Review of Division I Unpublished Opinion
Cause #82055-9-I

No. 99758-6

SUPREME COURT OF THE STATE OF WASHINGTON

DONNA ZINK,

Appellant

v.

JOHN DOE L, et al.,

Respondents.

PETITION FOR DISCRETIONARY REVIEW BY SUPREME COURT

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I. IDENTITY OF PETITIONER

Petitioner is Donna Zink, a pro se appellant in this cause of action. Zink respectfully asks this court to accept review of the Court of Appeals unpublished opinion terminating review as designated in section II of this petition.

II. COURT OF APPEALS DECISION

Zink seeks review of Division I of the Court of Appeal's decision in *John Doe L v. Donna Zink* Cause #820559-9-I. It is an unpublished decision filed on March 15, 2021. A copy is attached at Appendix A.

A timely motion for publication denied on April 8, 2021 is attached as Appendix B.

III. ISSUES PRESENTED FOR REVIEW

1. Can a plaintiff voluntarily dismiss litigation under CR 41 after a final determination on the merits of the case have been entered by the trial court because the decision is overturned in favor of the defendant on appeal?
2. Is the constitutional issue of an open trial and the sealing of court records moot if the litigation involves a Public Record Act (PRA) case?

IV. STATEMENT OF THE CASE

This case is one of four cases Zink is requesting this Court review concerning the sealing of court records by plaintiffs who sought to enjoin the release of their criminal records to a member of the public while remaining anonymous in the court records (Cause #99478-1, 99489-7, and 99602-4). In each of these cases the plaintiffs were allowed by the respective trial courts to initiate and prosecute litigation in total secrecy using a pseudonym in place of their true names in the caption of the summons, complaint and other court records including the SCOMIS index without justification in

violation of the Washington State Constitution, Article I, section 10. In all but one of these cases, plaintiffs were allowed to dismiss their cases in order to avoid the constitutional requirement of an open trial either: 1) after remand from the Court of Appeals; or 2) after this Court's decisions in *John Doe A v. Wash. State Patrol*, 185 Wn.2d 363, 374 P.3d 63 (2016)(*Doe A*) and *John Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156 (2018)(*Doe G*). In this case, the trial court dismissed under CR 41(a)(1)(B) after remand from Division II (CP 197-247).

1. This Court's decisions in Doe A and Doe G

In 2016, this Court addressed the issue of release of sex offender registration records and determined they were not exempt. This Court also addressed the issue of the sealing of the court records and found that in a PRA case the issue of use of pseudonym is moot.

> Because we find that these records are available, it is unnecessary to consider whether the trial court abused its discretion by allowing the plaintiffs to proceed in pseudonym. The issue is moot; Zink will receive the records—and the names of the parties—and even if this court were to hold that proceeding in pseudonym was in error, we would be unable to offer any further relief, as it has already been granted.

(*Doe A*). ¶36,

In 2018, this Court addressed the issue of the release of the sex offender SSOSA evaluations and found they are not exempt and must be released. This Court again addressed the issue of the sealing of the court records. This Court reversed its decision in *Doe A* and found that the sealing of the records was not moot in PRA cases.[1] This

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[1] Both *Doe A* and *Doe G* are PRA cases that involved third party sex offenders seeking to enjoin their criminal records under RCW 42.56.540 in total secrecy such that they cannot be identified by Zink or the general public as a plaintiff in the litigation.

Court determined that in order for the records to remain sealed a trial court must hold an *Ishikawa* hearing and apply GR 15 to justify allowing a party to violate constitutional requirement for open trials.

> We further hold that names in captions implicate article I, section 10, and that the trial court erred in granting the John Does' motion to proceed in pseudonym because the trial court failed to apply GR 15 and the Ishikawa factors.

Doe G, ¶34.

2. Affect of Doe A and Doe G on this cause of action.

After this Court's decision in *Doe A* and *Doe G*, Division II found in favor of Zink and remanded this cause of action back to the trial court to enter an order reversing the permanent injunction preventing the release of the records and to conduct an *Ishikawa* hearing to justify the sealing of the court records (CP 197-98; 199-247).[2]

Despite the mandate of Division II, the trial court dismissed the cause under CR 41(a)(1)(B), determining that the plaintiffs had a mandatory right to dismiss (CP 339-40; 341-42) and refused to hold an *Ishikawa* hearing or apply GR 15 to the issue of sealed court records.

Zink appealed to Division II (CP 352-62). Division II transferred the cause to Division I for determination (Appendix C). In an unpublished opinion, Division I determined that the trial court has the authority to dismiss a cause of action under CR 41(a)(2) after a decision in favor of a plaintiff has been reversed on appeal because the appeals court did not mandate the litigation continue and the issue of sealing court records is moot based on this Court's decision in *Doe A*.

It is these decisions that Zink requests this Court to review.

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[2] *John Doe L v. Pierce County*, 7 Wn. App. 2d 157, 433 P.3d 838 (2018)(*Doe L*).

