of the notice provisions and the rules of civil procedure.” *Id.* at 6.

16. Wilson has provided substantial assistance to her client, Christy Ryan, in concealing the whereabouts of the undersigned’s daughter in another state. *See* father’s [April 6th 2005 Motion for Contempt Citation](#) (ICON Event ID # 416).⁵ As a result of her conduct, she is a defendant in a civil suit regarding the same.⁶ Despite that father had no contact of any kind with mother during the several years that she was hiding the child and despite that father had not resided in Colorado (or Texas) for many years, Wilson drafted a, “[Response to Forthwith Motion for Continuance & Alias Citation, Motion to Compel & Motion for Attorney Fees per CRS 13-17-102\(2\)](#),” on or about January 24th 2005, in which she argued:

The mother fears the father, as his anger with her, her attorney and this Court is evident in his pleadings. The mother would request a restraining order if she had a physical address with which to serve the father.⁷

⁵ A [Contempt Citation](#) was issued (ICON Event ID # 425), but could not be served because mother had fled the state and concealed her whereabouts.

⁶ The matter is set for hearing in Texas on Monday, October 13th 2008 on the issue of minimum contacts.

⁷ ICON Event # 394 at ¶ 10, p. 2. [emphasis added]

This “argument” was proffered by Ryan & Wilson in objection to Plaintiff’s attempt to obtain the residential and contact information of his daughter.

17. Wilson has a long history of abusing process in this and cases concerning other parties. She has filed no less than five (5) restraining orders against the undersigned —most during the eight years he has not lived in Colorado— all of which have been denied, dismissed or vacated: ⁸

- ✓ Dec., 2005 05W01747 (Denver County Court); dismissed for failure to prosecute
- ✓ Jul., 2005 05W01018 (Denver County Court); denied after three continuances for failure to serve defendant
- ✓ Jul., 2003 03C11619 (Jefferson County Court); dismissed for failure to prosecute
- ✓ Jul., 2000 00C08748 (Jefferson County Court) ;vacated
- ✓ Feb., 2000 00C02389 (Jefferson County Court); denied on the merits after evidentiary hearing

There may be others, but father is unaware of them

18. The court-appointed Special Advocate, Natalie Van Note, included in her September 2001 findings to the court:

It is this advocate’s observation that the restraining order has been used as a tool to effectively eliminate contact between father and daughter. The restraining order has been relied upon by Ms. Ryan **and her attorney [Ms. Wilson]** to create the illusion that Mr. Harrington is somehow dangerous to Shelby, when, in fact, this is not the case. . . **restraining orders . . . have been used as a political tool** to eliminate Mr. Harrington from his daughter’s life . . . [and they] . . . **are a guise to retaliate** against Mr. Harrington.

⁸ See <http://www.knowyourcourts.com/Harrington/TRO-PRO.htm>

Id. at para. F, p. 7. [emphasis added] Father requests the Court to take judicial notice of this Special Advocate Report⁹ and, which was adopted by the Court through the November 6th 2001 stipulated/ordered Agreement.

19. In a November 14, 2007 response to the Texas State Bar during the course of a disciplinary investigation, Wilson wrote, among other things “*As a result of Mr. Harrington's threats, I have encouraged my children to change their names and move out of state.*”

20. In her April 25th 2006 answer to Texas State Bar Office of Chief Disciplinary Counsel, Wilson wrote, “*My receptionist and office mates have been given a picture of Sean Lee Harrington along with explicit instructions to call the police if he appears at our office. My entire suite of offices is on 'lock down' anytime we are made aware that he is in town and we take other special precautions with our safety because of this man.*”

21. In a July 27, 2005 fax to the United States Postal Inspector’s Office, Wilson wrote, among other things:

I believe Mr. Harrington is using the U.S. Mail to try to damage me economically. Please contact me and let me know if this is an offense with which he can be charged. I have recently received a letter from him (by facsimile) that I believe to threaten my life and mention my children. Please help me any way you can.

22. In a [July 21, 2005 unsolicited letter to Attorney Regulation Counsel John Gleason](#), Wilson wrote, among other things:

⁹ ICON Event ID # 216.

Mr. Harrington has informed me that he knows where I live. I have no idea how he knows about my children, but this frightens me greatly for their safety and I have asked them to go into hiding. . . I am extremely fearful of Mr. Harrington and believe that he will stop at nothing to destroy my reputation and livelihood. I have contacted the District Attorney's Office and the Attorney General's Office of assistance in stopping the constant harassment of me by Mr. Harrington.

