

**FILED**

NOV 22 2024

10:04  
Scott G. Weber, Clerk, Clark Co

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF CLARK

9 H.A.M., a minor child, by and through his  
10 natural mother, MICHELLE MORRISON,

11 Plaintiff,

12 v.

13 DAYBREAK YOUTH SERVICES, a  
14 Washington nonprofit corporation,

15 Defendant.

NO. 23-2-00615-06

**ORDER GRANTING DEFENDANT  
DAYBREAK YOUTH SERVICES'  
MOTION FOR CONTEMPT AND  
SANCTIONS**

***[CLERK'S ACTION REQUIRED]***

**THE HONORABLE DEREK J. VANDERWOOD  
DEPARTMENT 3**

16 **THIS MATTER** has come before the Court on Defendant DAYBREAK YOUTH SERVICES'  
17 ("Daybreak") Motion for Contempt and for Sanctions. The Court has reviewed the following  
18 pleadings:  
19

- 20
- Defendant Daybreak Youth Services' Motion for Contempt and Sanctions;
  - 21 • Declaration of David H. Smith in Support of Defendant Daybreak Youth Services' Motion  
22 for Contempt and for Sanctions with Exhibit(s) attached thereto;
  - 23 • Declaration of Rebecca Singleton in Support of Defendant Daybreak Youth Services'  
24 Motion for Contempt and for Sanctions;
  - 25 • Defendant Daybreak Youth Services' Reply in Support of its Motion for Contempt and  
26 for Sanctions;
  - The records and files herein.

**ORDER GRANTING DEFENDANT DAYBREAK  
YOUTH SERVICES' MOTION FOR CONTEMPT  
AND FOR SANCTIONS - 1  
[CASE #23-2-00615-06]**

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1 The Court has reviewed the pleadings on file in this case, heard argument from Daybreak's  
2 counsel and deemed itself fully advised as to the issues presented and the Court otherwise being fully  
3 advised, now therefore,  
4

5 **ORDER**

6 IT IS HEREBY **ORDERED, ADJUDGED and DECREED** that Defendant Daybreak Youth  
7 Services' Motion for Contempt and Sanctions is **GRANTED**. The Court finds:  
8

- 9 1. Twenty months ago, Michelle Morrison filed this lawsuit accusing Daybreak of failing to  
10 protect her son H.A.M. from sexual assault by former Daybreak employee LaRae Swope.  
Daybreak denied the allegations.
- 11 2. The Court scheduled trial for June 10, 2024, and ordered that discovery be completed by  
12 March 8, 2024.
- 13 3. On June 1 2023, Daybreak propounded its Request for Production No. 2 which required  
14 H.A.M. and Ms. Morrison to "produce any and all documents that ... contain information  
15 regarding any of the allegations in your Complaint. This request includes, but is not  
limited to, any ... text messages ... created or maintained by you that in any way reference  
... the factual allegations set forth in your Complaint in this matter."
- 16 4. H.A.M. and Ms. Morrison never produced to Daybreak texts and Instagram messages  
17 between H.A.M. and Ms. Swope, which were responsive to Daybreak's RFP No. 2.
- 18 5. Daybreak commenced Ms. Morrison's deposition on October 6, 2023, and H.A.M.'s  
19 deposition on October 16, 2023 without any knowledge that there were text and Instagram  
messages between H.A.M. and Ms. Swope.
- 20 6. In February 2024, Ms. Morrison and H.A.M., now an adult, moved for a trial continuance.  
21 The Court granted the motion, continuing the discovery deadline to September 6, 2024,  
and the trial to December 2, 2024.
- 22 7. In March 2024, Ms. Morrison and H.A.M., represented by counsel, filed a motion for  
23 partial summary judgment on their Washington Law Against Discrimination claim.  
Daybreak, still without knowledge of the text and Instagram messages between H.A.M.  
24 and Ms. Swope, opposed the motion. Plaintiff's motion was argued on April 12, 2024,  
and the Court took the matter under advisement.
- 25 8. Shortly thereafter, Daybreak's counsel received documents from Ms. Swope's criminal  
26 defense attorney showing that H.A.M. texted Ms. Swope repeatedly in an effort to

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1 blackmail her and that Ms. Swope successfully passed a polygraph exam denying  
2 H.A.M.'s allegations against her. Daybreak's lawyer immediately provided these  
3 documents to Ms. Morrison and H.A.M.'s counsel. In addition, Daybreak's wrote to  
4 H.A.M. and Ms. Morrison's attorney:

5 "The evidence recently obtained from Ms. Swope demonstrates that she and  
6 Daybreak have been falsely accused of sexual misconduct by Plaintiff and  
7 his mother. Their motives for doing so are clear, they wanted money from  
8 Ms. Swope and/or Daybreak and were willing to abuse the legal process to  
9 achieve this goal. This evidence also demonstrates that Plaintiff and his  
10 mother have given false testimony during their depositions. All of the above  
11 are more than sufficient reasons for the dismissal of this case with  
12 prejudice."

