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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

KING COUNTY SUPERIOR COURT,

Appellant,

v.

ENCARNACION IGNACIO AND KARLA FARRAS,

Respondents.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES CAYCE

REPLY BRIEF OF APPELLANT

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ORIGINAL

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A. ARGUMENT

1. Overview

Article I, section 10 of the Washington Constitution provides, “Justice in all cases shall be administered openly, and without unnecessary delay.” Compliance is mandatory. *State v. Duckett*, 141 Wn. App. 797, 804, 173 P.3d 948 (2007). Article 1, section 10 ensures public access to court records and court proceedings. *Dreiling v. Jain*, 151 Wn.2d 900, 908, 93 P.3d 861 (2004).

The sole purpose of Respondents' efforts to have their names removed from court indices is to ensure that the public does not have full and complete access to the records in their case. The problem is that GR 15, while allowing limitations on public access in narrowly tailored circumstances, does not provide for the relief that Respondents' seek in this instance.

Respondents argue at length about the unfairness of the landlord - tenant screening process, going into detail about how the process works and how the system is tilted against residential clients. None of this information relates to the legal merits of this case. Respondents are seeking to fix a perceived error in the landlord tenant screening process by expanding GR 15 beyond that which it allows. Respondents' arguments may be better served

through the legislative process and the Washington Residential Landlord-Tenant Act (RCW 59.18), the Fair Housing Act or the Equal Credit Opportunity Act. In short, Respondent's policy arguments need to be made to policymakers.

2. Standard of Review

The legal standard for sealing or redacting court records is a question of law which the court reviews de novo. *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005); *Indigo Real Estate Services v. Rousey*, 151 Wn. App 941, 946, 215 P.3d 977 (2009). An appellate court reviews a trial court's decision to seal or redact records for an abuse of discretion, but if the trial court applied an incorrect legal standard, the court remands for application of the correct standard. *Rousey*, 151 Wn. App. at 945

The trial court abused its discretion in ordering the redaction of the Respondents' names from SCOMIS and the court indices. The effect of the court's order is to drop the Respondent's names down a well from which they cannot be found. That is the functional equivalent of destruction under GR 15 without the requisite statutory authority. Moreover, even if the order calls for mere redaction or sealing, the rule still mandates that the parties' names remain in the court indices.

3. The Inherent Authority of the Trial Court does not Trump the Plain Instructions of the Supreme Court expressed in GR 15.

Respondents do not contest that “openness has long been recognized as an indispensable attribute of an Anglo-American trial.” Respondents’ Brief at 10. Respondents also acknowledge that Washington has fully embraced the principle of open courts. Respondents’ Brief at 11.

Respondents rely heavily on the judiciary's "inherent authority" to justify the trial court's redaction of their names from SCOMIS. *Yakima v. Yakima Herald-Republic*, 170 Wn.2d 775, 789-795, 246 P.3d 768, 774 (2011) (citing *Nast v. Michels*, 107 Wn.2d 300, 305, 730 P.2d 54 (1986)). However, as the Court in that case stated, when exercising authority over judicial documents, they remain subject to court rules governing disclosure, such as GR 15:

The documents, like Judge Lust's role, are plainly part of judicial activity in a criminal case and are judicial documents governed by court rules regarding disclosure, not the PRA, which governs nonjudicial agencies.

Yakima Herald-Republic, 170 Wn.2d at 795. In other words, inherent authority does not allow the trial court to disregard the express direction of the Supreme Court in court rules regarding the disclosure of court records.

In this case, GR 15 establishes a "uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record." GR 15. The standard for sealing, redacting and destroying court records under GR 15, must be harmonized with the five-art analysis in Ishikawa.

GR 15 provides more than mere "practical guidance for parties filing and courts deciding on motions to seal". Respondents' Brief at 16. On the contrary, the rule sets forth clear procedures the trial courts are required to follow. Even this court observed in COA I General Order 2006-1 that, "Whereas General Rule 15 provides that court files and records can be sealed or redacted **only upon compliance** with the requirements of General Rule 15..." (Emphasis added). Furthermore, the purpose of the general rules is "to provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process." GR 9.

In sum, the only way for the trial court to grant the relief requested by Respondents is if the court rule allows for it. As explained in Appellant's opening brief and again below, the trial

court incorrectly exceeded the scope of GR 15 when it ordered Appellant to redact Respondents' names from all court indices. The improper remedy fashioned by the court in turn violates the public's state constitutional right to access court records

4. GR 15 Does Not Permit the Trial Court to Obstruct the Public's Right to Know of the Existence of a Court Record.

Respondents concede that "as long as Mr. Encarnacion's and Ms. Faris' names remain redacted from SCOMIS, a person can not discover the action by running a SCOMIS name query..." Respondents' Brief at 39. They suggest, however, that adequate substitutes exist because searches can be made by case number. This is simply not how the vast majority of people search case records. The real issue is that the Respondents do not want a specialized segment of the population -- prospective landlords -- to discover that they were the subject of an unlawful detainer action. But neither GR 15 nor the state constitution differentiate between segments of the public. One member of the public is not any more worthy of accessing court records than another, or justification for making a court essentially irretrievable (i.e., destroyed) without any basis in the court rule or statute.

Interestingly, even when the issue simply involves redacting or sealing a court record, as opposed to destruction, the record still maintains the parties' names as part of its SCOMIS identification. GR15(c) (C) 5; GR 15(c) 6. In the case of redaction, the original unredacted copy must be sealed, GR 15(c) 6¹, but the order to seal itself that identifies the parties remains publicly accessible.

