

75519-6

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No. 75519-6

WASHINGTON STATE COURT OF APPEALS
DIVISION I

DONNA ZINK, APPELLANT

v.

JOHN DOE G, et al, RESPONDENTS

OPENING BRIEF OF APPELLANT DONNA ZINK

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I


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1. INTRODUCTION

This appeal concerns a case filed in the King County Superior Court allowing unknown plaintiffs to file litigation in total secrecy through use of pseudonymity or a false identity so that the true identity of the plaintiff(s) is completely and totally obscured and secret even to the trial court.

Respondents argue that as long as the trial court has no idea of their identity, then the records are not sealed since the public has access to the exact same information as the trial court.

Initially the trial court rejected this argument and determined the records needed to be sealed and loosely applied General Rule (GR) 15 and the *Ishikawa Factors*, sealing the records until a determination on whether RCW 4.24.550 was an “other statute” exemption under the PRA. In April 2016, our Supreme Court determined RCW 4.24.550 is not an “other statute” exemption and does not prevent the release of information identifying registered sex offenders.

Zink motioned for the trial court to unseal the previously sealed court records and identify all unknown plaintiffs in all court records filed under pseudonym. The trial court denied Zink’s motion claiming that no court records had been sealed.

It is from this decision and order that Zink appeals to this court.

II. ASSIGNMENTS OF ERROR.

The trial court erred and abused its discretion in denying Zink's motion to unseal the sealed court records when it found none of the court records in this matter have been sealed (CP 149-150).

III. ISSUES PRESENTED FOR REVIEW

- a. Are court records sealed when one or more of the parties is litigating the case using redaction in place of their legal name (obscuring the identity of the true party through use of pseudonymity)?
- b. Is a trial court required to know the true identity of all parties involved in litigation?
- c. Did Zink's motion need to meet the requirements of CR 60(b)(11) or was a motion to unseal proper based on the initial order of the King County Superior Court on August 14, 2014 that the sealing of the records would end if the Respondents did not prevail?

IV. STATEMENT OF THE CASE

On July 14, 2014, the King County Superior Court Clerk, in opposition to Civil Rule (CR) 4(b)(1)(i), 10(a)(1) and 17(a), allowed John Doe G and H (Does) to file a class action complaint for declaratory and injunctive relief (CP 1-11) as well as a summons (CP 12-17) without knowing the true identity of the litigants filing an action in the court. The case was assigned to the Honorable Judge Roger Rogoff (CP 12).

On August 4, 2014, Does motioned the trial court for permission to proceed in pseudonym (CP 18-26) without application of General Rule (GR) 15 or application of the *Ishikawa Factors*. Does argued that based on decisions of

other Washington State Superior Courts (CP 27-25) and the decisions made in *Bodie v. Connecticut*, 401 W.S. 371, 91 S.Ct. 780, 785, 28 L.Ed.2d 113 (1971) and *Does I thru XXIII v Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000)(CP 85-115), federal courts permit proceeding in pseudonym without application of GR 15 and *Ishikawa Factors* if the parties need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the parties identity (CP 21). Without identifying any statutory language or history supporting such a conclusion, Does claimed that as long as the trial court has no idea who the litigants are, then justice is being administered openly. (CP 18-26: 27-35: 78-84: 85-115)

Zink argued an absurd reading and/or blatant disregard by our judicial system and our Washington State Constitution Article 1, section 10 (Justice in all cases shall be administered openly...) Court Rule 4(b)(1)(i)(The summons for personal service shall contain... the names of the parties to the action, plaintiff and defendant), CR 10(a)(1) (In the complaint the title of the action shall include the names of all the parties), and CR 17(a)(Every action shall be prosecuted in the name of the real party in interest).