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Division I's Interpretation that CR 41(a)(2) allowing for voluntary dismissal by plaintiff after a final decision has been made at trial on the merits is in conflict with a prior decision of this Court (RAP 13.4(b)(1)) and involves a constitutional question of law (RAP 13.4(b)(3)) of substantial public interest that must be determined by this Court (RAP 13.4(3)).

Citing to Gardner v. First Heritage Bank, 175 Wn. App. 650, 673, *fn.* 31, 303 P.3d 1065 (2013), Division I determined that they could affirm the trial court's dismissal of this case under CR 41(a)(2)[3] despite the fact that a final decision had been rendered by the trial court which was overturned on appeal in Division II.[4] Division I made this determination based on the following facts.

1. After a summary judgement decision has been entered by a trial court, CR 41(a)(2) is a motion that allows a plaintiff to request dismissal for good cause (Opinion pg. 5, *fn.* 9).
2. "Respondents no longer wished to proceed with their case" and "[g]ood cause existed for dismissal" under CR 41(a)(2) "[b]ecause the decisions in Doe A, Doe G, and Doe L determined the merits of the case" (Opinion pg. 6).
3. "Zink obtained the requested records" (*Id.*).
4. "Respondents raised CR 41(a)(2) as an alternative basis for dismissal in their replies" to Zink's response to their motion to dismiss in the trial court (CP 334:19-23) and "Zink did not object to Respondents raising this argument in their replies" (Opinion pg. 6, *fn.* 11).
5. Dismissal will unburden court dockets and reduce unnecessary litigation (Opinion pg. 7).[5]

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[3] After plaintiff rests after plaintiff's opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper (CR 41(a)(2).

[4] John Doe L v. Pierce County, 7 Wn, App. 2d 157, 433 P.3d 838 (2018)(Doe L).

[5] Citing to Doe AA v. Zink, 2020 WL 7497009, at *3 (Opinion pg. 7, *fn.* 12) another cause of action Zink has requested review of by this Court.

Further, Division I determined that, despite the fact that Division II reversed the trial court's summary judgment order in a published opinion,[6] "the only mandate issued by Division II on remand was to properly apply an *Ishikawa* analysis to whether the plaintiffs could proceed in pseudonymity and the Court of Appeals did not direct the trial court to continue litigation (Opinion pg. 3-4, *fn.* 6, 8)).[7] This is error.

a) RCW 4.56.120 prohibits a court from voluntary dismissal after a final decision has been made on the merits.

Under our form of government, there are three branches of government: the legislative, the executive, and the judicial. Our constitution reserves separate governmental functions for the courts and for the legislature (*Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 143, 744 P.2d 1032, 750 P.2d 254 (1987)). Our Legislature enacts laws and our Courts interpret, construe, and apply laws made by the legislature. *Marine Power & Equip. Co. v. Human Rights Comm'n Hearing Tribunal*, 39 Wn. App. 609, 615 n.2, 694 P.2d 697 (1985).

In interpreting statutes, this Court has mandated that statutes are to be interpreted to discern and implement the intent of the legislature (*Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). If a statute's language is unambiguous, the legislative intent is apparent and the courts will not construe it otherwise (*State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)). Courts are not to add or delete language (*State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003)), and "[s]tatutes must be interpreted and construed so that all the language used is given

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[6] *John Doe L v. Pierce County*, 7 Wn, App. 2d 157, 164, 433 P.3d 838 (2018).

[7] Division I states that "[t]his court did not direct the trial court to continue litigation..."(Opinion pg. 4, *fn.* 8). While that is true, Division I was not the court that originally reviewed the trial court's decision or entered the published opinion.

effect, with no portion rendered meaningless or superfluous" (*Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999)).

The statute at issue is RCW 4.56.120 which was enacted by the legislature and provides authority for courts to dismiss cases.

> An action in the superior court may be dismissed by the court and a judgment of nonsuit rendered in the following cases:
>
> Upon the motion of the plaintiff, (a) when the case is to be or is being tried before a jury, at any time before the court announces its decision in favor of the defendant upon a challenge to the legal sufficiency of the evidence, or before the jury retire to consider their verdict, (b) **when the action, whether for legal or equitable relief, is to be or is being tried before the court without a jury, at any time before the court has announced its decision**...

RCW 4.56.120(1)(a)(b)(emphasis added). Under the PRA, only a superior court judge can render a decision concerning public records (RCW 42.56.550). In the case of a third-party injunction under RCW 42.56.540, as is the case here, only a superior court judge can issue an injunction to prevent release of public records (RCW 42.56.540). Clearly, under RCW 4.56.120(1)(b), once the decision to permanently enjoin the requested records was announced by the trial court and the permanent injunction orders entered,[8] Respondents were prohibited from dismissing their cases, even after resting, and were no longer entitled to dismiss under either CR 41(a)(1)(B) or CR 41(a)(2).[9] Furthermore, prior caselaw clearly shows RCW 4.56.120 prohibits dismissal for nonsuit after a decision is rendered by the trial court and Division I's decision is in conflict with a prior decision of this Court (RAP 13.4(b)(1)).

