

21-4-00443-34
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THURSTON COUNTY, WA
SUPERIOR COURT
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Linda Myhre Enlow
Thurston County Clerk

EXPEDITE (If filed within 5 court days of hearing)

Hearing is set

Date: 7-22-21

Time: 10:30am Zoom #: 242-974-5214 Rm:4

Judge/Calendar: Rebekah Zinn/Motion Reconsider

**Superior Court of Washington
for Thurston County Family &
Juvenile Court**

In re: Emergency Guardianship of
Hazel Belle Ursa Smith

Respondent(s): Minor Child(ren)

No. 21-4-00443-34

AMENDED

Counter--Affidavit to
James Wells' Declaration

By JOHN SMITH

(Cover Sheet)

TITLE OF DOCUMENT

**AMENDED Counter-Affidavit to James Wells' Declaration
by JOHN SMITH**

**NAME: John Smith, grandfather
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Counter-Affidavit to James Wells' Dec
pinbalwyz@yahoo.com

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**Counter-Affidavit to
James Wells' Declaration
by JOHN SMITH**

TO: The Clerk of the Thurston County and Juvenile Court, (360)709-3260, 2801 32nd AVE SW,
Tumwater, WA 98512;

AND,

Breckan Scott-Gabriel, bar #:41585, attorney for Kathryn Stoker (maternal grandmother) and Hans Stoker (husband of Kathryn Stoker, but NOT the grandfather), PO Box 1123, Yelm, WA 98597-1123, PH. (360)960-8951, fax (360)485-1916, e-mail: breckan@breckanlaw.com;

AND,

Selena Ursa Smith, mother, e-mail: doublekachina007@protonmail.com, domiciled in Oregon mailing address: 6901 26th Ct SE, Lacey, WA 98503, Ph. (971)803-9898

AND,

Robert Ayers (father), e-mail: unknown, Ph. unknown, address: unknown

I Identity of Parties

I, John Smith (grandfather of the subject minor(s) in this action) enter this counter-affidavit to James Wells' Declaration into the record, without counsel of necessity, pro se, for this court's consideration as the truth and nothing but the truth. I reserve the right and continue to object to the jurisdiction of this court as stated below under JURISDICTION. I also **object to Shelley Brandt presiding** over ANY aspect of this case due to her having received money from the Stokers, previously represented my ex-wife, Kathryn Stoker, a party herein, against myself who seeks to join this action and she nearly precipitated a physical altercation with me during that custodial litigation years ago. She also represented my daughter, Selena Smith, a party to this action. A fair hearing without her recusal cannot be had.

Kathryn Stoker (maternal grandmother) and her husband, Hans Stoker (who is NOT the grandfather of the children, contrary to his and his wife's sworn misrepresentations in their filed pleadings to this court)

Counter-Affidavit to James Wells' Dec
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2 PO Box 1711, WA 98584

brought this action before this court well BEFORE the young children at issue had been evaluated by any qualified Family and Children's social worker within the State of their domicile or oversight of a state court properly presiding over the same, i.e. Oregon, where this court's emergency ex parte order to seize the children was executed around midnight and they were spirited, under cover of darkness, out of Oregon after handing off the very young three to the Stokers at a gas station adjacent to I-5 north of Eugene that night. The seizure was executed, as described at midnight, 5-30-21 in/near Oakridge, OR, the initial ex parte emergency petition for seizing my 3 grandchildren was filed 5-27-21, the order granting the petition was entered on 5-28-21. The Stokers filed their petition prior to the children being examined and evaluated precisely to deny their mother and my grandchildren due process with this court's approval, aid, and abetment under color of state law in violation of Oregon's sovereignty, the federal ADA (Selena has only one hand), her status as a destitute DV survivor (contrary to UCCJEA requirements, and in violation of meaningful protection under the 6th and 14 Amendment as well as principles laid out in Troxel vs. Granville (530 U.S. 57) and the notorious Elian Gonzalez international case.