The issue went before the Honorable Roger S. Rogoff on August 12, 2014, without oral argument (CP 18). After reviewing the briefing, Judge Rogoff agreed with Zink that use of pseudonym was sealing of court records and loosely applied GR 15 and the *Ishikawa Factors* (CP 116-122). In applying the *Ishikawa Factors*, the trial court determined that requiring plaintiffs to a lawsuit to identify themselves as sex offenders would defeat the purpose of the lawsuit

which was to prevent the dissemination of sex offender registration records identifying sex offenders (CP 120).

The trial court limited the sealing of Does' identities until such time as the lawsuit concluded and, if the sex offenders did not prevail, their names would be provided to Zink and disseminated to the public. The trial court specifically found there was no prejudice to Zink in waiting for the outcome of the lawsuit prior to enjoying the results of the lawsuit (CP 121).

On April 7, 2016, our Supreme Court determined RCW 4.24.550 is not an exemption and does not protect sex offender information from release to the public (*John Doe A v. Wash. State Patrol*, 185 Wn.2d 363 (2016)); the sole basis claimed by Does as giving them the right to anonymity in our judicial system (CP 20-21). The Does clearly did not prevail and their records are to be released by DOC to Zink (CP 149).

On June 16, 2016, as prevailing party, Zink filed a motion to unseal the court records and identify all parties whose records were sealed through use of pseudonym (CP 123-129; 138-148). Does objected claiming Zink's request to unseal the records based on the orders of the trial court were without merit. Does claimed Zink will receive the names of the parties when the requested records are released by the Department of Corrections (DOC); citing to CR 60(b)(11)(CP 133) as specifically prohibiting Zink from motioning the trial court to unseal the court records and identify of all parties summoning her into this litigation (CP 131-32).

On June 23, 2016, the Honorable Palmer Robinson, denied Zink's request for oral argument to unseal the records (CP 123-124) and denied Zink's motion to unseal the previously sealed court records; claiming none of the Court Records in this Matter have been sealed (CP 149-50).

Zink filed this appeal on July 19, 2016, requesting review of the trial courts determination that none of the court records are sealed and denying Zink's request to unseal the previously sealed court records (CP 151-155) as mandated in the original order of the Honorable Roger Rogoff.

V. ARGUMENT

1. Standards of Review

Interpretation of the Constitution, Statutes and Court Rules

A trial court's constitutional interpretation and waiver are questions of law which courts review de novo. *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004). *State v. Robinson*, 171 Wn.2d 292, ¶13, 253 P.3d 84 (2011).

The standard of review of the interpretation of court rules and state statutes is reviewed de novo. *Citizens All. for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428, ¶11 359 P.3d 753 (2015); *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000); *State v. Reece*, 110 Wn.2d 766, 757 P.2d 947 (1988).

Sealing of Court Records

The proper standard governing the sealing of court records is reviewed de novo. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). The

standard of review of a trial court's decision to seal a court record is abuse of discretion. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). *Dreiling v. Jain*, 151 Wn.2d 900, 907, 93 P.3d 861 (2004).

Use of Pseudonymity to Redact Court Records

Once our Supreme Court made the ultimate determination concerning RCW 4.24.550, the outcome of this lawsuit was determined and Respondents lost this lawsuit and their names were court ordered to be released (CP 120-21). Nonetheless, the trial court ignored the previous order of the court in this case and refused to unseal the redacted court records claiming the records were not sealed.

The questions before the court is whether the records are sealed and whether the trial court was required to honor the initial orders entered on August 14, 2014 sealing the court records until such time as Respondents lost (CP 116-122) when Zink motioned the trial court to unseal the records as mandated in the original order (CP 149-50).

The trial court's determination was not based on any legal authority and is obviously unreasonable and based on unsustainable grounds; clearly an abuse of discretion. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Blackwell*, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993)).

There can be no dispute that the trial court ordered the court records sealed and limited the sealing until the conclusion of the lawsuit as required by the

Supreme Court's decision in *Ishikawa* on August 14, 2014 (CP 118-122). Once the Supreme Court determined RCW 4.24.550 was not an "other statute" exemption preventing release of sex offenders identities, a full and fair hearing had been had and unredacted court records were to be provided to Zink and disseminated to the public (CP 120).

