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NO. 50185-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

BRYAN LEE STETSON,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent.

**BRIEF OF RESPONDENT
WASHINGTON STATE DEPARTMENT OF CORRECTIONS**

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I. INTRODUCTION

In the fall of 2016, Stetson made multiple requests to the Department of Corrections (DOC or Department) to review his own medical file in the DOC facility where he was housed. Stetson reviewed his medical file twice in that time. After his reviews, Stetson filed a complaint alleging the Department's response to his requests violated both the Public Records Act (PRA), RCW 42.56, and the Uniform Health Care Information Act (UHCIA), RCW 70.02. But Stetson's requests to view his own medical files are governed exclusively by the UHCIA, not the PRA. Stetson's claims for damages under the UHCIA fail because Stetson did not allege any actual damages he suffered as a result of the Department's response. Finally, the Department complied with the UHCIA when responding to Stetson's requests. As such, the trial court correctly ruled that Stetson's PRA and UHCIA claims fail as a matter of law. This Court should affirm.

II. COUNTER STATEMENT OF THE ISSUES

1. Does the PRA provide a cause of action for a person's requests to review his own medical file fail where RCW 42.56.360(2) provides that the UHCIA governs inspection and copying of a person's own health care information?

2. Do Stetson's UHCIA claims related to his requests to review his own medical file fail as a matter of law when he alleged no actual

damages and the Department responded to each of Stetson's requests within fifteen working days?

3. Was it an abuse of discretion for the trial court to stay discovery for one month when the stay caused Stetson no identifiable prejudice and protected the Department from the burden of answering broad discovery requests while its dispositive motion was pending?

III. STATEMENT OF THE CASE

Bryan Lee Stetson is in DOC custody and housed at Stafford Creek Corrections Center. CP 22. Stetson submitted written Health Services Kites (kites) on September 22, 2016, and October 10, 2016, requesting to review his medical file. CP 23. A DOC employee responded to Stetson's requests on October 10, 2016, and October 11, 2016, stating Stetson had been scheduled and to watch the call out. CP 23. On October 18, 2016, Stetson reviewed his medical file. CP 23.

On October 19, 2016, and November 4, 2016, Stetson submitted two more requests to review his medical file. CP 24. A DOC employee responded on October 24, 2016, and November 8, 2016, stating that Stetson had been scheduled and to watch callout. CP 24. Stetson reviewed his medical file on November 23, 2016.¹ CP 25.

¹ Two previous attempts to schedule the second review were canceled. CP 24-25.

Stetson filed this action on December 7, 2016, challenging the Department's response to his four requests to review his medical file and the two reviews of the medical file. CP 22-27. Stetson alleged that the Department's response violated both the PRA and the UHCIA. CP 22, 25-27. Stetson requested statutory penalties under the PRA and the UHCIA and an order compelling the production of documents. CP 26.

On February 1, 2017, the Department filed a motion for judgment on the pleadings, set to be heard on March 17, 2017. CP 33-39, 43-44. On the same day, the Department also moved for a protective order staying discovery. CP 31-32, 45-66. Stetson had served 20 interrogatories and 20 requests for production on the Department along with the summons and complaint on December 23, 2016. CP 45; *see* CP 53-66. The Department moved the Court for a stay of discovery pending resolution of the Department's motion for judgment on the pleadings. CP 45.

The Department's motion for a protective order was heard on February 24, 2017. CP 78; Feb. 24, 2017 VRP at 3. At the hearing, the trial court granted the Department's motion for a protective order and stayed discovery until the dispositive motion hearing on March 17, 2017. CP 84-85; Feb. 24, 2017 VRP at 7. The court indicated that it would review its ruling staying discovery on March 17, 2017, if the Department's motion for judgment on the pleadings was denied. Feb. 24, 2017 VRP at 7-8.