JURISDICTION

The Petitioners (Stokers) are longtime residents of and domiciled in Thurston County, Washington.

I, John Smith (grandfather), am the one seeking to join this action. My daughter left Washington State without any intention of returning **more** than 6 months prior to the date my grandchildren were seized in Oregon where Selena Smith resided and was domiciled with her children. She returned briefly in March to recover some of her property, from the Stokers, but did not reside in Washington. The Stokers misused this date to deceive the court into believing less than 6 months had lapsed since Selena left Washington in late November, 2020 as a DV survivor with her 3 young children. Thus, this court does not have proper in personam or subject matter jurisdiction even if there had not been a less than 6-month absence of my grandchildren residing/domiciled in Washington. **In light of these facts, all actions/orders taken/entered by this court are void ab initio.** The basis for this court's rulings have been fraudulent misrepresentations and deception submitted to this court by the Stokers.

Selena Smith, the mother of the very young child(ren) at issue in this cause, due to DV, fled the State of Washington with my grandchildren prior to 11-21-20, which is the date James Wells (her boyfriend) filed a DV Protection Petition (20-2-30761-34 | JAMES DANIEL WELLS, Jr vs SELENA URSA SMITH) after she left Washington State to preserve her and her children's safety. Mr. Wells' purpose was to use the children (who he sought custody of in the petition) to support himself. The petition was denied by Court Commissioner Rebekah Zinn. Mr. Wells is currently sleeping near Mt. Adams, and is non-compliant with a DV protection order issued by the court prohibiting him from contact with my grandchildren.

Selena Smith, filed a petition for DV protection, alleging Mr. Wells was violently abusive with her and the children, an alcoholic, and in need of anger management classes. Court Commissioner Rebekah Wells ruled in Selena's favor and ordered Mr. Wells, a convicted felon, to surrender his firearms. This action was filed by the mother from out of State. Selena personally appeared electronically before this court (Court Commissioner Rebekah Zinn, presiding) from an out of state DV women's shelter, filed the declaration of an advocate associated with that shelter confirming evidence she'd seen what appeared to be stalking while Selena was staying in that out-of-state DV shelter. I, John Smith, observed the proceedings.

(20-2-30788-34 | SELENA URSA SMITH vs JAMES DANIEL WELLS, Jr)

Counter-Affidavit to James Wells' Dec
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i.e. For longer than 6-months, Selena Smith, and her children had left and no longer resided in Washington State prior to having her 3 children seized around midnight on 5-30-21 under the color of Washington State law via an ex parte emergency guardianship order executed beyond Washington's own borders in a foreign state (Oregon). Court Commissioner Rebekah Zinn was either well aware Selena had left Washington State with her children (or should have been) more than 6 months before the instant case had been filed. Selena was under no legal obligation to inform the Stokers of her whereabouts, nor did the Stokers have standing to object since there was no court order granting them standing, custody, or visitation. Yet they conspired to track Selena cross-country in conjunction with NJ security guard Robert Kurtz for months wherever she went using her I-phone to do so.

THIS COURT HAS REPEATEDLY CONFLATED NORMAL UCCJEA TYPE CUSTODY DISPUTES INVOLVING PARENTS/GUARDIANS WITH EX PARTE EMERGENCY PETITIONS FOR GUARDIANSHIP OF MINORS ORDERS EXECUTED OUT-OF-STATE, EFFECTIVELY STRIPPING THE RESPONDENT(S) OF ALL MEANINGFUL DUE PROCESS IN ALL BUT NAME ONLY. FOR THIS REASON, THE VERIFIABLE RATIONALE FOR DOING SO (IF IT IS NOT AN IMMUTABLE ABUSE OF PROCESS AB INITIO) MUST BE ASSURED. It was not. (See Exhibits 'F' & 'G'). Thus the unceasing ongoing objection to jurisdiction continues irrespective of the perjured and fraudulent declaration of security guard without portfolio AND NO "PROFESSIONAL CREDENTIALS in children's services or authorization from New Jersey to criminally stalk Selena Smith across the nation—a "nationwide manhunt" of 3...the Stokers and Robert Kurtz. He misrepresented his position to police agencies in other jurisdictions and made use of numerous criminally unlawful means of invading Selena Smith's privacy for months in tandem with the Stokers whose purloined information he used. Notwithstanding the evidentiary value of his sworn Declaration, his lies to other agencies regarding his authority, his credentials, Robert Kurtz's statements should be discounted/ignored and any evidence presented through his office should be suppressed. Robert Kurtz has tainted this entire process and this court along with any basis for its jurisdiction in this matter. Ergo, the court should vacate its rulings under Rule 60(b) and dismiss this case with extreme prejudice.

