

STATE OF MINNESOTA

COUNTY OF RAMSEY

City of Maplewood,

VS.

Kevin Berglund,

Petitioner,

Respondent.

DISTRICT COURT

SECOND JUDICIAL DISTRICT

File No. C7-03-100725

ORDER

The above entitled matter came on for trial before the undersigned upon petitioner's application for a permanent harassment restraining order against the defendant on February 3, 2004 and on April 26 and 27, 2004.

David Palm, Esq., and Robert Fowler, Esq., appeared on behalf of the petitioner.

Jill Clark, Esq., appeared on behalf of the defendant, who was also personally present.

Based upon the entire file, the testimony of the witnesses and the exhibits:

IT IS THEREFORE ORDERED THAT:

1. The *ex parte* order for harassment issued on September 17, 2003 and later modified on February 24, 2004 is vacated.
2. The petitioner's application for a permanent restraining order is denied and the matter is dismissed with prejudice.
3. The following Memorandum is a part of this order and constitutes the Court's findings of fact and conclusions of law to the extent necessary to support the order.

FILED

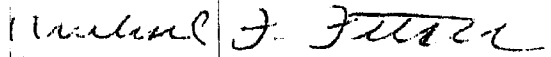
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4. The mailing of this order by the Court to counsel is notice of its entry for all purposes.

Dated: June 25, 2004

BY THE COURT:



Michael F. Fetsch
Judge of District Court

MEMORANDUM

On September 17, 2003, an *ex parte* harassment restraining order issued against the plaintiff. That order, which I now determine to have been improvidently issued, was amended after the first day of testimony by order dated February 24, 2004. In the *ex parte* request for a harassment restraining order, affidavits were submitted by Karen E. Guilfoile, Kathleen Juenemann, Sarah J. Sonsalla, Melinda Coleman, Daniel Faust, Roberta Darst, Sherrie Le and Charles Ahl.

After the first day of testimony, it was clear that the City of Maplewood would not be able to sustain its burden and justify the harassment order which had issued on an *ex parte* basis. I therefore modified the order by narrowing the harassment restraining order and by limiting its applicability to the following persons: Roberta Darst, Karen Guilfoile, Melinda Coleman and Kathleen Juenemann.

A complete review of the evidence indicates now that the order, even in its

modified form, is not justified by the evidence.

Kevin Berglund (Berglund), the respondent, is not well received by the employees of the City of Maplewood with whom he deals. As he attempts to gather information about issues which appear before the Maplewood City Council and which often become subject matter of the TV program *Inside Insight*, he is given short shrift. He reacts by becoming more demanding, less courteous and at times offensive. His conduct, contrary to the assertions of certain Maplewood employees, has never been intimidating, threatening or assaultive. Berglund is a legitimate member of the media, gathering facts and presenting opinions on governmental action to the public. The testimony by Maplewood's employees centered around perceptions of Berglund's conduct that each deemed it to be disrespectful, aggravating, annoying, discourteous at times, and even exasperating. But there is no factual basis to conclude that Berglund's conduct had a substantial adverse affect on the safety, security or privacy of any of its employees.

Berglund would request information from the city employees. When that request for information was not met with a satisfactory answer or response, Berglund was undeterred. His single-mindedness, his intensity of pursuit, and his unwillingness to be stonewalled caused annoyance and consternation to certain Maplewood employees whose jobs were to respond to such citizen inquiries. Granted, Berglund made more inquiries, more insistently, more argumentatively, and less politely than most. However, the First Amendment Right is not dependent on any of those qualities. While Berglund often made the messenger suffer, failing to distinguish between who delivered the message and who sent the message, he still acted within his rights under the First

Amendment.

Those instances of misconduct such as contacting people at home, ambushing them by telephone calls made during the presentation of the program *Inside Insight*, were annoying to the recipients but still within the boundaries of acceptable First Amendment conduct.

A culture developed within the City of Maplewood to make Berglund's acquisition of information as difficult as possible and to punish him for perceived transgressions, all of which were related more to social etiquette than to safety, security or privacy issues. The limitations placed on his access to information developed from that culture, with each employee reinforcing his/her distaste for Berglund and elevating that distaste to something much greater than was actually proven at trial.

Much of the evidence centered around Berglund's conduct at City Council meetings. The city, of course, did not retain any of the video footage of the meetings. It knew that the best evidence of its claimed misconduct charges against Berglund if it existed, would be contained therein. Those portions of the City Council meetings preserved and presented by Berglund showed no misconduct worthy of a restraining order. Nor did the voice mail records.

Other than the affidavits presented in connection with the original application for the *ex parte* harassment order, there was little, if any, documentation by the city of any misconduct on Berglund's part.

Anything Berglund did was given an excessively negative interpretation, one not consistent with an objective view of the facts. The voicemail messages while frequent, do not by reason of content form a basis for a harassment order. Berglund admits

repetitive calls but indicates that those calls were necessary because his requests for information were ignored. The city is not a private citizen who may insist upon no contacts. The city is required to respond.

Maplewood's mayor testified that he too was present at council meetings and that he never saw Berglund act inappropriately or in the manner described by the witnesses in whose favor the *ex parte* order issued. If one person makes another "uneasy", or "defensive", such reaction cannot mandate the issuance of a harassment restraining order, unless such reactions stem from "...safety, security or privacy..." concerns, based upon conduct which directly impinges thereon.

Melinda Coleman's principal complaint against Berglund was that he called her during a dinner party, a call she never terminated nor told him she did not want to continue.

Kathleen Juenemann insisted she had to tell Berglund to get out of her way, that Berglund was blocking her egress. The videotaped portions of the City Council meetings do not support her version of the facts. Her additional complaints that he called at home and that she did not like his tone of voice do not arise to harassment. Moreover, her allegation that his conduct was inappropriate, let alone harassing, at the August 28, 2002 police civil service is not supported by the videotape of that meeting.

Roberta Darst is tasked by her boss, Richard Fursman, with picking up Fursman's voicemail messages. She complains that Berglund "grilled her" and was especially irate when he asked her where she live, a question that was put to her in the context of whether the city's employees ought to live within as opposed to without Maplewood's boundaries. Nothing in her testimony would justify the issuance of a

restraining order.

Karen Guilfoile and Karen Darst complained about the frequency of Berglund's requests, by phone and in person, for information. Karen Guilfoile is the City Clerk and equates her annoyance at Berglund's insistent and frequent request for information with the legal term "harassment". While she may feel "harassed", she was not "harassed" in the legal sense of the word.

The videotapes in evidence do not show that Berglund's conduct had a substantial adverse affect on Guilfoile's safety, security, or privacy, at least based upon her failure to so react when in his presence on the videotapes. Guilfoile, who sits next to the Chief of Police at council meetings, also admitted that she never complained to him about Berglund's conduct.

The asserted justifications for the *ex parte* order based upon the claimed adverse affects on the safety, security or privacy of the four remaining persons protected by the modified harassment restraining order was not proven at trial.

MFF