The Department's motion for judgment on the pleadings was heard on March 24, 2017. CP 119; Mar. 24, 2017 VRP at 3. The trial court granted the Department's motion. CP 129-30. Mar. 24, 2017 VRP at 12-13. The court found that the UHCIA was the exclusive statute to seek the relief being requested by Stetson and that Stetson's medical records were not subject to a PRA cause of action. Mar. 24, 2017 VRP at 13. The court also found that Stetson did not make any claim for actual damages and that the Department did comply with its obligations under the UHCIA by timely responding to the requests made by Stetson. Mar. 24, 2017 VRP at 13. The court dismissed Stetson's claims with prejudice. CP 129-30; Mar. 24, 2017 VRP at 12-13. Stetson appealed. CP 141.

IV. STANDARD OF REVIEW

A trial court's dismissal of a claim under CR 12(c) is reviewed *de novo*. *Parmelee v. O'Neel*, 145 Wn. App. 223, 231–32, 186 P.3d 1094 (2008), *rev'd in part on other grounds*, 168 Wn.2d 515, 229 P.3d 723 (2010). Dismissal under CR 12 is appropriate only if it is beyond doubt that the plaintiff can prove no facts that would justify recovery. *Burton v. Lehman*, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005). In making this determination, plaintiff's allegations are presumed to be true and the court may consider hypothetical facts that are not included in the record. *Id.* However, the court does not need to accept the legal conclusions as true.

Haberman v. Washington Pub. Power Supply Sys., 109 Wn.2d 107, 120, 744 P.2d 1032 (1987) *amended*, 109 Wn.2d 107, 750 P.2d 254 (1988). A trial court's decision will be affirmed on appeal if it is sustainable on any theory within the pleadings and the proof. *Bock v. State*, 91 Wn.2d 94, 95, 586 P.2d 1173 (1978).

V. ARGUMENT

A. **Stetson Does Not Have a Claim Under the Public Records Act Related to His Reviews of His Own Medical File Because Those Reviews Are Governed Exclusively By RCW Chapter 70.02**

Stetson appeals from the trial court's order which dismissed his PRA claims, arguing that his complaint did state a valid claim under the PRA. Opening Brief, at 2, 19-22. The only claims in this case concern Stetson's requests to review his own health care records from September to November 2016. CP 23-25. Stetson's claims related to his review of his own medical file are properly brought under the UHCIA and are not cognizable under the PRA. As such, Stetson's PRA claims fail as a matter of law and were properly dismissed by the trial court.

The PRA provides that an agency need not produce public records for inspection or copying if another statute "exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). Washington courts have interpreted this general provision to mean that when a statute other than the PRA provides a mechanism for the release of public records, the

other statute is the exclusive means of obtaining such records and the PRA does not apply to requests for such records. *Wright v. DSHS*, 176 Wn. App. 585, 594-598, 309 P.3d 662 (2013) (RCW 13.50 provides the exclusive means of obtaining juvenile justice and case records and the PRA does not apply to requests for such records.); *Dependency of K.B.*, 150 Wn. App. 912, 210 P.3d 330 (2009) (same); *Deer v. DSHS*, 122 Wn. App. 84, 93 P.3d 195 (2004) (same). The mechanism for a patient to examine and copy his own medical file is found within the UHCIA, RCW 70.02, and it is that provision, not the PRA, which applies to a patient's request for those records. *See* RCW 42.56.360(2).

In 1991 the Legislature passed the "Uniform Health Care Information Act" (UHCIA), RCW chapter 70.02. Washington Laws, 1991, ch. 335, § 101-907. This Act served two primary purposes: to protect the confidentiality of patient health care information and records, and to provide patients access to their own health care information and records. *Id.* The Act includes a section which sets forth the procedure used by a patient to request examination or copying of all or part of the patient's recorded health care information. RCW 70.02.080.

In addition, a section of the bill establishing the UHCIA added a new section to the State's Public Disclosure Act, then RCW chapter 42.17. Washington Laws, 1991, ch. 335, § 902, now codified at

RCW 42.56.360(2). The new provision states, “Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.” RCW 42.56.360(2). The phrase “inspection and copying” is used consistently within the PRA to refer to the process of reviewing records under the PRA. *See* RCW 42.56.080 (“Public records shall be available for inspection and copying”); RCW 42.56.550(1) (“Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency”); *see also* RCW 42.56.040; RCW 42.56.070; RCW 42.56.090; RCW 42.56.230; RCW 42.56.240; RCW 42.56.250; RCW 42.56.260; RCW 42.56.350; RCW 42.56.615; RCW 42.56.640; RCW 42.56.900. Thus, under the plain language of the statute, RCW 42.56.360(2) removes patient requests to inspect and copy their own health care information from the PRA and places the requests exclusively under the purview of the UHCIA.

