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NO. 50412-0

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

JEFFREY PAYNE,

Appellant,

v.

JAMIE JANSSEN,

Respondent.

**DEPARTMENT OF SOCIAL AND HEALTH SERVICES'
RESPONSE BRIEF**

ROBERT W. FERGUSON
Attorney General

CRAIG B. MINGAY
Assistant Attorney General

Washington Attorney General's
Office
Social and Health Services Division

PO Box 40124
7141 Cleanwater Drive SW
Olympia, WA 98504-0124
(360) 586-6565
SHO Division OID No. 91021

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I. INTRODUCTION

Jeffrey Payne, a sexually violent predator committed to the Special Commitment Center (SCC), has a long-running obsession with SCC employee Jamie Janssen. This obsession has led to harassment through Mr. Payne violating an SCC-imposed no-contact restriction, letters to SCC management demanding contact with Ms. Janssen, a lawsuit in which the relief sought by Mr. Payne was a one-on-one meeting with Ms. Janssen, and Public Records Act (PRA) requests for records related to Ms. Janssen, including her timesheets and security camera footage during the times that she was working.

Ms. Janssen brought this suit against Mr. Payne and the Department of Social and Health Services (DSHS), the parent agency to the SCC, seeking injunctive relief as authorized by RCW 42.56.540 and .565. The Department urges this Court to affirm the permanent injunction granted by the trial court. The trial court correctly followed RCW 42.56.565, and the record amply supported its finding that Mr. Payne was utilizing the PRA to harass Ms. Janssen.

II. COUNTERSTATEMENT OF THE ISSUES PRESENTED

DSHS appeared below as a Respondent to Ms. Janssen's request for injunctive relief against DSHS and Mr. Payne. DSHS did not appear or participate in the hearing granting the emergency temporary restraining

order, nor did DSHS agree that PRA exemptions existed that supported the withholding of the documents. Therefore, the issues addressed in this response brief are limited to the matters that DSHS litigated in the trial court, as follows:

1. RCW 42.56.565 creates “a summary proceeding” at which a person may seek to enjoin the disclosure of records that are not exempt from the Public Records Act. Did the trial court properly enter the injunction after a single proceeding without holding a separate, initial preliminary injunction hearing?

2. Was there sufficient evidence for the trial court to find that Mr. Payne was making public record requests to harass or intimidate Ms. Janssen an employee of DSHS?

3. Did the Court sufficiently tailor the injunctive relief to address the harm alleged and within the limitations of RCW 42.56.565?

III. COUNTERSTATEMENT OF THE CASE

Ms. Janssen is employed at the SCC and is currently assigned to work in the SCC cafeteria. Clerk’s Papers (CP) at 3.¹ The SCC is a fully secure civil commitment facility established pursuant to RCW 71.09 for the

¹ The basis for the factual findings of the Court was the documentary evidence provided in support of the motion. Mr. Payne did not object to any of the records provided in support of the petition and he has not challenged the authenticity or admissibility of those documents here.

involuntary commitment and treatment of sexually violent predators.

Mr. Payne is a resident involuntarily committed to the SCC. CP at 68.

Mr. Payne worked in the SCC cafeteria until his inappropriate behavior directed towards Ms. Janssen required his removal in April 2016. CP at 3, 12, 154. After he was terminated from his employment in the cafeteria, he submitted a significant number of public records requests related to Ms. Janssen, including requesting video footage of her shifts. CP at 14, 15, 19.

Ms. Janssen repeatedly documented and reported the concerning behavior to SCC clinical staff. CP at 21, 25. On April 19, 2016, Ms. Janssen reported that Mr. Payne was getting more aggressive towards having interactions with her. CP at 25. She reported that Mr. Payne was attempting to find excuses to interact with her in the yard. *Id.* Ms. Janssen reported that his behavior was very threatening and imposing and that she did not feel safe around him. *Id.*

Based on the concerns raised by Mr. Payne's behavior directed towards Ms. Janssen, staff at the SCC placed Mr. Payne on a contact restriction. CP at 27, 29. Within one week of being placed on this contact restriction, Mr. Payne violated the restriction. CP at 29. The contact restriction requiring Mr. Payne to have no contact with Ms. Janssen is regularly reviewed by SCC clinical staff to determine whether the resident's

clinical needs indicate a continuation of the restrictions. CP at 154. Despite the fact that the restriction is regularly reviewed, Mr. Payne remained on the restriction one year later, at the time of the proceedings below. *Id.* According to Mr. Payne's therapist, he remained hyperfocused and obsessed with Ms. Janssen. *Id.*

