



Date: May 9, 2008

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## **ULF CARLSSON WINS APPEAL**

### ***Judge McBrien's Behavior 'Openly Violated' Due Process***

**SACRAMENTO, CA --** By SHERRI M. OKAMOTO, Staff Writer - Metropolitan News-Enterprise

A trial judge's improper behavior during a routine marital dissolution deprived a litigant of his due process right to a fair hearing, the Third District Court of Appeal ruled yesterday.

Vacating Sacramento Superior Court Judge Peter James McBrien's decision, the appellate court held in an unpublished opinion that the trial judge's conduct had so infected the integrity of the process that reversal was required without an assessment of actual prejudice.

The matter arose over McBrien's conduct while presiding over the two-and-half day proceedings in the marital dissolution of Ulf Johan Carlsson and his wife, Mona Lea Carlsson.

Throughout the proceedings, appellate court justice Justice M. Kathleen Butz opined, McBrien manifested impatience with the proceedings by repeatedly indicating that he would declare a mistrial if the matter did not conclude quickly. Butz wrote that McBrien "pressured" Carlsson's attorney into "rushing through her presentation and continuing without a break."

Yet, Butz noted, McBrien frustrated the trial's progression by issuing a sua sponte order that Carlsson produce certain financial documents that Carlsson was required to file as a public employee, even though the judge acknowledged that the documents were not relevant to the divorce proceedings.

After Carlsson's attorney suggested that her client may want to assert his Fifth Amendment right against self incrimination if Carlsson had made any mistake in filling out the forms, McBrien asked her whether he should hold her in contempt for refusing to produce the forms.

McBrien abruptly ended the proceedings by excusing himself to take a phone call right after Carlsson's trial attorney, Sharon Huddle, called a witness to the stand and was in the midst of asking the witness a question.

The judge never returned to the bench and later issued a written ruling against Carlsson on almost every issue.

On appeal, Butz concluded that McBrien's behavior "openly violated" the precepts of due process.

She wrote:

"The trial court essentially ran the trial on a stopwatch, curtailing the parties' right to present evidence on all material disputed issues.... This method of conducting a trial cannot be condoned in a California courtroom."

Justices Cole Blease and Rick Sims joined Butz in her opinion.

Upon learning of the appellate court's decision, Huddle exclaimed joyfully: "Thank God! After all these years!"

Huddle said that, in her 25 years of practicing, she had never seen a judge walk out of the courtroom.

"I was absolutely astounded," she said. "What's the public to think?"

Huddle expressed disappointment that the decision was unpublished, saying that she had hoped the court would "make an example" out of McBride's conduct. However, she reasoned, "maybe [the appellate court] thought this was so aberrant that's why they didn't publish it."

The Commission on Judicial Performance could not confirm whether a complaint had been filed or investigation had ensued based on McBrien's conduct in this case, although Carlsson said that he believed his appeal constituted the filing of a complaint.

In April 2002, the CJP publicly admonished the jurist after he pleaded guilty to misdemeanor vandalism for chopping down oak trees on public land because they obscured the view of the American River from his home.

Huddle opined that McBrien's "disrespect for the public is very similar for his disrespect for public rights," and that a "very similar mindset" is required for a judge to walk off the bench and to cut down trees on public land.

She adamantly declared that a judge's first priority is to be a public servant, and that divorce judges should "have a greater obligation to make sure that things have at least a semblance of fairness" because for many people, "divorce is the only time people make it to court, and this may be the only time they ever see our justice system."

Carlsson, a native of Sweden, said, "This is supposed to be a good place, a good country, with a good legal system."

He added:

"When you go into a court room you think you're going to get a fair trial, you know get my day in court, and the opposite happened."

He called the trial proceedings a "three ring circus."

Carlsson said that, after he appealed McBrien's decision, he lost his job despite an "unblemished" employment record.

He had previously publicly accused McBrien of drawing his employer's attention to the financial reporting documents that the judge had demanded, and of being responsible for his termination.

Carlsson declined to elaborate on those accusations, but said that he is trying to get his old job back and has filed an appeal to the state personnel board.

He had also previously made allegations that the judge had tampered with the appellate record, and said that other litigants before the judge had made similar complaints. However, he similarly declined comment on these previous remarks.

Even though Carlsson said he is still struggling to recover from the emotional and financial toll these legal proceedings have taken on him—he estimated that he is between \$200,000 to \$300,000 in debt as a result of attorney fees, expert witness fees, losing his job, and other costs associated with the divorce—he said, following yesterday's decision:

“Hopefully good things are going to happen now. Good ju-ju. Finally justice prevailed. I had my doubts about this country but...when you get down to it, you may have to fight hard for it, but there really is justice here.”

Carlsson is also involved in an effort to recall McBrien.

Supporters of the effort have circulated a petition claiming that the judge inflicts “evil terrorism” from the bench and poses an “extreme danger to children and parents.” The petition references the Carlsson case, decisions in 1998 and 1989 in which the judge is accused of placing children in the homes of physically or sexually abusive parents, and the 2002 tree-cutting incident.

Based on the stories told to him by other “victims” of the judge, Carlsson said that “my story is nothing compared to what happened with the others.”

Carlsson said that the group behind the recall effort is determined to gather the requisite number of signatures and vowed, “We are not going to go away.”

McBrien and counsel for Carlsson's wife could not be reached for comment.

The case is In re the Marriage of Carlsson, C053515.

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