23. In her [July 14th 2005 Verified Complaint for Temporary Restraining Order](#), Wilson wrote, “[Mr. Harrington] *sometimes calls my office when I come in on weekends to ask, 'Why are you working on the weekend?' He has come to my office & followed my receptionist into my office, causing me to call 911 but he left before they arrived.*”

24. Wilson even alleged that the undersigned “*attempted to assault me in court.*” However, as the Rev. Loren Sandford —present in the courtroom on May 31st 2000 testified in his Sept. 14th 2001 affidavit:

I did attend the divorce trial of Sean Harrington and Christy Ryan at the Jefferson County Courthouse in case No. 99DR3717, and provided him a ride home immediately afterward. I was present at all times in the courtroom, save only the opening segment . . .I do not recall any time hearing a threat of bodily harm voiced toward Madeline Wilson. I certainly did not witness any active attempt to assault her in court.

Id. at ¶ 5.

25. In addition to helping to coordinate a mental health commitment of the undersigned in the summer of 2000, Wilson repeatedly contacted the hospital staff, claimed that the undersigned had threatened to kill the judge (Tidball) and also requested that she, her client and the trial judge be added to a “Duty to Warn.” She

then contacted the clerk of the court (Arcilise) *ex parte* concerning these arrangements she had surreptitiously made on behalf of the court.

26. In the most recent appeal in this case (No. 07CA0379), Ms. Wilson urged the appeals court to construe the undersigned's briefs as the ramblings of a bipolar, mentally ill person, explaining "*This [aforementioned] information regarding the father's mental illness is highly relevant in that the Court needs to understand what drives the father so hard.*"¹⁰ The Court of Appeals disregarded her exhortation and agreed with father on all assignments of error presented for review.

27. The foregoing are only a few of myriad instances over the last nearly nine years of Wilson's attempts to spread fear to gain a tactical advantage. The lack of credulity of her claims is difficult to describe with ordinary words.

ANALYSIS

DUTY TO CONFER

Rule 121 of the Rules of Civil Procedure, section 1-15(8), requires moving counsel (1) to confer in good faith with opposing counsel before filing a motion, (2) to certify at the beginning of the motion that he or she has done so, and (3) to advise the court if the relief sought has been agreed to or is not opposed, and (4) to provide a reason if no conference has occurred.

In the [February, 2007 issue](#) of the First Judicial District Bar Association Newsletter (*The Proclamation*), Chief Judge Jackson addressed the subject of the duty to confer:

¹⁰ [December 3, 2007 Answer Brief at 4-7.](#)

“

In my view, “confer” is not an ambiguous or mysterious term. It means to talk, either face to face or by telephone. “Confer” does not mean to send a letter to opposing counsel advising that unless he or she does such and such by such and such deadline, you will file a motion. It is especially unimpressive when counsel represents that he has conferred, and the facts turn out to be that he faxed or emailed a stern letter to opposing counsel and then filed the motion on the same day without having received a response. It is, however, a two-way street. It is implicit in the rule, and also a matter of basic courtesy, that opposing counsel will respond to a telephone call within a reasonable time, usually meaning on the day the call was received. All too often we receive motions certifying that counsel has attempted to confer by placing several calls and leaving messages, but that opposing counsel has not returned any of the calls. That speaks poorly of the nonresponsive attorney and may sometimes result in the granting of a motion that might otherwise have been denied.

In my view this rule is not just another technical procedural hurdle through which counsel must jump. I consider this rule to be quite wise.

. . .

the Committee Comment suggests that conferring “would obviously not be appropriate prior to a motion for a temporary restraining order, a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment.” Quite frankly, I do not understand what is obvious about that. I agree that the Rule does not require a conference in those situations. However, in some cases a conference could resolve the need for a TRO or lead to a stipulated dismissal of parts of a case. I believe that counsel should always look for opportunities to visit with opposing counsel.

As Judge Tidball explained in her July 27th 2000 Order (discussed above), this Rule applies to the undersigned. However, Ms. Wilson has explained that she does not believe that the Rule applies to her: For example, she explained during [a hearing on May 17, 2004 in *Taylor v. Stadnyck*](#) (Douglas County, No. 1997DR0704), “*I’m not*

required to confer with him as per rule one twenty one”. In her [July 1st 2004 Answer Brief in Colo. App. N0 03CA1825 at p. 7](#), she argued, “Regarding the Duty to Confer under Rule 121 15 1-8, the father’s counsel filed a Motion to Withdraw on June 18, 2003; there was therefor [sic] no opposing counsel to confer with.”