13 9. Ms. Morrison and H.A.M.'s lawyer immediately gave notice of his intent to withdraw. He  
14 also struck their pending summary judgment motion. But Ms. Morrison and H.A.M. did  
15 not dismiss the lawsuit.

16 10. On July 11, 2024, Daybreak propounded Requests for Admission (the "RFAs") to Ms.  
17 Morrison and H.A.M. regarding H.A.M.'s text and Instagram communications to Ms.  
18 Swope. The same day, Daybreak propounded Request for Production of Documents (the  
19 "RFPs") regarding H.A.M.'s messages to Ms. Swope. The RFAs and the RFPs were  
20 personally served on H.A.M. and Ms. Morrison. Responses to both sets of discovery  
21 requests were due August 15. H.A.M. and Ms. Morrison never provided any responses to  
22 Daybreak.

23 11. On July 12, 2024, Daybreak issued its Second Amended Notices of Deposition to H.A.M.  
24 and Ms. Morrison to complete their depositions on September 6, 2024, the discovery  
25 cutoff. Both Notices were served by messenger on H.A.M. and Ms. Morrison. Neither  
26 appeared for their depositions nor requested an alternative date.

12. On August 19, 2024, Daybreak's lawyer sent a letter via messenger to H.A.M. and Ms.  
Morrison at the address provided in their former lawyer's Notice of Withdrawal.  
Daybreak's attorney requested a discovery conference to discuss their outstanding  
responses to the RFAs and the RFPs. The process server was advised by the woman who  
answered the door that neither H.A.M. nor Ms. Morrison currently reside in the apartment.  
Neither Ms. Morrison nor H.A.M. have – to this date – provided Daybreak's counsel with  
notice of their new address.

13. On August 28, 2024, Daybreak filed a Motion to Compel and to Deem Admitted its  
Requests for Admission. Ms. Morrison and H.A.M. did not respond to the motion. This  
Court ordered "that Defendant Daybreak Youth Services' Motion to Compel and to Deem  
Admitted its Requests for Admission is Reserved. Plaintiff is ORDERED to provide full  
and complete responses to Defendant's Third Requests for Production of Documents  
within 10 days of the date of this Order." Ms. Morrison was present via Zoom for the  
hearing when the Court issued its oral ruling compelling a response and signed the Order.

1 More than a month has passed since the Court's deadline and still H.A.M. and Ms.  
2 Morrison have not responded to the RFPs (or the RFAs).

3 14. On October 18, 2024, Ms. Morrison emailed the Court's staff requesting that the Court  
4 "extend time for evidence in this case." The explanation Ms. Morrison offered in this  
5 email bears no connection to Daybreak or the allegations H.A.M. made in this lawsuit. It  
6 also is not the subject of any motion made to this Court.

7 15. The discovery deadline has now come and gone, and trial is set to begin in less than a  
8 month. Still H.A.M. and Ms. Morrison have not appeared for their depositions nor  
9 complied with the Court's Order compelling responses to Daybreak's long outstanding  
10 RFPs.

11 16. Neither H.A.M. nor Ms. Morrison filed any response to Daybreak's Motion for Contempt  
12 and Sanctions.

13 17. Daybreak reasonably expects that the discovery it sought and which the Court ordered –  
14 but which Ms. Morrison and H.A.M. refused to provide – would have demonstrated that  
15 H.A.M.'s claims here are wholly without merit and that it was he, and not Ms. Swope,  
16 who was the aggressor. H.A.M. and his mother alleged in this lawsuit that he was  
17 victimized by Ms. Swope in September 2021. The texts and Instagram messages which  
18 Ms. Swope received from H.A.M. after he left Daybreak strongly undermine these claims.  
19 The Court has reviewed these text and Instagram messages. Daybreak reasonably expects  
20 that the requested discovery, *inter alia*, would have confirmed that the Instagram alias and  
21 the cell phone numbers used in damming communications to Ms. Swope belonged to  
22 H.A.M. and his mother *and* would have provided substantial additional evidence showing  
23 the allegations in this lawsuit to be meritless.

