

66428-0

66428-0

NO. 66428-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

KING COUNTY SUPERIOR COURT,

Appellant,

v.

ENCARNACION IGNACIO AND KARLA FARRAS,

Respondents.

2011 MAR 23 PM 4:38
COURT OF APPEALS
DIVISION I
CLERK

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES CAYCE

BRIEF OF APPELLANT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

SARAH JACKSON
Deputy Prosecuting Attorney
Attorneys for Appellant

King County Prosecuting Attorney
King County Administration Building
500 4th Avenue
Seattle, Washington 98104
(206) 296-0430

TABLE OF CONTENTS

	Page
A. INTRODUCTION.....	1
B. ASSIGNMENT OF ERROR.....	2
C. ISSUES PRESENTED.....	2
D. STATEMENT OF CASE.....	2
E. ARGUMENT	6
F. CONCLUSION	14

TABLE OF AUTHORITIES

	Page
Table of Cases	
<u>Washington State:</u>	
<u>Dreiling v. Jain,</u> 151 Wn.2d 900, 908, 93 P.3d 861 (2004)	6
<u>Indigo Real Estate Services v. Rousey,</u> 151 Wn.App 941, 947, 215 p.3d 977, 979 (Wash.App. Div.I, 2009)	9,13,14
<u>State v. Duckett,</u>	6
141 Wn.App. 797, 804, 173 P.3d 948 (2007)	
<u>State v. Young</u>	10,15
152 Wn.App. 186, 216 P.3d 449 (2009)	

Constitutional Provisions

<u>Washington State:</u>	
Washington Constitution, Article I, section 10	6,13

Rules and Regulations

<u>Washington State:</u>	
General Court Rule 15	6,8,9,10,11,12,13,14,15

General Court Rule 15(a)	7
General Court Rule 15(b)(1)	7
General Court Rule 15(b)(3)	10
General Court Rule 15(b)(4)	7
General Court Rule 15(b)(5)	7
General Court Rule 15(c)	11
General Court Rule 15(c)(3)	8,14
General Court Rule 15(c)(4)	11,12,14
General Court Rule 15(c) 4-6	2
General Court Rule 15(c) 6	11
General Court Rule 15(d)	11
General Court Rule 15(h)(1)	9, 10,12,14
General Court Rule 15 (h)(4)(C)(5)	11
General Court Rule 31(c)(4)	7
Civil Rules of Procedure 60(b)	4

King:

King County Superior Court Local Rule 7	3
---	---

A. **INTRODUCTION**

In the trial court this matter was captioned Aaron Hundtofte and Kent Alexander, petitioner v. Encarnacion and N. Karla Farras, respondent. This court has referred to the matter as it is captioned on the title page.

This case presents the issue of whether a superior court may "redact" a court file in such a way that court personnel and the public will never be able to access the file and learn of the case's existence.

In 2009, Aaron Hundtofte and Kent Alexander brought an unlawful detainer action against Encarnacion Ignacio and Karla Farras (Respondents), which was dismissed. Respondents want their names removed from all electronic court record databases to prevent the public from being able to locate the case. This Court should hold that there is no basis for this relief under Washington's Constitution, statutes, or court rules, and that even when redaction, sealing, or destruction is ordered, the public and court personnel must be able to access a record bearing the Respondents' names that sets forth the court's decision.

B. ASSIGNMENT OF ERROR

The trial court erred in entering the order of November 17, 2010 directing the King County Superior Court Clerk ("Clerk") to delete the Respondents' full names from all electronic court databases, and replace them with the Respondents' initials.

C. ISSUES PRESENTED

1. Under GR 15, courts are forbidden from destroying a court record absent express statutory authority. The trial court ordered the removal of Respondents' full names from court databases, including SCOMIS, and ordered that their names be replaced with their initials. Consequently, the public and court personnel likely will never be able to discover that a case involving Respondents ever existed, contrary to the Washington Constitution and GR 15. Does the trial court's decision constitute destruction of a court record, without an authorized statutory basis?
2. The Washington Constitution guarantees the public's right of access to court records. When court records are destroyed, sealed or redacted, GR 15 requires that a publicly-available record remain that contains that party's full name. If the trial court's decision does not amount to destruction, does the order conflict with GR 15 (c) 4-6, which mandates that the names of parties remain in court indices so that the public may at least learn of the existence of the case and access the court's GR 15 order?