Even case officers with the New Jersey Division of Children & Families admitted they had no authority to use a New Jersey Court Order (under the circumstances) to order law enforcement in Oregon to seize Selena's children upon New Jersey's direction, although security guard Robert Kurtz was indifferent to the invasion of my privacy when we spoke. When Kurtz's actions were challenged, a case worker supervisor retorted it was NJ Division of Children & Families 'policy' to track or find missing families/children when receiving reports/suspicions of the same. **Except...there WERE NO missing children!** They were with Selena, their mother, who had no legal duty to provide the State of New Jersey or the Stokers with such information. Nor was there a nation-wide manhunt for her, only the illegal surveillance conducted by NJ security guard Robert Kurtz and the Stokers, the means by which he chose **not** to reveal in his declaration submitted to this court to avoid incriminating himself.

Robert Kurtz was acting only on his own without authority from his agency or direction to invade Selena's privacy by conspiring with the Stokers who were using software on her I-phone to track, unbeknownst to Selena, her movements, purchases, bills and confidential health/billing records obtained by opening her mail without permission (as well as rifling through her personal papers left where she once resided on the Stoker property). Adding outrage to injury, the Stokers kept the notices intended for Selena of fines received in the mail they opened rather than forwarding it to her new mailing address of which they were aware—putting her Driver's License at risk of suspension for want of notice. They used the unlawfully

Counter-Affidavit to James Wells' Dec
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4 PO Box 1711, WA 98584

acquired document to try and prejudice the court against her. They may have succeeded, denying Selena fairness in these proceedings, or even the appearance of fairness.

This rogue action by a Washington Family Court fails what even grade school children would recognize as the **SMELL TEST**. The statutory construction of a normal petition for guardianship of minors in Washington State replete with a full complement of meaningful due process is very different from an ex parte emergency petition for guardianship of minors with effectively **no meaningful due process**. Accordingly, the ex parte judicial excess of Washington's judiciary ought to be a pleasure enjoyed by its own citizens which it is accountable to rather than being visited upon the citizens of foreign states.

In *Troxel vs. Granville* (530 U.S. 57), the U.S. Supreme Court pronounced Washington's Courts interpretation of the 'best interests' of the child(ren) "breathtaking in scope"! Additionally, it concluded a parent's bond with their minor children was so fundamental a right that a state which substituted its judgment for a parents exceeded its authority no matter how seductive the state's reasoning might be without a genuine true imminent harm that would come to the child(ren). Not only is that not evident in the instant case, but the child(ren) were minus Oregon due process and judicial oversight which would surely have denied the execution of an foreign state's emergency order under the circumstances where Washington had no prior orders establishing any rights for the Stokers. Nor were the children evaluated by a qualified expert prior to the court issuing its ex parte emergency seizure order executed out-of-state under cover of darkness.

Kathryn Stoker lied to me when she described the circumstances and genesis of that seizure as well as the date of the court hearing (Nathan Kortokrax presiding who recused himself) as being on the 18th of this month when it, in truth, was the 16th. The Stokers also lied about my mental condition and their egregiously galling false claims there was a "nation-wide manhunt" for Selena Smith.