If the order involves sealing of records, it shall apply for a specific time period with a burden on the proponent to come before the court at a time specified to justify continued sealing.

Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 39, 640 P.2d 716 (1982). In this case, the trial court's decision to disregard the initial court order sealing the records and determination that the records are not sealed, are not decisions concerning whether to seal a court record. The proper review of the trial court's determination that the records are not sealed is an interpretation of our constitution, statutes and court rules and review is de novo.

2. The Trial Court's Decision That the Redacted Court Records Are Not Sealed is Unjustified and the Trial Court Provided No Basis For Its Decision.

Interpretation of Rules, Statutes, Our Constitution and Case Law

In order to interpret the constitution, statute or rule, each of its provisions "should be read in relation to the other provisions, and construed as a whole."

Weyerhaeuser Co. v. Tri, 117 Wn.2d 128, 133, 814 P.2d 629 (1991) (citing *State v. Sommerville*, 111 Wn.2d 524, 531, 760 P.2d 932 (1988)).

Court rules and State statutes must be interpreted and construed in such a fashion as to give all the language used effect, and no portion may be rendered meaningless or superfluous in the interpretation. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010)(see also *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)).

The principles used to determine the meaning of statutes also applies to the interpretation of court rules *State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). In this cause of action, the trial court has interpreted the rules and statutes to allow a party to file in complete anonymity, to proceed in pseudonym, such that even the court does not know the true identity of the party initiating action in the court.

Knowing the True Identity of All Parties Of Interest to an Action is Not Optional: It is Mandated by Court Rules, State Statutes and Our Constitution

Court rules must be followed by every court in the State of Washington without exception. If court rules dictate that a court must perform a task, the court does not have the option to do otherwise. The requirements for identification of a true party of interest being named in the caption of court records is found at CR 4(b)(1)(i), 10(a)(1) and 17(a). Each of these court rules contain language stating that the party initiating legal action against another party must provide their true legal name and be identified as the true party of interest. Further, all parties, including the defendants, must be identified in the

complaint and summons unless that party is unknown and the record must be corrected once the party is identified.

“Every action shall be prosecuted in the name of the real party in interest” (CR 17(a)). The court is required to know the identity of each party in order to ensure that the action is prosecuted in the name of the real party

The summons for personal service must contain the names of all plaintiffs and the defendants (CR 4(b)(1)(i)). In order to summon Zink into this action, the summons was required to provide the true name and identity of the party summoning her into court in the caption of the summons.

CR 10(a)(1) requires the names of all parties, both plaintiffs and defendants by included in the complaint. The complaint filed by the court clerk was required to contain the true names and identity of the Does in order for the lawsuit to be filed.

Clearly, allowing litigant to file anonymously or under false names is not an option in our justice system and there is no legal authority allowing courts to do so. The trial court’s decision that the records are not sealed is error and an abuse of discretion. The decision and order must be overturned and this case remanded back with instructions for the trial court to implement the initial order of the court and unseal the true names of John Doe G and John Doe H.

Our Constitution Does Not Allow Secrecy In Our Judicial System Without Proper Application of GR 15 and the Ishikawa Factors

Our Constitution, Article 1, §10 assures open justice. However, it has been recognized by our Court that there may be times a party has a legal just cause for

closure. In order to balance open justice with the need to protect vulnerable litigants our Courts adopted GR 15¹ and set forth factors allowing for sealing court records under specific circumstances and after application of factors set for by our Supreme Court in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982)(*Ishikawa Factors*).

Here, the Honorable Roger Rogoff clearly understood that the records must be sealed if redaction was to be allowed and he loosely applied GR 15 and the *Ishikawa Factors* (116-122)(the findings entered did not meet the strict standards set out in *Hundtofte* and the hearing was closed to the public).