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[8] (CP 130-143; 144-153; 154-163; 171-185).

[9] Permissive. After plaintiff rests after plaintiff's opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper. (CR 41(a)(2)).

In 1966, this Court reviewed a case with the exact same circumstances as this one. In that case, as in this one, a court granted a plaintiff's motion for voluntary dismissal after the cause had been submitted to the trial court under our summary judgment procedure and after the trial court had orally announced its decision. *Beritich v. Starlet Corp.*, 69 Wn.2d 454, 455, 418 P.2d 762 (1966). This Court, after harmonizing CR 41, CR 56, and RCW 4.56.120 mandated that once a trial court has rendered its decision on summary judgment, voluntary dismissal is no longer available to a plaintiff.

> [T]he submission of a motion for summary judgment to the trial court for decision is analogous to the situation covered by RCW 4.56.120(1)(b), which states that an action may be dismissed by the trial court and a judgment of nonsuit rendered, when the action, whether for legal or equitable relief, is to be or is being tried before the court without a jury, at any time before the court. has announced its decision.
>
> As previously mentioned, the trial judge had already verbally indicated his ruling, granting the defendant's motion for summary judgment, at the time of the plaintiff's motion for voluntary nonsuit. The trial judge had "announced his decision... The dismissal without prejudice of the order of the trial court is reversed"

Beritich, 459. Here, not only did the trial court announce its decision, entering an order permanently enjoining the records, the trial court's decision was appealed to Division II and overturned. Clearly, neither the trial court, or the Court of Appeals, have the authority to dismiss a case under CR 41(a)(2) after a final determination on the merits of the case has been made and Division I's decision otherwise is in conflict with this Court's decision in *Beritich*.

b) The trial court did not dismiss this cause under CR 41(a)(2) and Zink did not have an opportunity to object to Respondents raising a new argument in their replies at trial.

The trial court dismissed the case under CR 41(a)(1)(B) (CP 339-342) mandatory dismissal as a matter of right as requested by Respondents in their motions to dismiss (CP 250:15-19; 190:1-17).[10] While the Respondents did broach the issue of permissive dismissal under CR 41(a)(2), they did not do so in their original motions to dismiss (CP 248-253; 189-196). Rather they made their request in their reply briefs (CP 331:10-17; 334:19-23)[11] filed after Zink's responses to their motions to dismiss (CP 256-329; 330-32)[12] and two days prior to the hearing on the motions to dismiss were heard and decided by the trial court (CP 337-38).[13]

> Allowing the moving party to raise new issues in its rebuttal materials is improper because the nonmoving party has no opportunity to respond. It is for this reason that, in the analogous area of appellate review, the rule is well settled that the court will not consider issues raised for the first time in a reply brief.

White v. Kent Med. Ctr., Inc., P.S., 61 Wn. App. 163, 168, 810 P.2d 4 (1991). The same is true at the trial level. Zink, as the "nonmoving party," had no opportunity to respond. Furthermore, if the Respondents did properly brief the trial court on

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[10] The motion to dismiss Level II & III sex offenders was filed in the trial court on June 20, 2019 (CP 189-196) approximately three weeks prior to the mandate issued by Division II after review (CP197-247. The motion to dismiss Level I sex offenders was filed in the trial court on July 19, 2019 (CP 248-253).

[11] Level II & III sex offenders filed their reply to Zink's response on July 30, 2019 (CP 330-32). Level I sex offenders filed their reply to Zink's response in the trial court on July 31, 2019 (CP 333-336).

[12] Zink's response was filed in the court on July 30, 2019 (CP256-329). The hearing on Respondents motions to dismiss was heard on August 2, 2019; two days after the sex offenders filed their reply brief (CP 337-38).

[13] No transcripts were provided for this appeal and so it is unknown whether Zink verbally objected at the hearing held on August 2, 2019.

permissive dismissal under CR 41(a)(2), then the trial court's decision to dismiss under CR 41(a)(1)(B) and not CR 41(a)(2) was intentional with or without Zink's objection.

c) As in all PRA cases, Division II's reversal of the trial court's permanent injunction was a final decision that ended litigation.

While it is true that Zink did receive the requested records on remand from Division II, that fact has no affect on whether a case is dismissed after a final decision has been made by a trial court on the merits. The case was concluded once the trial court made its decision to permanently enjoin the records. Had Zink not appealed, the injunction would have remained in place. However, Zink did appeal and the Respondents lost that appeal which is the main reason Respondents no longer wished to proceed with their case. But there was no more case to proceed with. The decision on the merits was made and finalized in the mandate issued to the trial court (CP 197-247). All that was left for the trial court to do, other than hold an *Ishikawa* hearing and apply GR 15 to the sealed court records, was enter the order striking the permanent injunction and allowing Pierce County to provide the requested records to Zink; if that. The trial court entered such an order (CP 341:17-22) effectively ending the case and there was no need to dismiss in order to unburden the court docket and reduce unnecessary litigation since there was no more litigation ongoing after the mandate from Division II was entered in the trial court. The most expeditious use of the court's time would have been to enter the order lifting the injunction just as it did when it issued the order dismissing the case.