D. STATEMENT OF THE CASE

Respondents were defendants in an underlying unlawful detainer action filed in King County superior court. See King

County Cause No. 09-2-33205-3. The court dismissed the unlawful detainer suit by stipulation and agreed order on November 12, 2009.

In April 2010, Respondents sought an order in the ex parte department redacting their names in the caption of the case from the Superior Court Information System ("SCOMIS") and, in their place, substituting the Respondents' initials, "I.E" and "N.F.," . CP 24-30, 36. On May 26, 2010, Commissioner Nancy Bradburn-Johnson granted the motion without opposition. CP 36A.

Having received the Commissioner's order to redact SCOMIS and the court databases, the Clerk concluded that the redaction did not comply with GR 15(h) because it effectively resulted in the destruction of a court record without citation to an authorizing statute. The order also conflicted with other parts of the Rule that require the parties' names to be accessible to court personnel and the public to be able to learn of the case's existence.

The King County Prosecutor's Office Civil Division, on behalf on the Clerk, filed a limited notice of appearance and prepared briefing in opposition to the Commissioner's order because the order greatly affected the Clerk's responsibility and ability to carry out its constitutional judicial function to index the records of the

court. CP 51. On June 24, 2010, the Clerk submitted its objection to Respondents' request to alter the court database, in an effort to get the matter back before the commissioner. CP 41-42.

At the time, the Clerk was unaware that Respondents, on June 7, 2010, had submitted a motion to the Chief Presiding Judge of the Norm Maleng Regional Justice Center, the Honorable Mary Roberts, seeking to affirm the ex parte commissioner's order. Respondents argued that the Clerk had not redacted the SCOMIS index in compliance with the commissioner's May 26th Order to Redact. Id. Judge Roberts denied the motion, without argument, on June 23, 2010. CP 45.

Consequently, Respondents filed a Motion for Direct Review to the Court of Appeals. See COA # 65659-7-I. Respondents limited the appeal to Judge Roberts' denial of their motion to affirm. This Court ordered the parties to appear for a hearing on the appealability of Judge Roberts' order. The Clerk opposed Respondents motion for review. Id. This Court held the appeal in abeyance until September 17, 2010, and authorized the trial court to make further rulings on the matter. Id.

On August 31, 2010, Ignacio filed a motion under CR 60(b), seeking relief from Judge Roberts' order. CP 51. Prior to hearing

the motion, the Honorable James Cayce requested that Respondents and the Clerk submit briefing on the Clerk's standing to challenge their motion for relief. CP 65-66. Judge Cayce found that the Clerk had standing and considered the Clerk's objections. CP 77.

In a written order issued November 17, 2010, Judge Cayce concluded:

19. The Clerk shall delete the Defendants' full names, "Encarnation Ignacio," "Ignacion Encarnacion," "Norma Karal Farias" and "N. Karla Farras," from the SCOMIS database under cause number 09-2-33205-3 KNT (for King County Superior Court) and replace, or cause to be replaced, their full names with their initials, being "I.E." and "N.F."

20. The Clerk shall also delete, or cause to be deleted, the Defendants' full names, "Encarnation Ignacio", "Ignacion Encarnacion," "Norma Karla Faris," and "N. Karal Farras" from any other databases maintained by this Court, and replace, or cause to be replaced, their full names with their initials, being "I.E." and "N.F."

CP 77.

Based on the orders directed to the Clerk, the Clerk timely filed a Notice of Appeal seeking review of Judge Cayce's order. CP 78.