After the decision was made concerning RCW 4.24.550 and the suit concluded in Zink's favor, the Honorable Palmer Robinson, refused to abide by the court order entered on August 14, 2014, refused to unseal the court records and identify the true parties of interest, violated court rules, well established case law and our constitution and declared that the records are not sealed without any justification or any citation to the legal authority allowing a trial court to make such declaration and order.

The trial court's decision and order is an absurd reading and/or blatant disregard by our judicial system of our Washington State Constitution Article 1, section 10 (Justice in all cases shall be administered openly...) Court Rule

¹ To seal means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal. GR 15.

~~4(b)(1)(i)(The summons for personal service shall contain... the names of the parties to the action, plaintiff and defendant), CR 10(a)(1)(In the complaint the title of the action shall include the names of all the parties), and CR 17(a)(Every action shall be prosecuted in the name of the real party in interest). There is absolutely no legal authority or justification for the decision and order of the trial court.~~

Openness In Our Judicial System Is Mandatory

The importance of openness in our judicial system was revisited in a recent Supreme Court decision, *Hundtofte v. Encarnación*, 181 Wn.2d 1, 330 P.3d 168 (2014). Our Supreme Court's mandate for open justice was reinforced and clearly identified that redaction of court records is sealing court records.

An order to redact a court record is treated as an order to seal. GR 15 (b)(4)..

(*Id.* ¶9). Clearly the records in question were redacted through use of pseudonym to obscure the identity of plaintiffs to this action (CP 118-122). Therefore, application of GR 15 and the Ishikawa Factors was required.

Article I, section 10 of our constitution states that “[j]ustice in all cases shall be administered openly, and without unnecessary delay.” Const. art. I, § 10. **The openness of our courts “is of utmost public importance” and helps “foster the public's understanding and trust in our judicial system.”** Dreiling v. Jain, 151 Wn.2d 900, 903, 93 P.3d 861 (2004). Thus, we must start with the presumption of openness when determining whether a court record may be sealed from the public. Rufer, 154 Wn.2d at 540. Any exception to this “vital constitutional safeguard” is appropriate only in the most

unusual of circumstances. In re Det. of D.F.F., 172 Wn.2d 37, 41, 256 P.3d 357 (2011) (plurality opinion). **The party moving to override the presumption of openness and seal court records usually has the burden of proving the need to do so.** Rufer, 154 Wn.2d at 540.

(*Id.* ¶10)(emphasis added). Furthermore, the trial court must justify any decision and order to allow any party to file redacted and sealed documents.

Under the General Rules, a court record may be sealed if a court “enters written findings that the specific sealing or redaction is justified by identified compelling *privacy or safety concerns* that outweigh the public interest in access to the court record.” GR 15(c)(2). **“Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records.”** *Id.* But GR 15 is not, by itself, sufficient—the rule must be harmonized with article I, section 10 of our constitution. *State v. Waldon*, 148 Wn. App. 952, 966-67, 202 P.3d 325 (2009). Thus, **a court must analyze a motion to redact using both GR 15 and the five-step framework for evaluating a closure outlined in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982).** *Waldon*, 148 Wn. App. at 967.

(*Id.* ¶11)(emphasis added). Respondents originally argued to the trial court that based on decisions of other Washington State Superior Courts (CP 27-25) and the decisions made in *Bodie v. Connecticut*, 401 W.S. 371, 91 S.Ct. 780, 785, 28 L.Ed.2d 113 (1971) and *Does I thru XXIII v Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000)(CP 85-115), federal courts permit proceeding in pseudonym without application of GR 15

and *Isbiakow Factors* if the parties need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the parties identity (CP 21).

Respondents argued that if a court does not know the true identity of the party, the records are not sealed because the public has access to everything the trial court reviews in rendering its decision. As previously argued, whether trial court know the true identity of all litigants is not optional. Trial courts are required to know the true identity of all parties.

While it is unknown whether any test for secrecy must be performed at the federal level in order to allow secrecy in our judicial system, in *Physicians Ins. Exch. V. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993) our Supreme Court made absolutely clear that State laws are not to be superseded by federal law unless that is the clear and manifest purpose of Congress (*Id.* 327).

