

FILED
Superior Court of the State of Washington
For the County of Yakima

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SUPERIOR COURT JUDGES

Judge Kevin S. Naught
Judge Michael G. McCarthy
Judge Douglas L. Federspiel
Judge Blaine G. Gibson
Judge David A. Eloffson
Judge Ruth E. Reukauf
Judge Gayle M. Harthcock
Judge Richard H. Bartheld

Yakima County Courthouse
128 North Second St.
Yakima, Washington 98901

SUPERIOR COURT
COUNTY OF WASHINGTON

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January 19, 2018

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Re: Junghee Kim Spicer, et.al. v. Paul Patnode, et.al
Cause No. 16-2-01465-39

Dear Mr. Plant and Mr. Hinckley:

This shall serve as my letter opinion following the bench trial on January 17 and 18. This is the fifth legal action between the parties. The following people testified: Junghee K. Spicer, Aimee Marie Packard, Scott Howard Martin, Jaden Michael Anderson, Charlene Cruz, Janis Murel Swart, Janna Christine Jackson and Merle Paul Patnode.

In 2005 Paul Padnode moved to 113 Lyle Loop in Selah, Washington. In 2006 David and Junghee Spicer, moved across the street at 101 Lyle Loop Road. The neighbors got along until approximately 2012. In 2012, David Spicer suffered from a stroke and ultimately took an early retirement from his music teaching employment at a local middle school. Both Spicers are highly educated and accomplished music teachers. In 2012 in an effort to bring money into the household, Mrs. Spicer, who teaches piano began to take on more piano students. She teaches mostly children. In the summer of 2012 she obtained a conditional use permit (CUP) from the county of Yakima and ultimately was able to take up to 6 piano students per day (30 per month). Throughout 2012, Mrs. Spicer increased the number of her students from 15 to 18 per month.

Trouble began between the neighbors in 2012. Mr. Patnode complained to the Spicers about the home-based piano teaching business. After speaking to the Spicers, without results, Mr. Patnode complained to the County. He later complained to the City of Selah after the City annexed the neighbors' property in 2014. Mr. Patnode complained, *inter alia*, about the traffic, damage to his property, noise from car doors slamming and locking alarms, failure to park in the Spicer's driveway, music noise and headlights coming into his home. Mr. Patnode was told by the County to document violations of the CUP. He did this by means of a previously installed surveillance video camera and photographs. When the properties were annexed by the City of Selah, Mr. Patnode and the City of Selah both believed that the CUP continued in effect through the annexation of the parties' property from 2014 through the summer of 2016. Mr. Patnode continued to document what he believed to be violations of the CUP.

After Mr. Padnode's first formal complaint to the County in 2012, Mrs. Spicer sued Mr. Patnode in District Court to obtain an Order for Protection for Unlawful Civil Harassment. She was successful in obtaining the order. Thereafter, Mr. Patnode sued the Spicers for a similar order. Upon agreement both cases were dropped. Mrs. Spicer had the court dismiss her order. Subsequently, Mr. Patnode sued the Spicers in the Yakima County Superior Court in 2012 for violation of the covenants, conditions and restrictions (CCRs) of their housing development and for nuisance. That case was dismissed for Mr. Patnode's "unclean hands" (having a tenant in his home) and he was ordered to pay over \$30,000 in the Spicers costs and attorneys fees pursuant to the CCRs.

In September 2014, the Spicers incorporated their business as Yakima Art Academy, LLC and moved some of their music lessons to an alternate location. They ultimately moved all of their lessons to various other locations.

In 2016 Mrs. Spicer filed a new petition for an Antiharassment restraining order, this time in Yakima County Superior Court. In part the petition was based upon the fact that Mr. Patnode parked various vehicles on the side of the Spicer's residence where Mrs. Spicer's piano students were dropped off and/or had to access her home by a gate on the side of her home facing the Patnode home. Mrs. Spicer was successful in obtaining a Restraining Order. The order required that Mr. Patnode and his household to no longer park their vehicles on the street next to the Spicer residence. The court found that Mr. Patnode was remotely starting his vehicles and doing so on purpose repeatedly for the purpose of harassing the Spicers, making their lives more difficult. It appears that was the sole basis for the granting of the restraining order.

In 2016 the Spicers filed suit in the instant case claiming that Mr. Patnode had tortuously interfered with their contracts with piano students and that his actions caused intention infliction of emotional distress. A partial summary judgment was granted pursuant to the doctrine of collateral estoppel based upon the findings in the 2016 restraining order case. It was found that:

As a matter of law, the defendant (1) engaged in a knowing and willful course of conduct directed at plaintiff Junghee Spicer in the fall 2015 and continuing to the spring of 2016; (2) the conduct of defendant seriously alarmed, annoyed, harassed or was detrimental to plaintiff Junghee Spicer; (3) the conduct of the defendant served no legitimate or lawful purpose; and (4) the conduct of defendant was of such a nature as would cause a reasonable person to suffer substantial emotional distress; and (5) the conduct of defendant actually caused substantial emotional distress to plaintiff Junghee Spicer.