Despite Ms. Janssen clearly indicating her lack of desire to meet and interact with Mr. Payne, Mr. Payne continued his relentless pursuit of such interaction. He submitted a letter to the Deputy CEO requesting a two hour in person meeting with Ms. Janssen to go over all of the information that he had. CP at 65-66. He further filed a lawsuit against Ms. Janssen, claiming a "Tort of Outrage." CP at 33. For relief in that suit, Mr. Payne demanded that "Defendant Ms. Janssen and plaintiff, Jeffrey Payne, be given the opportunity and time needed to sit down on a one-on-one in order to clear up any concerns, misunderstandings, indifferences, and make amends so we can start working on rebuilding a healthy pro-social, therapeutic, and non-hostile work environment like we used to have" CP at 57. Additionally, he demanded that, "Defendant Ms. Janssen, Dr. Elena Lopez (plaintiff's therapist) and plaintiff have a meeting together after plaintiff and Ms. Janssen have their one-on-one" *Id.* Throughout this time, Mr. Payne continued to request public disclosure documentation related to Ms. Janssen. CP at 3.

In February 2017, Mr. Payne requested Ms. Janssen's "work time sheets between December 1, 2015 to February 24, 2017." CP at 2. DSHS notified Ms. Janssen of this request, and Ms. Janssen sought to enjoin the release of the requested records and prohibit the future release to Mr. Payne of records related to Ms. Janssen. CP at 1-10. In support of her motion, Ms. Janssen filed a number of exhibits detailing Mr. Payne's prior interactions with her, the number of records requests Mr. Payne made related to Ms. Janssen, and how the SCC staff had previously responded to Mr. Payne's "stalking" behaviors. CP at 11-150.

At a hearing held on April 4, 2017, the trial court granted an emergency request for a temporary restraining order. That order prohibited DSHS from "releasing any records relating to Jamie Janssen, the movant, to Jeffrey Payne, the requesting party, until the hearing on the merits" CP at 151. The Court set a "hearing on the merits" for April 27, 2017. *Id.* The Court found good cause for issuing the order without notice to Mr. Payne and for extending the enforcement of the order past fourteen days. CP at 152.

Prior to the hearing scheduled on April 27, 2017, DSHS and Mr. Payne filed their respective responses to the motion for injunctive relief. Suppl. CP at 165-76. DSHS did not oppose entry of the injunction and submitted a declaration of the SCC's Chief of Resident Treatment,

Dr. Elena Lopez. CP at 153-56. That declaration explained Mr. Payne's inappropriate behaviors directed towards Ms. Janssen, the contact restriction that SCC placed on Mr. Payne, and that Mr. Payne remained hyperfocused and obsessed with Ms. Janssen. CP at 153-54.

On April 27, 2017, the trial court held the hearing on the merits of the petition. Verbatim Report of Proceedings (VRP), April 27, 2017. After considering the documents on file and the arguments of the parties, the trial court entered an oral ruling granting the requested injunctive relief pursuant to RCW 42.56.540. The court enjoined the release of Ms. Janssen's timesheets pursuant to the public records request at issue and enjoined the release to Mr. Payne relating to Ms. Janssen in response to any future requests by Mr. Payne of a person acting as an agent of Mr. Payne. VRP at 26-32. The court expressly considered the factors listed in RCW 42.56.565. VRP at 28. In response to the trial court's inquiry seeking any clarification from the parties, Mr. Payne indicated that he did not have any objection to the court ordering that he could not receive Ms. Janssen's timesheets, and instead indicated his continued objection to being prevented from requesting future public records related to Ms. Janssen. VRP at 30.

On May 11, 2017, the trial court entered the final order granting permanent injunction and restraining order after a hearing on the presentment of that order. CP at 157-61. Mr. Payne timely appealed.

IV. ARGUMENT

A. Standard of Review

Injunctions issued under the PRA are reviewed de novo. *King Cty. Dep' of Adult and Juvenile Det. v. Parmelee*, 162 Wn. App. 337, 351, 254 P. 3d 927 (2011). “ ‘Where the record consists only of affidavits, memoranda of law and other documentary evidence, an appellate court stands in the same position as the trial court in reviewing agency actions challenged under the PRA.’ ” *SEIU Healthcare v. DSHS*, 193 Wn. App. 377, 391, 377 P.3d 214 (2016). (quoting *Robbins, Geller, Rudman & Dowd, LLP v. Office of the Att’y Gen.*, 179 Wn. App. 711, 719-20, 328 P.3d 905 (2014)).