Our Supreme Court declared that federal preemption of state law may not occur unless Congress passes a statute expressly preempting state law. *Physicians Ins. Exch. V. Fisons Corp.*, 122 Wn.2d 299, 326-27, 858 P.2d 1054 (1993) Our Supreme Court has instructed courts to be very reticent to preempt state regulations and laws based on an ambiguous implication of a federal law. *Inlandboatmen's Union of Pac. v. DOT*, 119 Wn.2d 697, 702, 836 P.2d 823 (1992) (footnote removed).

None-the-less, the trial court apparently concluded that based on decisions of other Washington State Superior Courts (CP 27-25) and the decisions made in *Bodie v. Connecticut*, 401 W.S. 371, 91 S.Ct. 780, 785, 28 L.Ed.2d 113 (1971)

and *Does I thru XXIII v Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000)(CP 85-115), the records are not sealed (CP 149).

The trial court's decision and order do not identify any statutory language or history supporting such a conclusion and the trial courts order is in violation of court rules, well established case law and our Washington State Constitution and must be overturned and remanded with instructions to follow the initial order of the trial court and unseal all court record sealed through us of pseudonymity.

VI. COSTS

The Zink's request this Court to award her fees and costs under RAP 14. Pursuant to RAP 14.1 the appellate court which accepts review and makes final determination (RAP 14.1(b)) decides costs in all cases (RAP 14.1(a)). As the substantially prevailing party in this cause of action, the Zink respectfully request this Court to award her fees and costs for this appeal. See *Mount Adams Sch. Dist. v. Cook*, 150 Wn.2d 716, 727, 81 P.3d 111 (2003).

VII. PUBLICATION

Zink respectfully requests this court to publish the decisions made in this cause of action. The questions posed here are of great public concern requiring Appellate determination and publication is appropriate. The questions presented not only affect Zink. The questions posed here concern a Constitutional Right and the decision affects all future litigation filed by plaintiffs who may or may not want their identity known or associated with a particular litigation.

If the trial court is not required to know the identity of litigants, meet a test to sealed court records, or follow the orders issued in the same case by another judge the public has a right to know because it affects the public at large. These issues are of great public interest and importance and do not just affect Zink.

As the decision made by this court will profoundly affect the Court Rules concerning the need for a trial court to know the true identity of the party of interest in any given case, whether use of pseudonym is a sealing of court records and whether a trial court can disregard a previous ruling without just cause, Zink respectfully requests this Court's decision be published so it can be used in any future litigation concerning these same issues.

VIII. CONCLUSION

Secrecy in our justice system is not allowed under our State Constitution and allowing secrecy without application of the safe guards to assure its need fosters mistrust in our judicial system. The trial court clearly erred abused its discretion when it entered an order without any justification or legal authority allowing for the decision and order, stating simply the records are not sealed.

The trial court clearly erred and abused its discretion when it determined that it did not need to follow the order entered mandating that the records are to be unsealed if Zink prevailed.

The trial court clearly erred and abused its discretion when it determined that a trial court has no need to know the identity of the true party and that use of pseudonymity is not sealing of court records.

For all the reasons stated herein, Zink requests this court to overturn the trial court decision that the records are not sealed and remand this case back to the trial court with instructions to unseal the records and identify John Doe G and John Doe H.

RESPECTFULLY SUBMITTED this 4th day of October, 2016.

By 
Donna Zink
Pro se

IX. CERTIFICATION OF SERVICE

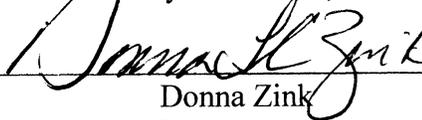
I, Donna Zink, declare that on the 4th day of October, 2016, I did send a true and correct copy of appellant's "*Opening Brief of Appellant Donna Zink*" via e-mail service to:

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Dated this 4th day of October, 2016

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STATE OF WASHINGTON
SUPERIOR COURT