This Court has accepted review of this issue in J.S. v. State, COA # 65843-3-I. Although the procedural history of J.S. is

significantly different, the questions before the Court are substantially the same.

E. ARGUMENT

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). Once the parties' names have been removed from the court databases, no one can learn whether the court record ever existed, and the public's constitutional right to access court records is meaningless.

1. The trial court's November 17, 2010 order effectively results in the destruction of a record in SCOMIS without statutory authority.

GR 15 prohibits the Clerk from redacting Respondents' full names in the court databases and SCOMIS. The trial court's order requiring such relief amounts to a "destruction" of the court record. This Court should find that removing Ignacio's name is the destruction of a court record.

a. GR 15.

GR 15(a) "sets forth a uniform procedure for the destruction, sealing, and redaction of court records...." It "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." Id.

A "court record" is broadly defined to include "any document, information, exhibit" maintained by the court in connection with a judicial proceeding, and "any index, calendar, docket, register of actions . . . in a case management system created or prepared by the court that is related to a judicial proceeding." GR 15(b)(1) (incorporating the definition of court record in GR 31(c)(4)).

GR 15(b)(3) defines "destroy" as "obliterat[ing] a court record or file in such a way as to make it permanently irretrievable." "Seal[ing]" is defined as "protect[ing] from examination by the public and unauthorized court personnel." GR 15(b)(4). "Redact" means "protect[ing] from examination by the public and unauthorized court personnel a portion or portions or a specified court record." GR 15(b)(5).

Court databases such as SCOMIS are court records. The Judicial Information System ("JIS") is the primary information

system for Washington courts. JIS is comprised of several components, including but not limited to a records database specific to individual persons and SCOMIS.¹

Searches within the individual person records database are conducted by entering a person or case number. The system retrieves all of the cases related to that person. Judges, court staff and criminal justice agencies use the database. The public has limited access to the database. The public can retrieve all cases associated with a person's name but cannot access any other personal identifying information.²

The court databases are also used to handle financial audits. An auditor may seek verification of receipts from an individual by searching the court databases for a party's name. CP 42.

GR 15 has established a hierarchy regarding the disposition of court records. The rule creates a presumption in favor of redacting, rather than sealing, a court record. GR 15(c)(3) ("A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court."). Destruction of a court record is the most extreme action authorized under GR 15.

¹Indigo Real Estate Serv. v. Rousey 151 Wn. App. 941, 947, 215 P.3d 977 (2009); See <http://www.courts.wa.gov/jis/> (last visited March 24, 2011).

Unlike sealing or redaction, a court is not authorized to "order the destruction of any court record unless expressly permitted by statute." GR 15(h)(1).

b. The Court's order is the functional equivalent of an order to destroy.

A superior court's decision to seal or redact records is reviewed for an abuse of discretion. Indigo Real Estate Servs. v. Rousey, 151 Wash. App. 941, 946, 215 P.3d 977 (2009).

In this instance, the court's November 17, 2010 decision fails to meet this standard. Redacting a party's name from court records severs the party's connection to an underlying case and effectively results in the destruction of records because court personnel and the public can never find a reference to the case once the parties' names are severed from the cause number. CP 61.

For example, if a judge from another county needed to see all of the cases and personal information related to the Respondents, a search under either of their names would not uncover this case because the link between the case and the names would have been severed. A judge, prosecutor, or law enforcement agency could not access any personal information in the case without first

² Id.

knowing the case number and that the initials "I.F." refer to Respondent Ignacio.

As a practical matter, the public does not search court records by case number, they conduct searches using the parties' names. Under the court's order, the record of Respondents' case would essentially become a needle in a haystack, permanently irretrievable and thereby "destroyed" under GR 15(b)(3). Indeed, that is the entire point of the Respondents' request -- to drop the case down a well so that the public will never (ever) be able to associate their name with the lawsuit.

Destruction of court record is not allowed unless expressly permitted by statute. GR 15(h) (1); State v. Young, 152 Wn. App. 186, 216 P.3d 449 (2009). Lacking express statutory authority for destroying the court records, the trial court's order must be vacated.