The marked differences between the PRA and the UHCIA further show that the acts cannot be read to apply concurrently to requests from patients to review their own health care information. The UHCIA favors nondisclosure and the protection of patient confidentiality, while the PRA penalizes nondisclosure and favors the broad disclosure of records. *Compare* RCW 70.02.005 *with* RCW 42.56.030. Agencies under the PRA are not permitted to distinguish among requestors, RCW 42.56.080, but

under the UHCIA, providers must necessarily distinguish between disclosure to patients reviewing their own records and disclosure to third parties. *See* RCW 70.02.080 (procedure for a patient’s own examination and copying); .050, .200 (governing disclosure to third parties without patient authorization). Penalties are available under the PRA, but the UHCIA provides for the recovery of actual damages only. *Compare* RCW 42.56.550(4), *with* RCW 70.02.170.

Moreover, the PRA imposes a five-day response rule on agencies, while the UHCIA requires providers to take action within fifteen working days after receiving a request. *Compare* RCW 42.56.520(1), *with* RCW 70.02.080(1). If the PRA and UHCIA were read to both apply to a patient’s request to review his own medical file, the UHCIA’s fifteen-day provision would be meaningless because an agency would always need to comply with the shorter, five-day deadline under the PRA in order to be in compliance with both acts.² “[T]he legislature is presumed not to engage in unnecessary or meaningless acts and statutes must be interpreted so no part is rendered superfluous or insignificant.” *State v. McGrew*, 156 Wn. App. 546, 560-61, 234 P.3d 268 (2010), citing *State v. Wanrow*, 88 Wn.2d 221, 228, 559 P.2d 548 (1977). Because of their many differences, the PRA and

² Stetson highlights the incongruity between the two provisions by claiming that the Department violated *both* the PRA’s five-day rule and the UHCIA’s fifteen-day rule when responding to his requests to view his medical file. Opening Brief, at 26.

UHCIA cannot be read to both apply to a patient’s request to review his own medical file.

Stetson disagrees, and asserts that the PRA and the UHCIA can and should be applied concurrently to patients’ requests to view their own medical files.³ Opening Brief, at 20. For support, Stetson relies on *Prison Legal News, Inc. v. Dep’t of Corrections*, 154 Wn.2d 628, 635, 115 P.3d 316 (2005) (“*PLN*”), and *John Doe G. v. Dep’t of Corrections*, 197 Wn. App. 609, 391 P.3d 496 (2017), *review granted in part*, 188 Wn.2d 1008, 394 P.3d 1009 (2017) (granting review on the pseudonym issue and “whether unredacted SSOSA evaluations are exempt from disclosure because they contain health care information”). Opening Brief, at 20-22.

Stetson’s reliance on *PLN* and *Doe* is misplaced. *PLN* involved a PRA request by a third-party for investigative records related to medical misconduct investigations in Washington prisons. *Id.* at 632. The Department used RCW 70.02.020 as the basis to redact from the disclosed investigative documents “all references to medical information concerning inmates, including names, treatments, medical conditions, etc.” *Id.* at 633-34. Similarly, *Doe* involved a PRA request for sex offender sentencing

³ Stetson also argues at length that the PRA and UHCIA must be applied concurrently based on the principle of *stare decisis*. Opening Brief, at 22-24. Yet Stetson admits that “no Washington case has expressly ruled that the PRA and UHCIA can be used concurrently” Opening Brief, at 19.

alternative (SSOSA) evaluations. *Doe*, 197 Wn. App. at 617. Like *PLN* it involved a request to review records of a third party, not the requestor's own records. *Id.* at 617. This Court held "that the unredacted [SSOSA] evaluations that the Department intended to release are exempt from the PRA's general disclosure provision because they contain confidential health care information," but did not decide whether the SSOSA evaluations could be sufficiently redacted to protect the health care information. *Id.* at 619. Rather than undercut the Department's position in this case, the cases support the position that inspection of an inmate's own medical records are not governed by the PRA, but by the UHCIA.⁴