Similarly, when an order sealing an entire court file is entered, the public still has a right to learn of the file's existence absent a statute expressly stating to the contrary. GR 15 (c) (4). The rule specifically directs the Clerk to include the names of the parties, among other information, on the court indices. GR 15 (c) (4); see also GR 15(d) (requiring adult and juvenile's name to remain available on public indices when a criminal conviction is vacated and an order to seal is entered).

Finally, even when records are destroyed, the order to destroy and the written findings supporting the order must be publicly accessible. GR 15(h) (4) (C).

Under Respondents' theory of GR 15, all the public would see under any of the foregoing scenarios is an order that contains

¹ GR 15(c)(6) requires that when a record is redacted, the original, unredacted, record must be sealed under GR 15(c)(5).

blanks in the caption where the parties' names would otherwise be, and direct the redaction, sealing or destruction of records relating to these unknown parties.

Respondents want to do under redaction that which is not allowed under sealing or destruction, which is make the existence of the record undiscoverable. Whether Respondents want to label this a sealing, redaction or destruction to make the existence of a case undiscoverable is contrary to GR 15.

5. The Names of Parties to a Litigation is Relevant Information Available to the Public.

Respondents contend that the names of the parties are not relevant to the merits of the case. This contention is nonsensical. First, the cases cited by Respondents are factually and legally distinguishable from the issue before this court. Specifically, they point to the following: *State v. McEnry*, 124 Wash. App. 918,103 P.3d 857 (2004) (reviewing a motion to seal the court file pursuant to GR 15 and RCW 9.94A.640); *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 114 P.3d 1182 (2005) (reviewing a motion to sealed exhibits at the close of the trial); *Bellevue John Does 1-11 v. Bellevue School District*, 164 Wn.2d 199, 189 P.3d 139 (2008) (holding that the Public Records Act exempts disclosure of personal

information in files maintained for employees, appointed and elected officials of any public agency. Personal information includes names and identifying information in unsubstantial sexual misconduct allegations against teachers.); *T.S. v. Boy Scouts of America*, 157 Wn.2d 416, 138 P.3d 1053 (2006) (plaintiff challenged the redacted release of files subject to discovery requests. The redaction of the names of the victims and perpetrators within the documents was not challenged on appeal); *Dependency of D.M.*, 136 Wash. App. 387, 149 P.3d 433 (2006) (the court used first names and initials for clarity and to protect the children's anonymity in compliance with COA II General Order 2006-I and RCW 13.34 which requires that dependency hearings may be closed if it is found to be in the best interests of the child).

None of these cases involve removing a parties' name from court indices. None of the cases address a motion which is intended to ensure that the public cannot learn of the existence of a case. Rather, in each matter the parties were seeking to seal/redact documents or portions of documents other than the caption. The underlying intent of which is to ensure that since the public can access the case, certain portions of the case should be protected. In each case cited the redactions or sealing did not

hamper the public's ability to know the case, document or exhibit exists.

In the one case involving a party's name in the caption, *In Re Dependency of D.M.*, 136 Wn.App. 387, 149 P.3d 433 (2006), the use of initials instead of the juvenile's full name was based on a state statute, RCW 13.34 which allows for closed hearing when in the best interest of the child. There is no such RCW, court rule, or general order that allows for closed unlawful detainer actions.

6. Respondents' Hypothetical Due Process Argument has no Relevance to the Circumstances of this Case.

Lastly, Respondents raise the hypothetical specter of due process violation. They speculate that "due process rights probably pertain to SCOMIS..." and "... a person who is (or is about to be) listed in a court database as an unlawful detainer defendant probably has the right to notice and an opportunity to dispute that records..." Respondents' Brief at 42. Respondents note that this possible due process violation applies, particularly to inaccurate or misleading information.

Respondents have made no claim in this case that their due process rights have been violated, let alone that they have standing to assert the due process of other, fictitious plaintiffs. Nor is there

any contention here from Respondents that they are seeking to correct inaccurate or misleading information. SCOMIS lists the party's names and type of action. The information in SCOMIS indicates that an unlawful detainer action was filed against the respondents. This is absolutely accurate. How future landlords may choose to use this information does not make it misleading. If a party was, as stated in the hypothetical, inaccurately listed in a SCOMIS database, that party could make a motion to *correct* SCOMIS. Respondents are requesting the court to put their initials in SCOMIS. That is not their name, nor is the word "redacted".

B. CONCLUSION

In summary, the trial court erred by using its power of redaction to effectively destroy a court record or file without statutory authority. See GR 15(h)(1). Even if its action did not constitute a destruction, the court nonetheless exceeded its authority under GR 15(c)(4). Sealing an entire court file is intended to impose a greater restriction on public access than mere redaction of court records. See GR 15(c)(3) (providing that a court record shall not be sealed when redaction will adequately protect privacy interest). The trial court, however, abused its discretion by imposing greater restrictions than sealing permits, effectively

eliminating the public's right to know of the very existence of a court file connected with Respondents. This is inconsistent with the terms and intent of GR 15.

For the foregoing reasons, the trial court erred by ordering the redaction of Respondents' names from the court indices. The Court should hold that removing a party's name amounts to the destruction of a public record. Additionally, whenever a court record is destroyed, sealed or redacted, a record of that action must be publicly available, and this requires the court indices to bear the party's full name.

DATED this 23 day of May, 2011.

RESPECTFULLY submitted,

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