GR 15 requires that Respondents' names remain available to the public. To safeguard the public's constitutional right to access court records under GR 15, the Court should hold that a party's name cannot be redacted in such a way as to thwart the public's ability to access court records using a party's name.

2. The trial court's November 17, 2010 order also conflicts with the requirements in GR 15 regarding public access to the parties' names and the court's decision redact, seal or

destroy.

The trial court relied solely on GR 15(c) to order the redaction of Respondents' names from SCOMIS and other court indices. GR 15(c) does not constitute express statutory authority to destroy a court record, nor does it otherwise support the court's decision.

Under GR 15, when a party's motion to redact or seal a record is granted, the record still maintains the parties' names as part of its SCOMIS identification. GR15(c)(C)5; GR 15(c)6. When a court redacts records, the original unredacted copy must be sealed. GR 15(c)6. Again, the order to seal and supporting findings must be publicly-accessible.³ As a result, the unredacted record exists in a sealed file, which is accompanied by an order to seal supported by written findings, while the order and findings are publicly accessible.

Further, 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

³ GR 15(c)(6) requires that when a record is redacted, the original, unredacted, record must be sealed under GR 15(c)(5).

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).

Thus, in each action the record documenting the action is available. Whether redacting or sealing, a court may limit the information that is available to court personnel and the public, but the rule requires the court to guarantee that the public is still able to discover that the record exists.⁴ Even in the most extreme situation, when a court orders records destroyed under GR 15(h)(1), there is still a record documenting the records' destruction that is available to the public.⁵

Because GR 15 treats redaction as a less extreme measure than sealing, it is illogical to conclude that the rule requires a party's

⁴Even when a court file is sealed in its entirety, GR 15(c)(4) requires that the file is available for public viewing on court indices. "The information on the court indices is limited to the case number, names of the parties, [and] the notation 'case sealed.'" GR 15(c)(4). Further, the order to seal and the written findings supporting the order must be accessible to the public. GR 15(c)(5)(C).

⁵ The clerk shall;... File the order to destroy and the written findings supporting the order to destroy. Both order and the findings shall be publicly accessible. GR 15 (h) (4) (c).

name to remain on court indices when sealing an entire court file, but allows a name to be removed when redacting a specific court record, or a portion of such record.

For these reasons, the court's order conflicts with GR 15 and must be reversed.

3. The Rousey decision is not on point; but if the Court determines to the contrary, the case should be revisited and clarified in a manner consistent with GR 15 and article 1, section 10.

The Respondents rely almost exclusively on this Court's decision in Indigo Real Estate Services v. Rousey, 151 Wn. App. 941, 949, 215 P.3d 977 (2009) to support the trial court's order.

In Rousey, a landlord brought an unlawful detainer action against a tenant seeking an order surrendering the tenancy. Rousey, 151 Wn. App. at 945. Following a voluntary dismissal of the action, the trial court denied the tenant's motion to replace her full name with her initials in the SCOMIS index. Id. This Court reversed and remanded the case for further proceedings, concluding that the trial court should have applied the factors in GR 15(c)(2) and the Rousey factors. Id. at 950, 953.

Rousey however, simply does not mention, let alone analyze the consequences of removing a party's name from SCOMIS and JIS presented by the order entered in this case.

Further, to the extent that Rousey can be read to stand for the proposition that redacting information, including parties' names, from SCOMIS or court databases is permitted under GR 15, the decision conflicts with the procedures set forth in the Rule. As indicated above, GR 15 (c)(4) sets forth the information that must remain on court indices when a case is redacted or sealed, specifically the cause number, case type, and the parties' names. This Court should clarify Rousey by stating that the opinion does not authorize trial courts to redact information that must remain publicly accessible in court databases, such as parties' names.

F. 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 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 28 day of March, 2011.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 

SARAH JACKSON, WSBA 36636
Deputy Prosecuting Attorney
Attorneys for the Appellant
WSBA Office #91002