Stetson also misapplies *Oliver v. Harborview Medical Center*, 94 Wn.2d 559, 618 P.2d 76 (1980), and *Nissen v. Pierce County*, 183 Wn.2d 863, 357 P.3d 45 (2015). *See* Opening Brief, at 20. The *Oliver* Court examined whether the medical records held by a public hospital were considered public records within the Public Disclosure Act, which defined "public record" as, in part, any record which "contain[ed] information relating to the conduct of government or the performance of any governmental or proprietary function" *Oliver*, 94 Wn.2d at 565

⁴ The two other cases which have examined RCW 42.56.360(2) also did not involve requests for a patient's own medical records. *John Doe P. v. Thurston County*, 199 Wn. App. 280, 399 P.3d 1195 (2017) (SSOSA evaluations); *Belenski v. Jefferson County*, 187 Wn. App. 724, 350 P.3d 689 (2015) (employment applications), *reversed in part on other grounds by* 186 Wn.2d 452, 378 P.3d 176.

(quoting former RCW 42.17.020(26)). The Court held that the medical records were public records within the meaning of the Public Disclosure Act. *Id.* at 566. However, the issue here is not whether Stetson's medical records are public records but whether a document which is a public record can be available under the PRA when a separate, exclusive statutory scheme exists. *See Wright*, 176 Wn. App. at 596. Under RCW 42.56.360(2), it cannot. *See RCW 42.56.360(2)*. Moreover, *Oliver* was published 11 years before the Legislature enacted the UHCIA and RCW 42.56.360(2). *See Washington Laws, 1991, ch. 335, § 101-907*. The Legislature is presumed to know of the Supreme Court's decisions and consider them in later legislation. *State v. Fenter*, 89 Wn.2d 57, 62, 569 P.2d 67 (1977). Thus, the Legislature is presumed to have known of the Court's decision in *Oliver* when it enacted what is now RCW 42.56.360(2). In light of this statute, which post-dates *Oliver*, it is clear that any action relating to the production of offenders' own medical records in the care of the Department is governed by the UHCIA and must be initiated under that chapter.

Nissen is similarly inapplicable. *Nissen* does not speak to whether the UHCIA is the exclusive means for patients to examine and copy their health information. Instead, the only issue in *Nissen* was whether the documents were public records. The *Nissen* Court looked to *Oliver* simply for the broad premise that "records can qualify as public records if they

contain any information that refers to or impacts the actions, processes, and functions of government,” and then held that text messages sent and received by a public employee on a private cell phone could be public records if sent and received in the employee’s official capacity. *Nissen*, 183 Wn.2d at 869, 880-881. Again, the issue here is not whether Stetson’s medical records are public records but whether they are available under the PRA when a separate, exclusive statutory scheme exists for their production. *See Wright*, 176 Wn. App. at 596.

Stetson purports to quote *Rickman v. Premera Blue Cross*, 184 Wn.2d 300, 309, 358 P.3d 1153 (2015), for support. Opening Brief, at 19. *Rickman* does not apply here. Stetson’s quoted material does not appear anywhere within *Rickman*. *See Rickman*, 184 Wn.2d at 300. Moreover, *Rickman*’s holding does not support Stetson’s case. The Court in *Rickman* held that the UHCIA did not preclude a litigant from suing under the common law tort of wrongful discharge. *Rickman*, 184 Wn.2d, at 304. That the UHCIA and a tort cause of action may coexist has no bearing on whether the UHCIA and the PRA can both be applied to Stetson’s request to review his own medical file. As argued above, the UHCIA, not the PRA, remains the exclusive statutory mechanism for Stetson to bring the claims raised in his complaint.