Finally, Division I opined that, despite the fact that Division II reversed the trial court's summary judgment order in a published opinion, "the only mandate issued by Division II on remand was to properly apply an *Ishikawa* analysis to whether the plaintiffs could proceed in pseudonymity and the Court of Appeals did not direct the

trial court to continue litigation (Opinion pg. 3-4, fn. 6, 8)). While the decision of Division II ended the litigation concerning the release of the records, as in all cases on review in our upper courts, Division II did direct the trail court to continue the proceedings when it mandated the case back "to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion" (CP 197); the opinion reversing the trial court and requiring an *Ishikawa* hearing be held.

2. Sealing Court records is a significant question law under the constitution of the State of Washington (RAP 13.4(b)(3)) which is of substantial public interest (RAP 13.4(b)(4)) and this Court must clarify its decision in Doe A (the issue is moot in PRA cases) and Doe G (an Ishikawa hearing is mandatory)(RAP 13.4(b)(1)).

a) While the decision of Division I is not in conflict with this Court's decisions in Doe A it is in conflict with this Court's decision in Doe G.

In 2016, this court determined that persons seeking to enjoin release of their criminal records in PRA cases can do so under seal because the requester will have access to the records and therefore has no need to know the party's identity.

> Because we find that these records are available, it is unnecessary to consider whether the trial court abused its discretion by allowing the plaintiffs to proceed in pseudonym. The issue is moot; Zink will receive the records—and the names of the parties—and even if this court were to hold that proceeding in pseudonym was in error, we would be unable to offer any further relief, as it has already been granted.

Doe A, ¶36. In 2018, this Court revisited this issue and reversed that decision determining that in all cases a trial court must justify a decision to allow a party to seal court records because it violated Article I, section 10, of the Washington state constitution.

> We further hold that names in captions implicate article I, section 10, and that the trial court erred in granting the John Does' motion to proceed in

pseudonym because the trial court failed to apply GR 15 and the Ishikawa factors.

Doe G, ¶34. Here the decision of Division I is based on this Court's decision in *Doe A*, (the constitutional issue of sealing court records is moot in PRA cases) and is not in conflict with that decision. However, the decision of Division I ignores this Court's later decision in *Doe G* (sealing court records must be justified in all cases) and is in conflict with that decision. Clearly, in *Doe G*, this Court mandated that defendants involved in PRA litigation have the same constitutional right to an open trial under Article I, section 10 of the constitution as all other litigants. The fact that Division II ignores that mandate is of tremendous public interest requiring this Court to clarify its conflicting decisions so that all litigants, whether involved in a PRA action not, will be treated equally under our constitution.

b) Whether a public record requester is entitled to an open trial under the Washington constitution is an issue of substantial public interest and Division I's unpublished opinion is in conflict with another Division I published opinion.

The question of whether our constitution applies to all litigants, including third parties seeking to enjoin public records under RCW 42.56.540 and the defendants fighting for access, is of substantial public importance. Not only are constitutional requirements important, in this case the public significance is of even greater importance. Here, Division I determined, utilizing this Court's direction in *Doe A*, that a trial court can dismiss the case and the issue of sealing the records is moot in a PRA action (Appendix A pg. 7-9), despite the fact the trial court was directed on remand to conduct an *Ishikawa* hearing (Appendix A pg. 4, *fn.* 8). But not all of the cases ended in this result.

In a recent cause from Thurston County Superior Court, the court found that dismissal was not appropriate and that issue of the sealing of the court records was not

moot. The court, utilizing this Court's decision in *Doe G*, held an *Ishikawa* hearing applying GR 15 as directed on remand.[14] While Zink is requesting this Court to review that decision (Cause #99602-4), the trial court's decision that the issue of sealing of court records is not moot clearly shows that without clarification equal justice under our constitution cannot be served because the constitution is being upheld in some cases and ignored in others.

In addition to the Thurston County case, in a recent published decision of Division I, that court clearly stated that the issue of the sealing of court records is not moot:

> "A case is moot when 'the court can no longer provide effective relief.'" The John Does claim that Zink's appeal is moot because "all legal questions raised ... here were answered by the Supreme Court in Doe G" and the trial court dismissed their lawsuit with prejudice under CR 41.
>
> While Doe G may have resolved all the legal issues the John Does wanted to litigate, and made their claims moot, it does not make Zink's appeal moot. She raises an issue that was not resolved in Doe G and has not been decided in any reported decision of a Washington State appellate court: can a party who filed a lawsuit anonymously later have that lawsuit dismissed at its request without the court first requiring the party to disclose their identity? If we resolve this issue in Zink's favor, we could provide relief by reversing the order of dismissal and directing the trial court to require the John Does to file an amended complaint disclosing their identities and to then conduct an analysis under CR 15 and Ishikawa to determine if that document should be sealed or redacted. This relief would also resolve Zink's claims about case indexes. So, her appeal is not moot.