B. The Trial Court Properly Issued the Final Order

The trial court properly issued the permanent injunction based upon the affidavits and documents on file at the time of the hearing. With respect to issuing the final injunctive order, Mr. Payne complains that due process requires a preliminary injunction hearing prior to a permanent injunction hearing. He complains that this failure deprived him of his due process right to conduct discovery. These claims lack merit.

Mr. Payne has not cited any authority in support of the proposition that due process requires a preliminary injunction hearing prior to the court considering a permanent injunction or that he has a due process right to

discovery. “[N]aked castings into the constitutional seas are not sufficient to command judicial consideration and discussion.” *Matter of Det. of Belcher*, 196 Wn. App. 592, 605, 385 P. 3d 174 (2016) (quoting *State v. Johnson*, 179 Wn.2d 534, 558, 315 P. 3d 1090 (2014)).

Mr. Payne also argues that court rules required separate preliminary and permanent injunction hearings, citing CR 65(a)(2). By enacting RCW 42.56.565, the legislature has created a special proceeding for persons seeking to enjoin disclosure of nonexempt records. That statute provides that the “motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise.” RCW 42.56.565. This statute plainly contemplates a single hearing held in a summary manner. “The rapidity envisioned by RCW 42.56.565(4) likely renders moot any need for a preliminary injunction.” *Dep’t of Corrs. v. McKee*, 199 Wn. App. 635, 650, 399 P.3d 1187 (2017).

In this case, the court identified the hearing scheduled for April 27, 2017, as a “hearing on the merits” in its order granting motion for temporary restraining order. CP at 151. Mr. Payne therefore had notice of the nature of that hearing. At that hearing, Mr. Payne did not ask the court for additional time to conduct discovery or to prepare for the hearing in either his response to the motion or his argument made at that hearing. Because Mr. Payne

failed to object to his claimed inability to conduct discovery, the Court may refuse to review these claims. RAP 2.5(a).

The trial court properly issued the injunction based on the documents and pleadings on file. Any additional preliminary injunctive relief was unnecessary given the legislative preference for rapid determination of these matters based on summary proceedings.

C. The Trial Court Properly Issued The Injunctive Relief After Finding That Mr. Payne Was Utilizing The Public Records Act To Harass An Employee of DSHS

Mr. Payne's arguments that the evidence did not establish that Ms. Janssen was not entitled to injunctive relief should be rejected by this Court. Ms. Janssen sought injunctive relief pursuant to both RCW 45.56.540 and .565. RCW 42.56.540 is a procedural provision which allows a superior court to enjoin the release of specific public records if they fall within specific exemptions found elsewhere in the act. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 257, 884 P.2d 592 (1994). This provision requires that the person seeking the injunction must prove that an exemption to the PRA applies. *SEIU Healthcare 775NW*, 193 Wn. App. at 392. This is a limited remedy authorizing the Court to enjoin the release of specific records.

Separately, RCW 71.09.120(3) permits a court to enjoin the inspection or copying of any nonexempt public records by persons residing

in a civil commitment facility for sexually violent predators. Mr. Payne resides in such a facility. Therefore, the injunction statute applies to Mr. Payne and specifically authorizes the injunction of nonexempt public records so long as the requirements of RCW 42.56.565 are met. In order to enjoin the production of nonexempt records, the court must find (1) that the request was made to harass or intimidate the agency or its employees; (2) fulfilling the request would likely threaten the security of correctional facilities; (3) fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or (4) fulfilling the request may assist in criminal activity. RCW 42.56.565(2)(c).

In making that determination, the court may consider all relevant factors, including other requests made by the requestor, the type of records sought, statements offered by the requestor regarding the purpose of the request, whether disclosure would likely harm any person or vital government interest, whether the request seeks a significant and burdensome number of documents, the impact of the disclosure on correction facility security and order, and deterrence of criminal activity. RCW 42.56.565(3).

The trial court's injunction was proper under RCW 71.09.120. Under this statute, there is no need for a person to establish that the records

were exempt from production under the PRA. Instead, the issue is whether the petitioner can demonstrate, among other possible showings, that the request was made to harass or intimidate an agency employee or that fulfilling the request would likely threaten the security of a correctional facility or the safety or security of staff. The record supports the trial's conclusion that each of these showings were sufficiently made.

