

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

In re the guardianship of:

Hazel Smith

Case No.: 21-4-00577-34

Declaration of Breckan Scott

Under penalty of perjury under the laws of the State of Washington, I swear or affirm that the following is true and correct to the best of my knowledge and belief:

1. I am over the age of 18, competent to testify, and am the attorney of record for the Petitioners in this case.
2. I am writing this declaration to advise the Court of an error in the issuance of a defective Subpoena from my office on May 14, 2021. Although none of the information obtained via that Subpoena was introduced or substantively used, in the interests of full candor and transparency to avoid any misconstruction, I am making this self disclosure of the error.
3. I corresponded with Robert Kurtz, a security advisor for family services in New Jersey, throughout the month of May, 2021 because he was tracking Selena Smith with phone information obtained from a Family Plan paid for by Petitioners, and we were coordinating the best time to file the action. I had been advised that the childrens' mother, Selena Smith, had a history of fleeing when made aware of pending welfare/child services checks, so it followed logically that making a public

1 filing before we could ensure the ability to effectuate any emergency order obtained
2 would likely hinder the efforts to enforce the order.

3 4. On May 4, 2021 I was in a car accident that has resulted in substantial impairment to
4 my ability to type – as a result, it became increasingly my/our practice for my
5 assistant (who was hired in December 2020, and is extremely competent, especially
6 since she had no prior legal experience) to handle my email, and for her to take more
7 initiative on following up on client and miscellaneous case-related issues without
8 needing as much direction from me.

9 5. In mid-May, Mr. Kurtz requested a Subpoena to get real-time financial records
10 because even though he was tracking her location with the family cell phone plan
11 information (that belonged to/was paid for by the Stokers), more specific financial
12 transactions information would assist when the emergency order was effectuated to
13 pinpoint down to exact location, thus also preserving law enforcement resources. I
14 emailed him back on 5/12/21 advising that I was drafting the Subpoena, but could
15 not send until “we have a case number.” By that, I meant that I could not send out a
16 Subpoena until we opened a case. Those emails were also copied to my assistant.

17 6. In response to that email, Mr. Kurtz sent an email directed only to me, which I did
18 not see, with a NJ case number indicating that he was providing the “case number” I
19 had said I needed. That email was forwarded by my assistant on the morning of
20 5/13/21 from my account to my assistant’s account (as is our customary practice
21 when she is not copied). On 5/14/21, my assistant emailed the Subpoena that I had
22 been drafting, which at the time did not yet have a case number (but which did have
23 my electronic scanned signature, as was custom for most documents in my form
24 bank) to the subpoena recipient and to Mr. Kurtz. For expedience, that draft subpoena
25 directed all material to be sent directly to Mr. Kurtz – so our office never received

1 anything which would have put me on notice that a subpoena had actually been sent
2 out.

3 7. Mr. Kurtz had been tracking Selena Smith, without the need for the requested
4 Subpoena, with the cell phone information, and it did not fully register to me that I
5 may have made an error until I reviewed the Oregon police report filed by Selena
6 Smith on July 7, 2021 in detail. (I had previously briefly reviewed a copy, but focused
7 almost entirely on the sections regarding the welfare of the children). The section
8 regarding real time financial tracking obtained with a New Jersey subpoena gave me
9 pause (because Mr. Kurtz had never mentioned sending out a NJ Subpoena to me),
10 and reminded me of Mr. Kurtz's earlier subpoena request, thus prompting me to
11 review the email correspondence from my office that then revealed the 5/14/21 email
12 from my assistant with the draft subpoena.

13 8. Immediately upon my discovery, I "replied all" to the email which sent the subpoena
14 to Mr. Kurtz and the subpoena recipient, indicating that it was immediately
15 withdrawn and to revoke all access conveyed by the defective Subpoena. I received
16 immediate confirmation from Mr. Kurtz that they had "shut down" all of that the
17 same day contact was made, and that no information was transmitted after that day. I
18 then advised my clients as to the nature of my error. My clients, having been made
19 aware of the error, told me that they wanted me to continue to represent them in this
20 matter.

21 9. In no way does this effect the substantive basis for any of the Orders issued by this
22 Court. I never received, and do not have, any information received from the
23 Subpoena. The information was received by Robert Kurtz, who relayed it to the
24 police in Oakridge, who relied on it solely to pinpoint her precise location. I have
25 taken steps to change processes and procedures so that this error will not happen

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

again, in this or any other case. I have removed my electronic signatures from all forms of Subpoena in my form bank, provided clarity/instruction to my support staff, and have revised the correspondence flow to ensure better attorney oversight.

10. I regret that I made this error. As explained above, the premature issuance of the subpoena was a result of an unintended mistake. It was not intended to bypass or disrespect the authority of the Court, or to prejudice any of the parties in this matter.

Dated this 26th day of August, 2021.



By: Breckan Scott-Gabriel, WSBA 41585