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[14] *John Doe P v. Thurston County*, 199 Wn. App. 280, 399 P.3d 1195 (2017)(Different results reached on reconsideration by, Remanded by *John Doe P v. Thurston County*, 2018 Wash. App. LEXIS 2279 (Wash. Ct. App., Oct. 2, 2018).

John Doe AA v. King County, 15 Wn. App. 2d 710, ¶11-12, 476 P.3d 1055 (2020).[15]

Despite the recent publication of that case, Division I found that the issue of sealing court records is moot as to Zink because:

> But changing the prior case captions and SCOMIS entry in this case cannot be considered "relief." And no "substantial question" remained before the trial court. See Cox, 2 Wn. App. 2d at 408 (quoting Spokane, 155 Wn.2d at 99). Relief here turns on whether the PCSD can release the records, and that issue was decided in Zink's favor.

Appendix pg. 8.

> Zink says that because any person at any time can move to unseal documents under GR 15(e)(3), the issue of pseudonymity can never be moot. We disagree, and case law undermines her position. See, e.g., Doe ex rel. Roe v. Washington State Patrol, 185 Wn.2d 363, 385, 374 P.3d 63 (2016) ("Because we find that these records are available, it is unnecessary to consider whether the trial court abused its discretion by allowing the plaintiffs to proceed in pseudonym. The issue is moot."). And whether one can move to unseal documents in the future does not affect whether the trial court can provide relief in this case.

Appendix pg. 9. Clearly, the unpublished opinion of Division I, based on this Court's decision in *Doe A*, is in direct conflict with the published opinion of Division I which was based on this Court's decision in *Doe G* (RAP 13.4(b)(2) and a final determination by this Court is necessary.

VI. CONCLUSION

It is troubling that Division I determined that a plaintiff can merely dismiss a cause of action after losing in the Court of Appeals and that a defendant has no right to the

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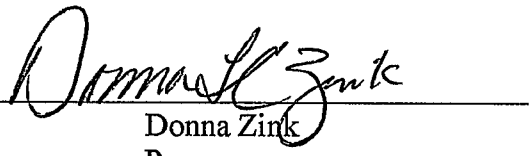
[15] Zink has also petitioned this Court to review of the overall decision in this case. But not the issue of mootness in that specific case since she agrees that the issue of sealing records is not moot (Cause #99478-1)

decision of that Court of Appeal. It is even more troubling that plaintiffs are being allowed to dismiss this case simply to avoid well established constitutional requirements of openness in our judicial system.

The question of whether third parties are allowed to file litigation anonymously in PRA cases needs to be address and resolved by this Court so that all litigants will be treated equally under our constitution by our courts.

For all the reason stated herein, Zink respectfully requests this Court to review this unpublished opinion of Division I.

RESPECTFULLY SUBMITTED this 10th day of May 2021.

By 

Donna Zink
Pro se

Appendix A

FILED
3/15/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN DOE L; JOHN DOE M; JOHN DOE N; and JOHN DOE O, as individuals and on behalf of others similarly situated, Respondents, v. DONNA ZINK, a married woman, Appellant, PIERCE COUNTY, Defendant.	No. 82055-9-I DIVISION ONE UNPUBLISHED OPINION

CHUN, J. — Donna Zink sought disclosure of sex offender records from the Pierce County Sheriff's Department (PCSD) under the Public Records Act (PRA).[1] John Does sued to prevent the disclosure. The trial court entered summary judgment rulings in John Does' favor. Zink appealed. During the pendency of that appeal, our Supreme Court decided two cases applicable to the merits here. This court consequently reversed the summary judgment rulings and remanded. On remand, John Does moved to voluntarily dismiss the case with prejudice. Over Zink's opposition, the trial court granted the motions. We affirm.

[1] Ch. 42.56 RCW.

I. BACKGROUND

In 2014, Zink made a PRA request to PCSD for sex offender records.[2] PCSD notified the individuals listed in the records that it would release the materials unless a court enjoined it from doing so.

John Does L–O sued Pierce County, seeking a declaratory judgment that the requested records were exempt from disclosure and an injunction prohibiting their release. They made Zink, the "Requestor," a party to the action.

The plaintiffs moved for class certification. They also moved for preliminary injunctive relief prohibiting the release of the requested records. And they moved for permission to proceed in pseudonymity.