It is undisputed that patients of government health care providers such as DOC may access their own health care records under the UHCIA. *See* RCW 70.02.170. The question, then, is whether the Legislature intended to provide such patients the option of *also* accessing their health care records under the PRA. The legislature plainly did not so intend. The plain language of RCW 42.56.360(2) removes patient requests to view their own medical records from the PRA, and the two acts cannot be applied in tandem to a patient's request to review of his own medical file. The UHCIA is the exclusive means by which Stetson can raise claims relating to his requests to review his own medical file at the DOC facility where he is housed, and because the only claims raised in his complaint relate to such requests, his attempt to raise those claims under the PRA fails as a matter of law. This Court should affirm the trial court's dismissal of Stetson's PRA claims.

B. Stetson's Claims Under RCW Chapter 70.02 Fail as a Matter of Law Because Stetson Does Not Allege Actual Damages and the Department Complied with Statutory Time Frames

Stetson also claims the trial court erred in finding that his complaint failed to state a claim under the UHCIA. Opening Brief, at 2. He is incorrect. First, Stetson's claim for UHCIA "penalties" fails as a matter of law. The UHCIA allows for a party to recover monetary damages for actual damages proximately caused by a violation of the UHCIA, but the act does not allow

for the recovery of consequential or incidental damages. RCW 70.02.170(2). Actual injuries are synonymous with compensatory damages. *See Wynn v. Earin*, 131 Wn. App. 28, 43, 125 P.3d 236 (2005). Actual damages are “[t]he sole remedy provided in the UHCIA” *Jeckle v. Crotty*, 120 Wn. App. 374, 386, 85 P.3d 931, 937 (2004). In his complaint, Stetson does not request any actual or compensatory damages, or allege any harm he has suffered, but rather requests “Statutory Penalties for violations of the PRA and UHCIA[.]” CP 27. No such “penalty” exists under the UHCIA. *See* RCW 70.02.170; *Jeckle*, 120 Wn. App. at 386. With no allegations of actual injury contained in his complaint, Stetson’s monetary claim under the UHCIA fails as a matter of law, and this Court should affirm its dismissal.

This Court should also affirm the trial court’s dismissal of Stetson’s request for an order directing the Department to comply with the UHCIA because the Department did comply. Under RCW 70.02.080, when a health care provider receives a written request from a patient to examine or copy all or part of his/her medical records, the health care provider must respond to the request within fifteen working days. RCW 72.02.080(1)(a). The Department did so in this case. The Department responded to Stetson’s requests to review his medical file twelve, one, three, and two working days

after Stetson submitted his written kite requests. CP 23-24. The Department met its obligation under RCW 70.02.080.

Stetson counters that it took the Department 26 days, then 36 days, to provide him the file to review. Opening Brief, at 26; *see* CP 23, 25. But RCW 70.02.080 does not state that the inspection itself must take place within 15 days, but simply that the agency must make the information available within normal business hours. In other words, the agency must “respond to the request within 15 days and must state whether or not it will grant or deny the request.” *Neel v. Luther Child Ctr.*, 98 Wn. App. 390, 394, 989 P.2d 600 (1999). The Department did so here.

Furthermore, any order compelling the Department to permit Stetson to review his medical file within 15 days is moot. A case is moot when the court cannot provide effective relief. *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994). Here, it is uncontested that Stetson was provided with two reviews of his medical file after submitting written requests. CP 23-25. Even assuming that the Department violated the UHCIA by failing to provide Stetson with the reviews within fifteen days, there is no effective relief that can be given. Stetson is not entitled to any monetary damages because he alleges no actual injury, and an order of compliance would be meaningless because the Department has already provided the review. *See* CP 23-25. Therefore, the question of whether the

Department violated the UHCIA by failing to provide a review within fifteen days is an abstract question of law that does not entitle Stetson to any relief in these proceedings. Because Stetson cannot show he is entitled to any relief on his claim of a violation of the fifteen-day provision in RCW 70.02.080, this issue is moot and this Court should affirm its dismissal.

Stetson also claims that the Department violated the UHCIA for failing to respond to his verbal request to view certain medical records, such as CT Scans, which were stored electronically. CP 24. But the UHCIA requires that requests to examine or copy medical records be submitted in writing. RCW 70.02.080(1). Furthermore, the UHCIA does not require the Department to provide Stetson with access to his medical records in the format of his choice:

If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid.