The pertinent facts based upon the testimony regarding the instant claims are that in the fall of 2014 Mr. Patnode took photos of Janis Swart and her children from about 5 feet away. Mr. Patnode was taking cell

phone photos to demonstrate to the county or city that there were violations of the CUP. On or about Thanksgiving of 2015 through March 24, 2016, Mr. Patnode parked his F250 diesel pickup on the sidewalk next to the side of the Spicer's residence. This is also the side of the residence where the students, who were primarily children, of the Spicers would walk to get to a walkway that led to a gate in their fence. After walking through the gate, the children would walk through the Spicer's back yard to access the home to the music studio. Not only did Mr. Patnode park his F250 there, but he and others related to him or his household, parked other vehicles along the Spicer's side of the street along the sidewalk. This included a Hummer, a box truck and a sedan. Most consistently the F250 was parked there from Thanksgiving 2015 until March 24, 2016.

Testimony from the Spicers, one student and three of the students parents established that Mr. Patnode was regularly and repeatedly remotely starting his F250 pickup when the Spicers, their students and the students' parents walked by the F250. Mrs. Spicer observed this about a dozen times and Mr. Spicer observed this about 6 times. Ms. Packard testified that the engine was "revved" and bright lights flashed into her car which startled her. She also heard an alarm go off. She was scared, concerned and nervous. Because she was so concerned, Mrs. Spicer agreed to teach piano lessons to Ms. Packard's children at the Packard home and they continued to take lessons. Mr. Anderson, a student, testified that that when he walked by the F250, the engine would rev excessively and that exhaust from the F250 hit him in the leg. He testified that this occurred regularly over approximately 5 months. He continued to take lessons. Charlene Cruz, another parent, had a similar experience and reaction to Ms. Packard's. She described that the F250 would start as someone walked by and that the horn would honk repeatedly for a long time. She also kept her children in lessons despite her concerns.

No convincing testimony was provided that the Spicers or YAA, LLC lost business from a breach of contract or loss of referral or reputation damage as a result of the actions of Mr. Patnode. There was no convincing proof that there was damage as a result of same. What did happen is that the Spicers and YAA, LLC began to move their music lesson business to various other locations.

Mrs. Spicer testified and the facts show that as a result of Mr. Patnode's conduct, she suffered emotional distress. She became fearful for herself, her children, and her students. She suffered from anxiety and insomnia and began to take anti-anxiety medications. She continued to take this type of medication to the time of trial. Mr. Spicer testified that his distress was not severe but not mild either.

Based upon the foregoing facts and having considered case law, the following are the conclusions of law and order:

1. That while there were valid contractual relationships between the Spicers and their students' families and Mr. Patnode had knowledge of same and intentionally attempted to interfere with those contracts, there is not sufficient proof that he successfully did so. He was not the cause of a breach or termination of any contractual relationship that the Spicers had. Nor did he cause damage to their reputation causing lack of referrals or new business. As a result they suffered no damage. The claim for intentional interference with the plaintiffs' contractual relationships or business expectation fails.
2. As to the claim of intentional infliction of emotional distress, the plaintiff, Mrs. Spicer, prevails. Mr. Spicer does not and there can be no claim by YAA, LLC for this tort.

- a. The four month period of time in which Mr. Patnode remotely and repeatedly started his F250 pickup (which included revving the engine, lights turning on and repeated honking) which he parked next to the Spicer's residence where children/students and their parents were walking to lessons at the Spicers' is outrageous conduct. The conduct was directed at children, their parents and at Mrs. Spicer to ultimately interfere with the teaching business and cause distress to Mrs. Spicer. It went beyond all possible bounds of decency and is regarded as atrocious by this court and utterly intolerable in a civilized society.
 - b. The behavior was intentional by Mr. Patnode and he knew that it would cause or inflict Mrs. Spicer with emotional distress.
 - c. The intentional behavior did in fact cause Mrs. Spicer emotional distress and the distress was severe for purposes of this outrageous behavior. It caused Mrs. Spicer to suffer from anxiety and insomnia and begin to take anti-anxiety medications, which she continues to take.
3. Mrs. Spicer has proven her case of intentional infliction of emotional distress against Mr. Patnode. As a result, damages are ordered and awarded to Mrs. Spicer in the amount of \$40,000 against Mr. Patnode and his marital community.

The parties shall prepare the final papers and set them for presentation to be heard within 30 days.

Sincerely,



Gayle M. Harzhcock, Judge
Yakima County Superior Court