JUDICIAL ESTOPPEL & INVITED ERROR

In Colorado, judicial estoppel requires that a party take a position in a proceeding that is totally inconsistent with a position he successfully took in an earlier, related proceeding in an intentional effort to mislead the court. *Arko v. People*, __P.3d__ (Colo. 2008) (*en banc*). “[T]his doctrine normally applies to inconsistent factual positions rather than legal positions: The position to be estopped must be one of fact rather than law or legal theory.” *Id.* Likewise, under the invited error doctrine, “a party may not complain where he has been the instrument for injecting error in the case; he is expected to abide the consequences of his acts.” *Id.* (citation and quotations omitted).

Under the doctrines of judicial estoppel and Invited Error, Wilson should not be permitted to claim, on the one hand as she has, that father has violated a restraining order, but claim on the other hand —as she has also done— that father has failed to serve her under Rule 5 or that he has failed to confer.

DECLARATORY JUDGMENT

Under Colorado law, “Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” C.R.S. § 13-51-106. The purpose of the statute is to

afford relief from the uncertainty surrounding legal rights and legal relations and is remedial in nature, to be liberally construed and administered. *Cnty. Tele-Communications v. Heather Corp.*, 677 P.2d 330, 334 (Colo. 1984).

Father should not have to labor under the constant worry that, if he does confer with Ms. Wilson as both the Rules and common courtesy requires, he will be served with another (sixth) frivolous restraining order or contempt citation. Moreover, Wilson should be enjoined from burdening the Court's staff and parties litigant under the guise of her manufactured safety concerns. Accordingly, father request a declaratory judgment, to wit:

- ✓ That § 3.3 of the a November 6th 2001 Agreement does not prohibit the undersigned from sending faxes, email, memoranda, voice-messages or telephone calls about and concerning any pending litigation or petitioning matter.
- ✓ That the duty-to-confer applies to pro se parties and attorneys alike and reciprocally.

Further, father requests injunctive relief in the nature of a Case Management Order prohibiting Wilson from filing any further contempt citations or restraining orders arising from or concerning an alleged violation of § 3.3 of the Agreement, where the alleged violation pertains to communications regarding any extant or proposed litigation or petitioning matter.

WHEREFORE, based on the foregoing reasons and the foregoing authorities, father requests declaratory judgment and injunctive relief concerning § 3.3 of the stipulated/ordered Agreement.

Dated this 9th day of October, 2008



Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of October, 2008, I served a true and accurate copy of the foregoing *MOTION FOR DECLARATORY JUDGMENT* by placing the same in the U.S. Mail, postage prepaid, and affixed hereto to the following:

First Judicial District Court
Division 9
100 Jefferson County Parkway
Golden, CO 80401

and by facsimile to: Law Office of Madeline Wilson at: 303-321-3196

and by electronic mail to: David H. Yun (DYun@jalegal.com)



2008-10-08_fax-toMadel i neWi l son. txt

Madel i ne:

I left a voice message for you on Sept. 16, 2008 at 2p.m. pursuant to Rule 121 to --among other things-- inquire as to whether your client intended to honor the Court of Appeal Order regarding my Bill of Costs. Please inform me if your client has already paid or intends to pay and, if so, when. If I do not hear from you, I will reluctantly have to resort to an enforcement action in Texas or in Colorado or both. I hope to avoid informing the court that my action was necessitated by the lack of a courtesy response from you.

In addition, I sent you an email this morning, as follows:

I am contacting you because you have been identified either either a party, a witness or an attorney for a party or witness for an upcoming trial set for a one-day hearing about and concerning Bill J. Fyfe.

The case is Marriage of Harrington (First Judicial District Court). The docket is posted here at: <http://www.knowyourcourts.com/Harrington/99DR3717.htm>

The issues at this hearing are set forth in a pending Motion for Summary Judgment, which is here:

http://www.knowyourcourts.com/Pladings%20%20orders/99DR3717/2008-10-02_fathersMotion-forSummaryJudgment.pdf

The expert and non-expert witnesses are enumerated in this document:

http://www.knowyourcourts.com/Pladings%20%20orders/99DR3717/2008-10-01_disclosures.pdf

The available hearing dates are:

Dec 08
Dec 11
Dec 22
Jan 05
Jan 07
Jan 21

All hearing dates are at 8:30 a.m. and I have asked for a half-day.

If these dates cannot be coordinated amongst all of us, I can contact the clerk of the Court to obtain a different set of dates.

Please reply to this email to indicate which dates are possible or which dates are impossible. If you are a witness, please also indicate if you would be willing to execute a subpoena waiver. Please do not [Reply All].

. . . with kind regards,

Sean L. Harrington
(508) 361-2018
esoxlucios@msn.com