RCW 70.02.080(2). By Stetson's own admission, the electronic documents were available to Stetson if he were to request a copy. CP 24. Thus, on the face of Stetson's complaint, the Department did not violate the UHCIA with

respect to Stetson’s verbal request for copies of his electronic medical records.

Stetson makes a passing claim that the Department violated the UHCIA because he “specifically asked for explanations of his medical records . . . and was denied explanation to the coding.” CP 27; *see* CP 25. Stetson fails to identify what codes or abbreviations he asked for clarification of, and does not allege that he made the request to a qualified health care provider who would have been able to explain the medical abbreviations/codes. *See* RCW 70.02.080(2) (“Upon, request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information.”); RCW 70.02.010(18) (“Health care provider’ means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.”). Without more, Stetson’s vague statements about medical codes do not allege a UHCIA violation.⁵

Because Stetson’s complaint alleges no actual damages or injury stemming from the Department’s response to his requests to view his medical file, and because the factual allegations in Stetson’s complaint

⁵ Stetson also attempts to raise claims regarding the time he had to review his medical file, records which appeared to him to be missing from his file, and “markers” which Stetson placed in his file for reference during one review and which had been removed when Stetson viewed the file again. CP 23-25. No statutory authority suggests that this claimed conduct is a violation of the UHCIA.

demonstrate that the Department complied with the UHCIA in responding to Stetson's requests to view his medical records, Stetson's claims under the UHCIA fail as a matter of law, and this Court should affirm their dismissal.

C. The Trial Court Did Not Abuse its Discretion in Granting the Department's Motion for a Protective Order Staying Discovery

Stetson claims it was an abuse of discretion for the trial court to enter an order staying discovery until the resolution of the Department's motion for judgment on the pleadings. Opening Brief, at 17-19. A court's decision on whether to grant a protective order is reviewed for abuse of discretion, and "[a] trial court abuses its discretion only if its ruling is manifestly unreasonable or is based upon untenable grounds or reasons." *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 348, 16 P.3d 45, 50 (2000), *as amended on reconsideration* (Feb. 14, 2001). Under CR 26(c), "the trial court exercises a broad discretion to manage the discovery process in a fashion that will implement the goal of full disclosure of relevant information and at the same time afford the participants protection against harmful side effects." *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 232, 654 P.2d 673 (1982). This Court has held that CR 26(c) gives the trial court the discretion to stay discovery until after a CR 12(b)(6) hearing. *Nissen v. Pierce Cty.*, 183 Wn. App. 581, 597, 333 P.3d 577, 585 (2014), *affirmed in*

part, reversed in part on other grounds, 183 Wn.2d 863, 357 P.3d 45 (2015).

Here, the trial court did not abuse its discretion in granting a stay of discovery until the Department's motion for judgment on the pleadings was resolved. Because the Department's pending CR 12(c) motion would require the parties and the Court to look only at the pleadings in the case, Stetson would not have needed the tools of discovery to respond to the Department's motion and therefore would suffer no identifiable prejudice due to the stay. *See* CR 12(c); CP 46. In contrast, the Department would have been subject to undue burden and expense if it were required to respond to Stetson's submitted discovery requests. CP 46.

Stetson submitted 20 interrogatories and 20 requests for production to the Department. CP 45; CP 53-66. These requests included broad requests for production such as "produce any and all documents articulating what a public record is," and "produce any and all documents articulating the types of documents that are generally considered Health Care information." CP 46-47; CP 56-57. Stetson also asked the Department to identify in detail "every lawsuit against you alleging the wrongful withholding of records," including the parties to each action, the court each case was filed in, each cause number, the attorneys involved, the subject matter of each action, the substance of any orders entered in each case, the

status and nature of any appeal, and the final resolution of each action. CP 47; CP 61. Stetson further asked for the production of each complaint, answer, discovery document, dispositive motion, court order, settlement agreement, appellate brief, appellate opinion, and final order or mandate for each of the identified lawsuits. CP 47; CP 62. The Department asserted it would be unduly burdensome and expensive to respond to such broad requests when it was the Department's position that Stetson's complaint did not state a claim. CP 46-47.

