

**IN THE DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA,
SECOND DISTRICT**

RICHARD BRADBURY,
Appellant,

vs.

CASE No.: 2D07-423
L.T. Case No. 03-006649-CI
Sixth Judicial Circuit
BAR NO.: 0234052

MELVIN SEMBLER
and BETTY SEMBLER,

Appellees.

_____ /

APPELLANT'S REPLY BRIEF

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I
INTRODUCTION

The scope of this reply brief is narrow, and focuses only on the argument made by the appellees relating to the stipulation between the parties regarding the conduct of Richard Bradbury (“Bradbury” or “the Appellant”) as it related to the statutory injunction which remains in force. The remainder of the answer brief deals with matters fully covered by the Appellant in the Initial Brief, thus a lengthy reassertion of what has already been argued would be repetitious and a waste of this Court’s time.

II THE SCOPE OF THE STIPULATION IS BROADER THAN APPELLEES SAY

The scope of the stipulation into which the parties entered on December 28, 2006 is made clear in the words of the author of the Answer Brief which now attempts to repudiate them. On that date, and in open Court the undersigned's learned brother Leonard Englander, Esq. said, "[D]efendant does challenge the constitutionality of Florida Stalking Statute, *the determination of which shall solely be through defendant's motion and memorandum in support of summary judgment and the plaintiff's motion for summary judgment.*" (Emphasis added) (R 1279 lines 20 et seq. and R 1280 Line 1; Transcript of December 28, 2006 proceedings before the Hon . Mark Shames - p. 4 lines 20 et seq , and p 5 line 1). Therein lies the link between the Stalking Statute and the behavior of Richard Bradbury because that link is precisely the argument made by Bradbury in the motions and memorandum to which reference was made. Moreover, the initial brief filed in this appeal strictly followed those arguments to reach the conclusion it did.

Even without such a precise stipulation citing specific arguments already presented it would be senseless and illogical to ask this court for what would

amount to an advisory opinion if a particular course of behavior could somehow be disentangled from a statute controlling the behavior of a citizen.

What the appellees are trying to do is claim that by admitting that the Appellant engaged in the exact course of conduct of which he was accused, that he also surrendered his First Amendment rights, a proposition which defies all reason. As argued in the Initial Brief, the Appellant's conduct was lawful and the juxtaposition between his conduct and the application of the statute necessarily renders the language of the statute vague and over-broad.

The remainder of the Appellee's tautological argument, goes like this: "We content Bradbury is a stalker; stalking is illegal and unprotected activity; therefore Bradbury engaged in illegal activity. Moreover, their reliance on *Patterson v. The Tribune Company*, 146 So. 2d 623 (Fla. 2d DCA 1962) is badly misplaced because its underpinnings have been overturned by the United States Supreme Court.

Patterson, supra dealt with the removal of trash set out to be collected, something that was invasive of privacy at the time (almost a half century ago). That premise was overruled by *California v. Greenwood*, 486 U.S. 35,39,40 (1988) which holds there is no privacy interest in garbage set out to be collected. Thus, the garbage Bradbury collected was lawfully obtained which in turn means

the information contained therein may be published as was decided in *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (Holding that private information lawfully obtained can be published without the state imposing statutory restrictions on such publication).

CONCLUSION

Appellee's own lawyer read into the record that the scope of the stipulation of the parties was everything argued in the Appellant's motion and memorandum in opposition to a summary judgment on the stalking issue. This argument included the inexorable linkage between the conduct and the application of the statute in question to it. For the foregoing reasons and for the reasons set forth in the initial brief, therefore, the decision of the trial court should be reversed, and remanded with instructions that Florida's Stalking Statute is unconstitutional and that the Appellant's remedy to injunctive relief is restricted to such relief as is proscribed by the Florida Rules of Civil Procedure.

Respectfully Submitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via regular first class US mail to: Leonard S. Englander, Esq., Englander & Fischer, P.A., 721 First Avenue North, St. Petersburg, FL 33701 on this 3rd day of January, 2008.

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