24 18. H.A.M. and Ms. Morrison are in contempt of this Court's October 4, 2024 Order  
25 compelling them to respond to the RFPs. Pursuant to CR 37(b)(2), sanctions should issue  
26 against Ms. Morrison and H.A.M. for their contempt of the Order.

19 19. H.A.M. and Ms. Morrison are in contempt of Daybreak's notice of deposition. Pursuant  
20 to CR 37(d), sanctions should issue against Ms. Morrison and H.A.M. for their contempt  
21 of the deposition notices.

22 20. "The purposes of sanctions are to deter, punish, compensate, educate, and ensure that the  
23 wrongdoer does not profit from the wrong." *Barton v. Dep't of Transp.*, 178 Wn.2d 193,  
24 215, 308 P.3d 597 (2013). Generally, the trial court should impose the least severe  
25 sanction that will serve its purpose. *Id.* One of the harsher remedies of CR 37(b) may be  
26 warranted where "(1) one party willfully or deliberately violated the discovery rules and  
orders, (2) the opposing party was substantially prejudiced in its ability to prepare for trial,  
and (3) the trial court explicitly considered whether a lesser sanction would have sufficed."  
*Id.*

- 1 21. Ms. Morrison and H.A.M. acted willfully and deliberately in violating the discovery rules  
2 *and* this Court's Order. In fact, they willfully violated multiple Civil Rules. *Magaña*, 167  
3 Wn.2d at 584-85 (affirming default judgment penalty where the defendant "willfully  
4 violated the discovery rules"). *First*, they violated CR 36(b)(3)(A) which required them  
5 to produce the texts and Instagram messages in July 2023 in response to Daybreak's initial  
6 discovery requests. Instead, H.A.M. and Ms. Morrison secretly withheld these records,  
7 which Daybreak did not even know existed until April 2024. *Second*, they violated CR  
8 36(b)(3)(A) again when Daybreak specifically requested the texts and Instagram messages  
9 in July 2024, to which they still have not responded. *Third*, they violated CR 36(a) by  
10 refusing to respond to the July 2024 RFAs, to which they still have not responded. *Fourth*,  
11 they violated CR 30 by refusing to appear at their depositions in September 2024.
- 12 22. Last, and most importantly, they violated this Court's Order compelling them to respond  
13 to the RFPs by October 14, 2024. *Magaña*, 167 Wn.2d at 584 ("A party's disregard of a  
14 court order without reasonable excuse or justification is deemed willful.") (quotation  
15 marks & citation omitted).
- 16 23. Daybreak has been substantially prejudiced in its ability to prepare for trial. "This prong  
17 of the test looks to whether" the party deprived of discovery "was prejudiced in *preparing*  
18 for trial, not *obtaining* a fair trial." *Id.* at 589. Ms. Morrison and H.A.M. filed this lawsuit  
19 asserting damning allegations against Daybreak and its former employee 20 months ago.  
20 This case was scheduled to go to trial in June 2024, but the trial date was delayed on the  
21 motion of Ms. Morrison and H.A.M. Nearly seven months ago, this Court granted  
22 Plaintiff's continuance motion and postponed the trial date to December 2, 2024. The  
23 Court ordered that discovery "shall be completed on or before **September 6, 2024.**" The  
24 Court advised the parties that "[a]bsent unforeseen circumstances outside the control of  
25 the parties<sup>1</sup> an additional request to continue the trial date will not be granted." In footnote  
26 1, the Court specifically noted that "[i]ncomplete discovery ... will not be sufficient to  
establish good cause for an additional continuance." Pursuant to the Court's Amended  
Scheduling Order, Daybreak was required to provide its exhibit list by October 18, 2024.
24. Ms. Morrison and H.A.M.'s violation of the Civil Rules and the Court's order compelling  
their responses to the RFPs have substantially prejudiced Daybreak in preparing for trial  
and in complying with the Amended Case Scheduling Order. Daybreak has been deprived  
of expected deposition testimony confirming the appropriate nature of Ms. Swope's  
interactions with H.A.M. and H.A.M.'s and Ms. Morrison's use of their Instagram  
accounts and cell phone numbers to bombard Ms. Swope with inappropriate requests for  
her attention and unlawful threats to blackmail her. Daybreak also has been deprived of  
all the *other* texts and Instagram messages that Daybreak still has not seen and which  
Daybreak reasonably presumes H.A.M. and Ms. Morrison continue to hide from  
Daybreak, which would have been confirmed at the depositions they refused to attend.  
Daybreak has been deprived of the admissions and responses to Daybreak's outstanding  
discovery requests which Daybreak reasonably believes would have established the  
baselessness of this lawsuit. *Magaña*, 167 Wn.2d at 589 (finding prejudice where the  
defendant "knew about these claims but willfully failed to disclose them thereby