The trial court entered a temporary restraining order prohibiting PCSD from releasing the records. It then granted a preliminary injunction for the same purpose. It certified the class and appointed John Does L–O class representatives. It granted the plaintiffs' motion to proceed in pseudonymity. And it consolidated the case with three other cases, including a class action initiated by John Doe D, a respondent in this appeal.[3]

John Does moved for summary judgment, seeking a permanent injunction against the release of the records. The trial court granted the motions and

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[2] Zink requested a list of all registered sex offenders in Pierce County, all related victim impact statements, and all related Special Sex Offender Sentencing Alternatives (SSOSA) and Special Sex Offender Disposition Alternatives (SSODA) evaluations.

[3] We refer to all the plaintiffs in the consolidated matters as "John Does." We refer to the respondents in this case—John Does L–O and John Doe D—as "Respondents."

enjoined PCSD from releasing the requested records in each of the consolidated cases.[4]

Zink moved for reconsideration, which motion the trial court denied. Zink appealed the order allowing the plaintiffs to proceed under pseudonyms, the class certification, and the summary judgment rulings granting permanent injunctions. John Doe L v. Pierce County, 7 Wn. App. 2d 157, 164, 433 P.3d 838 (2018).

While the case was pending before this court, our Supreme Court held in John Doe A v. Washington State Patrol, 185 Wn.2d 363, 385, 374 P.3d 63 (2016), that "level I sex offender registration information is subject to disclosure under a PRA request." And the Supreme Court held in John Doe G v. Dep't of Corr., 190 Wn.2d 185, 202, 410 P.3d 1156 (2018), "that SSOSA evaluations are not exempt under the PRA." The Supreme Court also held in Doe G that "names in captions implicate article I, section 10," and that a trial court errs in granting a motion to proceed in pseudonymity without conducting a GR 15 and Ishikawa[5] analysis. Id.

Division Two of this court then decided Zink's appeal in 2018. Doe L, 7 Wn. App. 2d at 164. The court affirmed the trial court's rulings in some respects, including the class certification for John Does L–O and John Doe D. Id. But the court reversed and remanded the pseudonym issue because the trial court did not conduct a GR 15 and Ishikawa analysis and partially reversed and remanded

[4] The record does not include John Doe D's motion for summary judgment or the order granting it. But the parties do not dispute that the trial court so ruled.

[5] Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982).

the summary judgment rulings preventing release of the records, given the Supreme Court's holdings in Doe A and Doe G.[6] Id.

This court entered a mandate in June 2019. A few days later, at the trial court level, John Doe D and John Does L–O moved for voluntary dismissal with prejudice under CR 41(a)(1)(B). In their replies, John Doe D and John Does L–O also argued for voluntary dismissal under CR 41(a)(2). At a hearing, the trial court dismissed all their causes of action under CR 41(a)(1)(B) with prejudice.[7] Zink moved for reconsideration, which motion the trial court denied.

Zink appeals again.

II. ANALYSIS

A. Dismissal

Zink says the trial court erred by dismissing this case under CR 41(a)(1)(B). She contends that such a dismissal may not occur after a summary judgment ruling and that the trial court failed to abide by this court's ruling on remand.[8] Respondents counter that CR 41(a)(1)(B) allowed dismissal because they had not rested their case, there was no operative summary

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[6] This court affirmed summary judgment rulings exempting juvenile SSODA evaluations from disclosure. Doe L, 7 Wn. App. 2d at 205.

[7] The dismissal order cites "CR 41(a)(1)(A)" but this was apparently a clerical error. CR 41(a)(1)(A) concerns dismissal by stipulation, which did not occur here. The parties do not dispute that dismissal was under CR 41(a)(1)(B).

[8] Zink says that the trial court violated the law-of-the-case doctrine by failing to follow this court's mandate. See RAP 12.2 ("Upon issuance of the mandate of the appellate court . . . the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court"). We disagree. The only mandate on remand was to apply the proper analysis to whether the plaintiffs could proceed in pseudonymity. Doe L, 7 Wn. App. 2d at 164. And as discussed below, we determine that issue to be moot now. This court did not direct the trial court to continue litigation and Zink has no pending claims.

judgment ruling, and trial had not begun. Respondents also say that good cause existed for dismissal under CR 41(a)(2).[9] We agree with the Respondents that good cause supported dismissal under CR 41(a)(2).[10]

We review "a decision to grant a voluntary dismissal under CR 41 for abuse of discretion." Gutierrez v. Icicle Seafoods, Inc., 198 Wn. App. 549, 553, 394 P.3d 413 (2017). "An abuse of discretion exists when a court's decision is 'manifestly unreasonable or based upon untenable grounds or reasons.'" Thomas-Kerr v. Brown, 114 Wn. App. 554, 557–58, 59 P.3d 120 (2002) (quoting Davis v. Globe Mach. Mfg. Co., Inc., 102 Wn.2d 68, 77, 684 P.2d 692 (1984)). We review "the application of a court rule to undisputed facts de novo." Gutierrez, 198 Wn. App. at 553.

CR 41(a) states in part:

> (a) Voluntary Dismissal. . .
>
> (2) *Permissive.* After plaintiff rests after plaintiff's opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper.