This court did not provide Selena with 60-days notice to respond to service from out-of-state, nor was a Return of Service filed in either of the 2 case #'s involving the child(ren) within 48 hours to either father or permission for alternative service sought. No return of service was filed, no Petition or summons was served on Selena Smith, or even properly filed with this court. By it's own court rules, this court has not had proper jurisdiction in this case from the start. Nor were the fathers notified in a timely manner—48 hours in an ex parte emergency Guardianship order gratuitously and egregiously executed after midnight in a foreign jurisdiction where no emergency existed nor was one found when the children were seized without an iota of due process in their home State. A rent-a-prosecuting-attorney is not a presiding Oregon judge in a court of law, but just another attorney serving the two-bit town of Oakridge, OR. What has already been lost in this case can never be recovered or restored, Selena's trust in her mother...a mother who admitted to Selena she'd been using the I[Phone she'd gifted her daughter to spy on her. A credit card Selena used to make personal purchases for hersekf and her children. Security guard Robert Kurtz lied to authorities in other states by claiming to have obtained a warrant to spy on/surveil her use of her credit card in real time. This was doubtless a fraud he used to deceive the credit card company and why he declined to clarify his methods in his sworn declaration submitted to this court. **Falsus in uno, falsus in omnibus!**

In short, this case and all orders pursuant to it are void ab initio for failure to establish proper subject matter and in personam jurisdiction over all the parties. The issuance of the ex parte emergency order to seize the children executed out-of-state was based on fraudulent misrepresentations and deceptions that are a matter

Counter-Affidavit to James Wells' Dec
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of record presented to the court. Nor did the court take any care to insure the child(ren) were genuinely at risk before giving them the impression that their mother was a 'bad' person as they were seized as though she was Dillinger. I have ordered and will be paying for the video, audio, photos, and police reports from the Oakridge PD. They will reveal my grandchildren were not imperiled and their needs were being met; they were not living in squalid conditions. I will present this evidence to this court for its consideration given the chance. Selena has spoken to the Oakridge authorities about this case. Their assessment does not support the tale the Stokers had to tell this court. The midnight raid on Selena and her child(ren) is what one would expect in a totalitarian regime or from Hollywood. She has spent many hours discussing these events with my me. I am part of my daughter and her children's life and have always tried to maintain a relationship with them. I has never interfered with Selena's relationship with her children. I am a necessary and indispensable party to this action as the Stokers have never respected my role in their lives which can be seen in their declarations where Hans and his wife deceived the court into believing he is the grandfather of my daughter's children. Her story is persuasive if the court would but take the time to hear it out rather than 5-minute justice. I, John Smith, have taken the time to do so since I learned of my daughter's predicament despite Kathryn Stoker's lies about it—dozens of hours listening to my daughter, Selena. It is abundantly clear mu daughter is **not** delusional or mentally ill. She cries and gets upset about her babies. I am not an attorney, but I has an important ongoing role in the lives of my daughter and grandchildren that will be ignored by the Stokers if I am not allowed to join this action and represent myself on behalf of my relationship with Selena, my daughter, and her children.

II REBUTTAL DECLARATION

I, John Smith, am the maternal grandfather of the children at issue before the court in this case. I am unrepresented and necessarily come, without counsel, pro se before this court to voluntarily and honestly make the following Counter-Affidavit to James Wells 's Declaration filed 6-29-21 in this cause:

Kathryn Stoker does not like James Wells. She has had to clean up after him and his disgusting filth in the home she provided him, rent free, too often. (See Maya Stoker's declaration regarding the filth and mouse feces requiring the house to be gutted by Kathy Stoker's own admission to me over the phone.)

Maya's observation of the filth in her grandmother's house took place months after Selena fled the DV she experienced there at the hands of James Wells and in the findings of a DV order, entered by commissioner Rebekah Zinn. The Stokers, through their attorney, and in league with James Wells are attempting to Strip Selena Smith and her children of the DV protection order they so desperately need entered by Commissioner Zinn.