prejudicing [plaintiff]’s ability to prepare for trial”). In short, had Ms. Morrison and H.A.M. not violated the Civil Rules and the Court’s Order, Daybreak reasonably expects it would have evidence requiring dismissal of this lawsuit.

25. The Court has considered the available lesser sanctions and believes that none would suffice. The trial court “should issue sanctions appropriate to advancing the purposes of discovery.” *Id.* at 590. “The discovery sanction should be proportional to the discovery violation and the circumstances of the case.” *Id.* “The sanction must not be so minimal [ ] that it undermines the purpose of discovery. The sanction should ensure that the wrongdoer does not profit from the wrong.” *Id.* (quotation marks & citation omitted).

26. A monetary fine here would not suffice. It would not cure the prejudice to Daybreak in the few days remaining before a trial for which it has been deprived of the ability to prepare. Moreover, there is every reason to believe that, as they have flouted this Court’s prior Order, so too Ms. Morrison and H.A.M. will not pay a monetary fine which will only impose a further burden on Daybreak. *Id.* at 591 (approving the trial court’s finding that “a monetary sanction would not address the prejudice to [the party deprived of discovery] or to the judicial system”).

27. A continuance here would not suffice. The trial already has been continued once. A further delay would substantially increase the cost of defending this lawsuit at the same time as it rewarded Ms. Morrison and H.A.M. for thumbing their noses at the process that is to govern all lawsuits before this Court, including the lawsuit they chose to file. *Id.* at 592 (approving the trial court’s rejection of a continuance sanction because “sanctions for discovery violations should not reward the party who has committed the violations and that granting a continuance would only exacerbate the situation”).

28. Striking a witness here would not suffice. It would not remedy Daybreak’s inability to prepare for trial nor would it appropriately punish Ms. Morrison and H.A.M.’s complete refusal to abide by the Civil Rules or the Order of this Court.

29. Taking certain facts as established here would not suffice. There is no way to know the extent of Ms. Morrison and H.A.M.’s false charges and wrongdoing here to limit the established facts. In essence, every fact on which their claims depend, would need to be deemed established which would have the same effect as the dismissal ordered here.

30. The appropriate sanction here is dismissal of this lawsuit. *Id.* at 591 (“While the amount reinstated is large” as a result of the default sanction, “this is not because of any wrongdoing on [the party deprived of the discovery]’s part; rather it is due to Hyundai’s atrocious behavior in failing to respond to discovery requests throughout the lawsuit.”).

31. An order dismissing this lawsuit <sup>without</sup> ~~with~~ prejudice is warranted here as a discovery sanction. It serves the purposes of the sanction.

32. Pursuant to CR 37(b)(2), CR 37(d), and CR 37(a)4), the Court exercises its discretion to also award Daybreak its attorney’s fees and costs caused by Ms. Morrison and H.A.M.’s

1 refusal to abide by the Civil Rules and to comply with this Court's Order. Daybreak is  
2 directed to file its fee declaration within 20 days of the date of this Order and to note it for  
3 consideration pursuant to the Local Civil Rules.

4 Based on the foregoing, and the Court's exercise of its discretion, it is hereby ORDERED that  
5 following the Court's determination of the amount of the fee award, this lawsuit shall be DISMISSED  
6 WITH PREJUDICE. Daybreak is directed to submit to the Court a final Order of Dismissal once the  
7 attorney's fees and costs are set by the Court.

8 IT IS SO ORDERED this 22 day of November, 2024.

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10   
11 The Honorable Derek J. Vanderwood  
Clark County Superior Court Judge

12 Presented by:  
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