First, the trial court correctly concluded that the request was made "to harass [or] intimidate . . . Jamie Janssen." CP at 159. Harass is defined as " 'to worry and impede by repeated attacks . . . to tire out . . . to vex, trouble, or annoy continually or chronically.' " *McKee*, 199 Wn. App. at 646 (quoting Webster's Third New International Dictionary 1031 (1993)). Here, the trial court's finding that Mr. Payne was utilizing the PRA to harass Ms. Janssen is supported by the record. The declaration of Dr. Elena Lopez provided evidence that Mr. Payne was hyperfocused and obsessed with Ms. Janssen. CP at 154. Mr. Payne has repeatedly requested public records related to Ms. Janssen that relate to her whereabouts in the facility, including security camera footage of her work area. CP at 3. The record establishes that Mr. Payne was aware that his contact with Ms. Janssen was harassing to her, as he was notified by the SCC that he was not to have contact with her. CP at 27. He almost immediately violated this prohibition on contact with Ms. Janssen. CP at 27, 29. He continued to demand contact

with Ms. Janssen through letters to SCC management and by filing a lawsuit against Ms. Janssen in which he sought, as relief, a one-on-one meeting with Ms. Janssen, despite her repeated requests to not have such contact. CP at 33, 65-66.

This history of the requests, the history of Mr. Payne's actions towards Ms. Janssen, and Mr. Payne's continued obsession with Ms. Janssen all support the conclusion that Mr. Payne's request was made to harass Ms. Janssen.

Second, Mr. Payne's behavior, coupled with a continued ability to utilize the public records act to track Ms. Janssen threatens the security of the institution as well as the employees of the SCC. RCW 42.56.565(2)(c)(ii)-(iii). The threats to the security of the institution and threats to the safety of the staff at the SCC provides an additional basis to support the issuance of this injunction.

The court properly enjoined the disclosure of future public record requests made by Mr. Payne regarding Ms. Janssen.

D. The Trial Court Properly Tailored the Injunction to the Harms Alleged by Ms. Janssen

Mr. Payne complains that the injunction precludes persons other than him from receiving public records related to Ms. Janssen. The order appropriately applies specifically to Mr. Payne, his attorneys, agents, and

assigns. Requests made by third parties on behalf of Mr. Payne should be similarly enjoined in order to prevent the harms that the injunction is intended to prevent. CR 65(d). The clear intent of the court's order as well as the statutory authority authorizing the injunctive relief in this case limits the applicability of an injunction issued pursuant to RCW 42.56.565 to Mr. Payne and persons acting on behalf of Mr. Payne.

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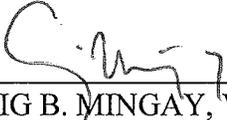
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V. CONCLUSION

This Court should affirm the injunction. The procedural requirements of RCW 42.56.565 were followed, as that statute authorizes a streamlined process based on affidavits and documentary evidence. The record established that Mr. Payne made the requests to harass Ms. Janssen. Finally, the order properly included a prohibition against persons acting on behalf of Mr. Payne. The order was appropriate, authorized by RCW 42.56.565 and should be upheld by this Court.

RESPECTFULLY SUBMITTED this 9th day of May 2018.

ROBERT W. FERGUSON
Attorney General



CRAIG B. MINGAY, WSBA #45106
Assistant Attorney General
Attorneys for Respondent

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124
(360) 586-6565
CraigM1@atg.wa.gov

PROOF OF SERVICE

I, *Beverly Cox*, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein.

I hereby certify that on May 9, 2018, I served a true and correct copy of this **DEPARTMENT OF SOCIAL AND HEALTH SERVICES' RESPONSE BRIEF** and this **PROOF OF SERVICE** on the following individual, in the manner indicated below:

Attorney for Plaintiff
Saphronia Young
Law Offices of Regeimbal, McDonald & Young, PLLC
612 South 227th Street
Des Moines, WA 98198

By U.S. Mail - Postage Prepaid
 By E-mail PDF: saphronia@rm-law.com

I certify that on May 9, 2018, I served a true and correct copy of this **DEPARTMENT OF SOCIAL AND HEALTH SERVICES'** and this **CERTIFICATE OF SERVICE** by sending an electronic copy to Rachel Weest, Legal Coordinator and Deborah Woodard, Administrative Assistant 3 at the Special Commitment Center and upon information and belief, the same was printed and delivered to Respondent, Jeffrey Payne, and a copy was also sent via U.S. Mail as follows:

//

//

Respondent

Jeffrey Payne
Special Commitment Center
PO Box 88600
Steilacoom, WA 98388

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

DATED this 9th day of May 2018, at Tumwater, Washington.



BEVERLY COX
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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