The trial court agreed, and granted a stay of discovery until the Department's motion for judgment on the pleadings could be heard, only one month later. Feb. 24, 2017 VRP at 7-8. The court also indicated that it would reexamine its ruling if it denied the Department's motion. Feb. 24, 2017 VRP at 7-8. Thus, it was not an abuse of the Court's broad discretion under CR 26(c) to enter a stay of discovery, one month in duration, when the stay caused no identifiable prejudice to Stetson and relieve the Department of the burden of answering Stetson's broad discovery requests.

Stetson argues that the trial court abused its discretion based on the general premise that discovery is a "bedrock of all civil actions," and the stay "stopped Stetson from gathering all of the responsive documents" that another inmate later provided to him. Opening Brief, at 19. While discovery is undoubtedly an important tool of civil procedure, Stetson did not need

the tools of discovery to respond to the Department's CR 12(c) motion. *See* CR 12(c). The trial court also recognized that its order was temporary, and it would review its order (and likely allow for discovery to be reopened) if the Department's dispositive motion were denied. Feb. 24, 2017 VRP at 7-8. The court's decision both advanced the "goal of full disclosure" by allowing for discovery to commence if the case continued, and protected the Department from the "harmful side effects" of responding to burdensome discovery requests while its dispositive motion was pending. *See Rhinehart*, 98 Wn.2d at 232. The decision was not an abuse of discretion, and this Court therefore need not disrupt the trial court's ruling in this regard.

D. This Court Should Decline to Consider Any New Grounds Raised in Stetson's Opening Brief

Stetson claims that he has raised new grounds in his opening brief which were not presented below and which the Court should consider. Opening Brief, at 28. Stetson asserts that "because the substantive proceedings below moved so swiftly, this Court should make substantive rulings on all ancillary issues raised in this appeal." Opening Brief, at 29.

The Department cannot identify any "ancillary issue" raised in Stetson's opening brief except for a few references to attachments which were part of Stetson's original brief and which were previously rejected by

the Court. Opening Brief, at 12, 13, 25; Clerk's October 31, 2017, Notation Letter; *see* RAP 9.1. To the extent that any issue raised in Stetson's brief is raised for the first time on appeal, this Court should decline to consider the issue. The only case which Stetson cites for support, *Dragonslayer Inc. v. Wash. State Gambling Comm'n*, notes that parties appealing public disclosure decisions may attempt to raise new ground on appeal, but also notes that the appellate court may refuse to review any claim of error which was not raised in the trial court. *Dragonslayer*, 139 Wn. App. 433, 488, 161 P.3d 428 (2007) (citing *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn. 2d 243, 253, 884 P.2d 592 (1994) and RAP 2.5(a)). The Court then declined to consider any of the new arguments. *Id.* This Court should do likewise.

E. Costs And Attorney's Fees Should Not Be Awarded Because Stetson Is Not The Prevailing Party

Stetson raises the issue of costs and attorney's fees. Opening Brief, at 28. The PRA and UHCIA each provide for costs and attorney's fees to the prevailing party. RCW 42.56.550(4); RCW 70.02.170(2).

Stetson is not entitled to attorney's fees and costs because the trial court's decision should be affirmed. *See supra* Sections (V)(A)-(C). As such, Stetson is not the prevailing party for purposes of appeal or this case. Furthermore, even if Stetson prevails on the reversal of one or all of his

claims, Stetson is not the prevailing party at this time. A reversal in this circumstance will result in further proceedings below to determine whether the Department violated the UHCIA and/or the PRA. It is premature to determine who the prevailing party in this case is until such a determination is made. If Stetson succeeds on issues on appeal and submits a cost bill under RAP 18.1, the Department will respond to such appellate costs at that time. Therefore, in the event that the Court reverses any portion of the trial court's decision, it should remand the issue of attorney's fees to the trial court for it to determine the issue after the case is resolved and to determine the prevailing party.

VI. CONCLUSION

For the above reasons, the Department respectfully requests that this court affirm the lower Court's dismissal of Stetson's action.

RESPECTFULLY SUBMITTED this 13th day of December, 2017.

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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the Brief of Respondent Washington State Department of Corrections with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 13th day of December, 2017, at Olympia, WA.

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