After the Supreme Court's decisions in Doe G and Doe A, this court partially reversed the trial court's summary judgment rulings and permanent injunctions preventing the disclosure of the requested records. On remand, the

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[9] Zink says dismissal was improper under CR 41(a)(2) (as well as CR 41(a)(1)) because Respondents moved to dismiss after the summary judgment ruling. But the cases she cites concern motions to dismiss before the plaintiffs rested, while CR 41(a)(2) addresses motions "after the plaintiff rests."

[10] Because we affirm based on CR 41(a)(2), we do not reach the CR 41(a)(1)(B) issue.

Respondents moved to dismiss under CR 41. The trial court granted the motions to dismiss under CR 41(a)(1)(B).

Respondents say that good cause existed for dismissal under CR 41(a)(2) because the rulings in Doe A and Doe G determined the merits of the case, Zink obtained the requested records, and there are no remaining counterclaims or other pending issues. Respondents also note that the goal of CR 41 is to lighten the burden on court dockets.

Though the trial court did not grant dismissal under CR 41(a)(2), we may affirm on this ground. Gardner v. First Heritage Bank, 175 Wn. App. 650, 673 n.31, 303 P.3d 1065 (2013) ("It is a general rule of appellate practice that the judgment of the trial court will not be reversed when it can be sustained on any theory, although different from that indicated in the decision of the trial judge." (quoting Sprague v. Sumitomo Forestry Co., 104 Wn.2d 751, 758, 709 P.2d 1200 (1985))). Respondents raised CR 41(a)(2) as an alternative basis for dismissal in their replies.[11] See Gosney v. Fireman's Fund Ins. Co., 3 Wn. App. 2d 828, 877, 419 P.3d 447 (2018) ("An appellate court can affirm a trial court judgment on any basis within the pleadings and proof."). Good cause existed for dismissal. Because of the decisions in Doe A, Doe G, and Doe L, Respondents no longer wished to proceed with their case, and there were no other pending claims. While Zink says that the trial court must still conduct a GR 15 and Ishikawa analysis to decide the pseudonym issue, as discussed below, the issue is moot. The purpose of CR 41 is to provide plaintiffs with a tool to unburden court

[11] Zink did not object to Respondents raising this argument in their replies.

dockets and reduce unnecessary litigation.[12] The trial court acted within its discretion.

B. Pseudonyms

Zink says that the trial court erred by dismissing the case without conducting a GR 15 and Ishikawa analysis of the pseudonym issue, which it determined to be moot. John Doe D responds that the issue is indeed moot as to them because this court has already said so. John Does L–O respond that the issue is moot because the trial court dismissed their case with prejudice and Zink obtained the relief she sought. We conclude the issue is moot.

"Mootness is a question of law reviewed de novo." State v. Slattum, 173 Wn. App. 640, 648, 295 P.3d 788 (2013). "A case is moot when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." Cox v. Kroger Co., 2 Wn. App. 2d 395, 408, 409 P.3d 1191 (2018) (quoting Spokane Research & Def. Fund v. City of Spokane, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005)).

In the first appeal, this court determined that the trial court erred by granting John Does L–O's motion to proceed under pseudonyms because it did not conduct a GR 15 and Ishikawa analysis.[13] Doe L, 7 Wn. App. 2d at 164,

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[12] See Doe A by & through Roe v. Zink, 2020 WL 7497009, at *3 ("The actions [in moving to dismiss] of the John Does 1 recognized the futility of continuing with their lawsuit and resolved it in a most expeditious manner."); see GR 14.1 ("Washington appellate courts should not, unless necessary for a reasoned decision, cite or discuss unpublished opinions in their opinions").

[13] Zink says under the law-of-the-case doctrine and under RAP 12.2 the trial court must abide by the rulings and conduct a GR 15 and Ishikawa analysis. But as we noted above, the trial court did not violate the doctrine because there was no mandate to continue with litigation.

202–03. The court reversed and remanded the issue of whether John Does L–O could proceed in pseudonymity. Id. But the court stated, "[W]e do not address whether Does G and D were correctly allowed to proceed under pseudonyms because this issue is moot as to them" because their names were either revealed or were going to be revealed. Id. at 164.

Because this court held in Doe L that the issue was moot, the trial court did not err by declining to conduct a GR 15 and Ishikawa analysis on pseudonymity for the John Doe D plaintiffs.

As for John Does L–O, the trial court correctly concluded that the issue was moot.

The trial court can provide no further relief in this case. This court reversed the summary judgment rulings and on remand the trial court dismissed the Respondents' claims. No active counter or cross-claims remained.

Zink says that the pseudonym issue is not moot because there is a possibility that after conducting the required analysis, the trial court will have the case captions and the Superior Court Management Information System (SCOMIS) entry changed to identify the John Does. But changing the prior case captions and SCOMIS entry in this case cannot be considered "relief." And no "substantial question" remained before the trial court. See Cox, 2 Wn. App. 2d at 408 (quoting Spokane, 155 Wn.2d at 99). Relief here turns on whether the PCSD can release the records, and that issue was decided in Zink's favor.