Mr. Wells has yet to comply with any of the conditions imposed by the order Commissioner Zinn entered except surrendering his firearms. Rebekah Zinn noted in her ruling James Wells appeared drunk when appearing before her. I have recently heard Mr. Wells slurred speech over the phone when attempting to discus my grandchildren with him.

I believe Hans Stoker is using/gulling James Wells to undo Selena's efforts to have her children restored to her. Hans violates the intent of the DV protection order entered on her and her children's behalf by commissioner Zinn. I have reason to believe James Wells is omitting important information in his declaration such as sexually assaulting and injuring my handicapped daughter. Selena confided a great deal to me in an earlier DV petition against James Wells which she ultimately allowed to languish. It is a matter of record.

Counter-Affidavit to James Wells' Dec
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6 PO Box 1711, WA 98584

Mr. James Wells filed a motion to vacate the DV protection order issued by commissioner Zinn for failure to show up in the proper courtroom. The court granted that motion and rescheduled a new hearing date Mr. Wells attended. He lost at that hearing when commissioner Zinn ordered a renewed DV protection plan after a full hearing where James Wells was given the opportunity to present his case. Commissioner Zinn noted in her ruling that James Wells appeared before her drunk, slurring his speech, and had violently abused Selena Smith and her children. She reviewed the pictures, submitted by Selena Smith, of a squalid house Selena had left weeks before in which James Wells continued to live off the Stoker's largesse, preventing any possibility of Selena returning to it.

James Wells was doing little/nothing to support his children while residing at/on the Stoker's \$5 million waterfront estate and is doing nothing by his children currently. He was effectively subsisting off of Selena and the children prior to her leaving. He would like to return to that status now, were it possible, and that is his hope.

Kathryn Stoker has helped Selena clean out mountains of beer cans from James' residence and vehicle in the past. When I confronted him over the phone with this fact, he did not deny it, but averred Selena helped consume some of them. Selena states she does not drink.

James Wells allowed one of his junkie friends going through severe heroin withdrawals to abide in the house with the children, leaving the vomit covering the walls, carpet, and bed for Selena to clean up/. He excused this abuse by arguing Selena went along with it. But, Selena bitterly complained of the incident and does not like Jim's drug addicted/using friends. She speaks of witnessing Jim snort hard drugs at a meth house.

Jim is associated with the Rainbow Family. He likes to attend their annual gatherings in far flung remote locations across the country. The one I recall most recently occurred in eastern Oregon. Everyone who attended became ill from a tainted water source, including Hazel Smith, my daughter's child with special needs. When they arrived at my home, I discovered Hazel was vomiting regularly and had diarrhea every 3-days. I deduced this was likely a multinucleated protozoan parasitic disease like/similar to giardia. What distressed me was rather than respond to my granddaughter's complaints about the pain she felt, he left to play frisbee golf for the day instead of taking her to the hospital. When he returned, I gathered up my granddaughter, Selena, and Jim for a trip to a family medical clinic in Shelton Washington. We waited some days for a test result diagnosing what ailed my granddaughter, Hazel. It proved to be inconclusive, but close enough to act on my hunch. We were forced to demand medication for my sick granddaughter with me leading the charge remonstrating with the PA who finally threw up her hands and retorted, "What do you want me to do?" I told her and she finally conceded the point, writing a children's prescription for Hazel who was not yet 5. Nobody in the region had it due to it being for small children. We had to race to an Olympia compounding pharmacy 15 minutes before it closed to get the prescription filled. It worked. Hazel healed. But I will never forget Jim's priorities: Frisbee Golf over a child sick with pain and vomiting. Jim cannot be trusted with the responsibility for the health and safety of small children, particularly in a drug induced or drunken stupor. His unwillingness to provide financial support for his children and their need of basic like food, shelter, clothing, etc. also militate against his being entrusted with the care of small children or a second bite at the legal DV apple separating him from those children until he complies with the order.

