

IN THE UTAH COURT OF APPEALS

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Roger Bryner,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20060405-CA
v.	)	
	)	F I L E D
Lana Bryner,	)	(May 24, 2007)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 182</span>

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Third District, Salt Lake Department, 060903365  
The Honorable Denise P. Lindberg

Attorneys: Roger Bryner, Midvale, Appellant Pro Se  
Emily A. Broadhead-Smoak and Thomas J. Burns, Salt  
Lake City, for Appellee

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Before Judges Bench, McHugh, and Orme.

PER CURIAM:

Roger Bryner (Mr. Bryner) appeals the dismissal of an ex parte civil stalking injunction and the denial of a permanent stalking injunction against Lana Bryner (Ms. Bryner). Mr. Bryner's claims that only he, as Petitioner, could dissolve the ex parte civil stalking injunction and that Ms. Bryner was not entitled to a hearing seeking dissolution are without merit and contrary to the plain meaning of the stalking statute. See Utah Code Ann. § 77-3a-101 (2003). We summarized the procedures applicable to civil stalking injunctions in Ellison v. Stam, 2006 UT App 150, 136 P.3d 1242, as follows:

Once a proper petition is filed, and the trial court "determines that there is reason to believe that an offense of stalking has occurred" under [Utah Code] section 76-5-106.5, "an ex parte civil stalking injunction may be issued by the court." Id. § 77-3a-101(5); see id. § 77-3a-101(1). However, "[w]ithin ten days of service of the ex parte civil stalking injunction, the respondent is entitled to request, in writing, an evidentiary hearing on the civil stalking

injunction." Id. § 77-3a-101(6). "At the hearing, the court may modify, revoke, or continue the injunction," and "[t]he burden is on the petitioner to show by a preponderance of the evidence that stalking of the petitioner by the respondent has occurred." Id. § 77-3a-101(7). In other words, to avoid having the injunction revoked, the petitioner must demonstrate by a preponderance of the evidence that respondent's conduct satisfies the elements of section 76-5-106.5. See id. § 77-3a-101(1), (7).

Id. at ¶20 (second and third alterations in original). Ms. Bryner made a timely request for a hearing after service of the ex parte civil stalking injunction. In compliance with the applicable statute, the district court held an evidentiary hearing to determine whether the civil stalking injunction should be dissolved.

Mr. Bryner contends that the district court incorrectly found that an earlier civil stalking injunction was dismissed "with prejudice." There is no record support for this assertion. The district court correctly stated that the original civil stalking injunction was dismissed pursuant to stipulation and without prejudice. The district court's ruling reflects that it considered all allegations on the merits to determine whether they would support a finding of a "course of conduct" of stalking. There is no error or prejudice shown in the district court's consideration of claims made in support of the earlier civil stalking injunction.

Mr. Bryner also claims that the district court erred in ruling that the scope of his action was limited to a proceeding under section 77-3a-101 and could not encompass his tort claim for intentional infliction of emotional distress. Mr. Bryner chose to initiate a civil stalking injunction proceeding under section 77-3a-101. However, on the following day, he amended his petition to assert the claim for intentional infliction of emotional distress. Mr. Bryner could have filed a separate civil proceeding asserting his tort claim, but he could not pursue it in statutory proceedings constrained by section 77-3a-101. The district court did not err in limiting the scope of the proceeding to conform to the statute.

Mr. Bryner contends that the district court erred in failing to make a finding that Ms. Bryner allegedly "flipping him off" constituted stalking. This claim is inadequately briefed. In addition, we note that the court's detailed ruling contains a

careful analysis of each specific allegation claimed to constitute stalking under statute and case law in order to determine whether Ms. Bryner engaged in a "course of conduct directed at" Mr. Bryner that would cause "a reasonable person" to be in fear of bodily injury or to suffer emotional distress. Id. at ¶19 (citing Utah Code Ann. § 76-5-106.5(2)-(3)(2003)). We conclude that the district court considered the alleged conduct "cumulatively in light of all of the facts and circumstances of the case." Id. at ¶38.

Mr. Bryner next contends that the district court abused its discretion in stating that the parties were combative and highly inappropriate with one another. The district court's observation does not support any claim of error in dismissing the civil stalking injunction that is the subject of this appeal.

Finally, Mr. Bryner contends that the district court erred in holding the evidentiary hearing prior to entry of a written order denying his motion to disqualify the assigned judge. At the hearing, the trial judge stated that Mr. Bryner had filed a motion to disqualify her, and after determining that the grounds were legally insufficient, she referred the motion to Judge Hilder, who was assigned to consider issues regarding judicial disqualification. The trial judge stated that she had been instructed by Judge Hilder to proceed based upon his determination that insufficient grounds for disqualification were stated. Neither party objected to proceeding before entry of a written order. In the ruling issued following the April 11 hearing, the trial judge stated:

Prior to commencing the proceedings the Court noted for the record that it had received and reviewed [Mr. Bryner's] motion to disqualify the Court. The Court informed the parties that upon review of the motion, it had found the request to state insufficient grounds for disqualification. Having so found, the matter had been referred to the Associate Presiding Judge (Judge Hilder) for his further review and determination pursuant to Utah R. Civ. P. 63. The Court also informed the parties that Judge Hilder had reviewed the request and had orally informed the Court had he had also found no grounds for disqualification and therefore had denied [Mr. Bryner's] motion. As directed by Judge Hilder, the Court informed the parties that Judge Hilder would be entering a written ruling by the end of the day, but had given his approval for the Court to proceed with

the hearing. Based on Judge Hilder's direction, the Court then held the scheduled hearing.

Any error in proceeding prior to entry of a written order on the motion to disqualify was not preserved. In addition, rule 63(b) of the Utah Rules of Civil Procedure states, in relevant part, that a judge whose disqualification is sought may certify the motion to a reviewing judge, after which "[t]he judge shall take no further action in the case until the motion is decided." Utah R. Civ. P. 63(b)(2). The trial judge took no further action until notified by Judge Hilder that he found no grounds requiring disqualification and, therefore, the hearing could proceed as scheduled. Mr. Bryner did not make a timely objection to the lack of a written order and allowed the hearing to proceed without objection. The district court did not err in proceeding with the scheduled hearing.

The remaining arguments are inadequately briefed and do not merit further analysis. See State v. Thomas, 961 P.2d 299, 305 (Utah 1998) (stating an issue is inadequately briefed "when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court"). We affirm the district court's decision.

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Russell W. Bench,  
Presiding Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge