E-FILED
THURSTON COUNTY, WA
SUPERIOR COURT
05/29/2024 - 12:39PM
Linda Myhre Enlow
Thurston County Clerk

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❑ **EXPEDITE**
❑ **Hearing is set:**
Date: 5/31/2024
Time: 9:00 a.m.
Judge/Calendar: Hon. Anne Egeler

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SAVE THE DAVIS-MEEKER GARRY OAK,

Plaintiff,

vs.

DEBBIE SULLIVAN, in her capacity of Mayor of Tumwater,

Defendant.

NO. 24-2-01895-34

REPLY IN SUPPORT OF MOTION TO DISSOLVE EX PARTE TEMPORARY RESTRAINING ORDER

I. A TRO ISSUED WITHOUT NOTICE IN VIOLATION OF CR 65 IS VOID

When a party obtains a temporary restraining order, the moving party must provide notice or, if it is sought ex parte, must certify to the court the efforts made to notify the adverse party and certify the reasons why such notice should not be required. CR 65(b). As early as 1900, the Washington Supreme Court held in *In re Groen*, 22 Wash. 53, 56, 60 P. 123 (1900), that these prerequisites exist to ensure that parties are afforded minimum due process protections.

The United States Supreme Court said much the same in *Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers Local No. 70 of Alameda County,* 415 U.S. 423, 439, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974), stating the "stringent restrictions imposed [by Federal Rules of Civil Procedure Rule 65(b)] on the availability of ex parte temporary restraining orders reflect the fact

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that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute." *In re Estates of Smaldino*, 151 Wn. App. 356, 368, 212 P.3d 579, 585 (2009). Because CR 65(b) was modeled on the federal rule, Washington courts look to federal decisions for guidance in construing it. *See Bryant v. Joseph Tree, Inc.,* 119 Wash.2d 210, 218–19, 829 P.2d 1099 (1992).

Plaintiff here disregarded the minimum dictates of due process and obtained a temporary restraining order without notice to the City, and without certifying the reasons why such notice should not be required. In these circumstances, the TRO is void. *In re Estates of Smaldino*, 151 Wn. App. 356, 367–68, 212 P.3d 579, 584–85 (2009); *Dep't of Labor & Indus. v. Fowler*, 23 Wn. App. 2d 509, 532, 516 P.3d 831, 844 (2022), *review denied,* 200 Wn.2d 1027, 523 P.3d 1184 (2023).

The plaintiff's paltry efforts here to provide notice were not described in her declaration. Indeed, there was no motion for a TRO to inform the ex parte judge as to the legal requirements of CR 65 or RCW 7.40.050. Her phone message stated only the fact that she would be seeking a TRO about the Meeker tree. It failed to provide "reasonable notice of the time and place of making application", as required by RCW 7.40.050. Her declaration contains a single conclusory paragraph stating that she left a voicemail that she was filing a lawsuit and motion for TRO. No such motion was actually filed. Her declaration did not certify "the reasons supporting the applicant's claim that notice should not be required" as it is required to do under CR 65(b).

The failures to address the requirements of CR 65(b-d) here is comparable to In *Renner v. Williams,* 140 Colo. 432, 344 P.2d 966 (1959) where the Colorado Supreme Court set aside a contempt order, holding that the underlying ex parte restraining order was "completely devoid of virtually all of the requirements of [Colorado Rule of Civil Procedure] 65(b), (c), and (d)." The order did not set a time

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