Zink relies on Indigo Real Estate Servs. v. Rousey, 151 Wn. App. 941, 945, 215 P.3d 977 (2009), which is inapposite. There, following a voluntary

dismissal, the defendant moved under GR 15 to change her name to her initials in SCOMIS. Id. The parties had agreed to dismiss the unlawful detainer case and the defendant sought to prevent future landlords from seeing her name associated with the case. Id. The court held that while GR 15 permits the redaction of information in SCOMIS, the trial court erred in deciding the motion without conducting a GR 15 and Ishikawa analysis. Id. at 944, 949–50. But Rousey does not address mootness in relation to the redaction issue.

Zink says that because any person at any time can move to unseal documents under GR 15(e)(3), the issue of pseudonymity can never be moot. We disagree, and case law undermines her position. See, e.g., Doe ex rel. Roe v. Washington State Patrol, 185 Wn.2d 363, 385, 374 P.3d 63 (2016) ("Because we find that these records are available, it is unnecessary to consider whether the trial court abused its discretion by allowing the plaintiffs to proceed in pseudonym. The issue is moot."). And whether one can move to unseal documents in the future does not affect whether the trial court can provide relief in this case.

Zink also says that the pseudonymity issue is a collateral issue, meaning that the trial court can consider it even after the case has been dismissed. See Beckman v. Wilcox, 96 Wn. App. 355, 359, 979 P.2d 890 (1999) (noting that a "federal court may consider collateral issues [i.e., issues independent of the main proceeding] after an action is no longer pending." (quoting Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990))).

But this argument fails to address the proposition that, notwithstanding whether an issue is collateral, it may still be moot.

We affirm.

Chun, J.

WE CONCUR:

Coleman, J.

Brennan, J.

Appendix B

FILED
4/8/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

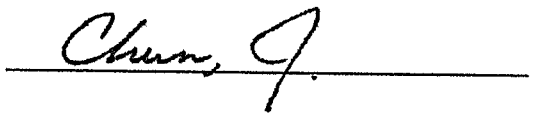
JOHN DOE L; JOHN DOE M; JOHN DOE N; and JOHN DOE O, as individuals and on behalf of others similarly situated, Respondents, v. DONNA ZINK, a married woman, Appellant, PIERCE COUNTY, Defendant.	No. 82055-9-I ORDER DENYING MOTION TO PUBLISH

Appellant Donna Zink has moved to publish the opinion filed on March 15, 2021. Following consideration of the motion, the panel has determined the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion to publish is denied.

FOR THE COURT:



Appendix C

In the Court of Appeals of the State of Washington

Division II

ORDER TRANSFERRING CASES

#	Case Title	Division II Case Number
1	John Doe L., et al., Respondents v. Pierce County et al, Appellants	540576
2	State of Washington, Respondent v. Juwan Marche Williams, Jr., Appellant	538512
3	Arthur West, Appellant v. Office of the Governor, State of Washington, Respondent	539900
4	State of Washington, Respondent v. Steven Rancour, Appellant	540169
5	State of Washington, Respondent v. Todd K. Walker, Appellant	535556
6	In re the Marriage of: Airelle B. Vanwey, Respondent v. Scott H. Vanwey, Appellant	535823
7	State of Washington, Respondent v. Paul Tlusty, Jr., Appellant	534231
8	In Re the Detention of M.M.	540151
9	Columbus Park, Respondent v. Patricia Croghan, Appellant	534886
10	State of Washington, Respondent v. Sean Crocker, Appellant	538962
11	Mark Mulder, Appellant v Kristina Marie Ward, Respondent	541921
12	State of Washington, Respondent v. Gabriel H. Norman, Appellant	540703
13	State of Washington, Respondent v. Michael Schluetz, Appellant	535483

Division Two designated these cases as non-oral argument cases. It has further been determined that to expedite review, the cases are transferred from Division Two to Division One of the Court of Appeals. CAR 21(a). It is

SO ORDERED.

DATED this 9th day of November, 2020.

FOR THE COURT:

J., C.J.
CHIEF JUDGE, Division Two

I Concur:
CHIEF JUDGE, Division One

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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CASE #: 82055-9-I
John Doe L., et al., Respondents v. Pierce County et al, Appellants
(Division II No. 54057-6)

Counsel:

The above case has been transferred to Division I of the Court of Appeals.

All matters in connection with the above cause should be addressed to the Court Administrator/Clerk of the Court of Appeals, Division I, One Union Square Building, 600 University Street, Seattle, Washington 98101.

Counsel are requested to please note the Court of Appeals number in all future references to this case.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

HCL

DONNA ZINK - FILING PRO SE

May 10, 2021 - 2:23 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	82055-9
Appellate Court Case Title:	John Doe L., et al., Respondents v. Pierce County et al, Appellants
Superior Court Case Number:	14-2-14293-1

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