Counter-Affidavit to James Wells' Dec
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7 PO Box 1711, WA 98584

But, this is all 'fine' with Kathryn and Hans Stoker according to their declarations filed with this court. They're more than pleased to accommodate Jim despite the well founded existing DV order Jim has made no effort to comply with. The Stokers continue to hinder/deny my visitation with my grandchildren, in person or by phone, while embracing my daughter's abuser who thought nothing of endangering Hazel at the Rainbow Family gathering or failing to respond to her pain driven pleas for help! Think about that for one minute in this forum for 5/10 minute justice. Would you want this man entrusted with YOUR children's care? But Hans and Kathryn Stoker would according to their own declarations. Their ego infested extra-judicial plan to strip the children from my daughter is doing my grandchildren no favors. To date, neither has this court.

If Mr. Wells' job pays so well, as he says in his declaration, then why is a stage hand living in a rented tent trailer (he says) near Mt. Adams rather than Tacoma or Seattle? Why isn't he contributing to the support of his children? Why does he refuse to comply with the DV order naming him? Why hasn't he submitted a series of paystubs to the court confirming the rosy picture he paints. The truth is, even if he were working, the children would see none of it. But THIS IS THE GUY the Stokers heartily support to spend time with my daughter's children. It speaks volumes about the Stokers' priority and misuse of this court.

The house Jim describes on the Stoker estate was NOT safe, primarily due to Jim's and Hans Stoker's presence there. Selena is terrified of Jim and the Stokers because they injured and oppressed her. They have now seized her children without proper authority or due process in the middle of the night like some Gestapo scene from a bad movie lying in wait for Dillinger. James Wells is not a hard working man trying to provide for his children. He does not provide for them now, and he didn't provide for them then. Neither did he provide for his oldest daughter from long before he met Selena. His personal hygiene is disgusting with sores on his head under his dreadlocks last I saw him. He does not bathe regularly and he fills his abode with the detritus of alcohol containers and drug paraphernalia. This does nothing to queer his relationship with Hans Stoker. Selena, and the court, has good reason to protect her children from Jim.

Despite what 'benefits' Jim may have received from the State, he was never the head of household, in fact, and never was the primary support of the children. He used whatever income he received on himself and to buy alcohol. Mr. Wells describes his well-paying trade in his declaration, then segues to his routine of applying for public assistance, TANIF, food stamps, etc. He goes on to describe his receipt of public welfare benefits as continuing uninterrupted.


Mr. Wells vaguely pans my daughter's veracity without so much as a shred of evidence or specific bare assertions. Jim voices platitudes about family while doing little/nothing to contribute to it. A father who limits himself to being a sperm donor doesn't have much to crow about. If Selena berated James, it was because he laid about in a drunken stupor all day doing nothing. Any court attempt to emasculate the existing DV protection order requiring Mr. Wells' compliance would be cavalier and irresponsible. It would also reward the Stokers for their deceit, perjury, and chicanery before this court. The seeds of a new Faustian bargain with the Stokers (this court presiding) lie barely beneath the surface of Mr. Wells' declaration. My grandchildren would be better off in a foster home than under the alcohol saturated care of James Wells.

Counter-Affidavit to James Wells' Dec
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I declare under penalty of perjury of the laws of the State of Washington and pursuant to GENERAL Court RULE 13 and RCW 9A.72.085 that the foregoing is true and correct to the best of my knowledge.

Signed at Mason, [County] Washington [State] on July 7, 2021 [Date]



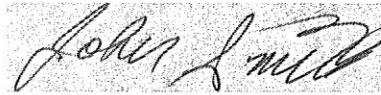
Signature of Petitioner or Lawyer/WSBA No.

Selena Smith (mother), pro se

Print Name

I have e-mailed a copy of this entire document to Breckan Scott, attorney for the Stokers, Selena Smith & not Robert Ayers on 7-7-21.

Signed at Mason, [County] Washington [State] on July 7, 2021 [Date]



Signature of Petitioner or Lawyer/WSBA No.

Selena Smith (mother), pro se

Print Name