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In the
Court of Appeals for the State of Washington
Division Two

BRIAN DAVIDSON,
Appellant,
v.
PACIFIC COUNTY,
Respondent.

APPELLANT'S OPENING BRIEF

Appeal From Pacific County Superior Court No. 15-2-00293-9

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I. IDENTITY OF APPELLANT

The appellant is Brian Davidson (“Davidson”).

II. ASSIGNMENTS OF ERROR

- A. The lower court abused its discretion by dismissing the case at issue for having been improperly initiated where the initial pleading met the notice requirements for review of the County’s actions under the Public Records Act.
- B. The lower court abused its discretion in finding Davidson’s case to be frivolous and awarding attorneys fees and costs where Davidson had a good faith basis for initiating a claim for review under the Public Records Act as a motion for order to show cause, and where the motion met the notice pleading requirements for initiating a lawsuit.
- C. The lower court abused its discretion in finding Davidson to be a vexatious litigant with no findings of fact to support the finding and improperly placed limitations on Davidson for future filings.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. Whether the court abused its discretion in dismissing Davidson’s case for review of the County’s actions under the Public Records Act, without making specific findings for its holding that the case was improperly initiated?

- B. Whether Davidson’s motion for order to show cause was sufficient to initiate the case under the notice pleading requirements for a complaint and survive a motion to dismiss?
- C. Whether the court abused its discretion in finding Davidson’s lawsuit to be frivolous and awarding attorneys’ fees and costs to the County, without making sufficient findings of fact?
- D. Whether the lower court abused its discretion in finding Davidson to be a vexatious litigant with no findings of fact in support and improperly placing limitations on Davidson’s ability to file future lawsuits?

IV. STATEMENT OF THE CASE

This case arises from Brian Davidson’s attempts, as a pro se litigant,¹ to seek compliance from Pacific County to his requests for records under the Washington Public Records Act. RCW 42.56.001, *et seq.* Davidson initiated the case at issue in this appeal in the Superior Court of Pacific County, Case No. 15-2-00293-9, by filing a “Motion and Proposed Order to Show Cause” on November 30, 2015. Clerk’s Papers (“CP”) 7. In his declaration included with the motion, Davidson asserts

¹ Davidson was represented briefly by an attorney during this case. His attorney filed a motion for reconsideration in this case on his behalf (CP 200), but filed a Notice of Intention to Withdraw and withdrew from the case. CP 210.

that he submitted a public records request on the form provided by Pacific County on August 12, 2014, and that Pacific County did not “release these records within five days as required by law.” CP 7-8. Davidson attached the public records request form at issue as an exhibit, in which he requested the following records: “I would like to receive a copy of any and all information regarding Jake Barnes. This includes reports, dispatch records, arrest information, etc. . . .” CP 9. The attached letter response from Pacific County shows that Pacific County responded on December 31, 2014, stating that the records he requested “have been made available for download from the Public Records Center.” CP 10.

The County moved to dismiss the motion for order to show cause and moved for terms and costs on December 2, 2015, and mailed a copy of its motion to Davidson on that day. CP 13, 22. The trial court granted the County’s motion just a day later, on December 3, 2015 (“Dismissal Order”). CP 106. It is unclear from the record whether a hearing was held on the motion, but Davidson had no notice of a hearing and had not received the motion prior to the court’s entry of the order granting the motion to dismiss just one day after the filing of the motion. CP 214; VRP 2, 4. In the Dismissal Order, the court made three findings. CP 106. First, that “Mr. Davidson has, again, failed to properly initiate a lawsuit against Pacific County.” CP 106. Second that “Mr. Davidson’s request

for an order to show cause is an improper request.” CP 106. Finally, the court found “Mr. Davidson to be a vexatious litigant as to this issue.” CP 106. The court dismissed the complaint “with prejudice.” CP 106. The court further ordered that “the Clerk of the Pacific County Clerk shall not accept any cause of action for filing, any matter involving Mr. Davidson against Pacific County without the consent of the Court; provided, however, that the clerk may accept as a filing a matter which is presented by a member of the Washington State Bar Association, or by Mr. Davidson only upon prior, written permission of Court to allow Clerk to file Mr. Davidson’s pleadings.” CP 107. The court further ordered “that Mr. Davidson shall not file any further Public Records suit against Pacific County without such a suit being initiated by a licensed Washington State Attorney and only then pursuant to CR 11, or by leave of the Court in advance of any filing.” CP 107. Davidson was ordered to reimburse Pacific County “for the cost of defending this suit pursuant to CR 11 in an amount of \$250.00.” CP 107.

Also on December 3, 2015, the court entered its “Order and Judgment Awarding Attorney’s Fees and Costs to the Defendant” in this case in favor of Pacific County (“Order and Judgment”). CP 103. The court awarded attorneys fees and costs “pursuant to RCW 4.84.185, and pursuant to the Court’s Order granting involuntary dismissal to the

Defendant, dismissing the Plaintiff's complaint. This Court further found that the Plaintiff's action was frivolous and advanced without reasonable cause." CP 221. The Order and Judgment stated that "the Plaintiff appeared pro se and opposed." CP 221. There is no evidence that a hearing was held, and Davidson had not filed anything in response to the County's motion. The court ruled one day after the County's motion was filed. It states in the Order and Judgment that the Court considered "Defendant's motions for terms and costs, and affidavits in support thereof, and the Judgment in this matter." CP 221. There are no affidavits in the record. In the Order and Judgment, the Court hand wrote that "Mr. Davidson may file a motion for the Court to reconsider this Order and Judgment. Such motion must be accompanied by a declaration signed under penalty of perjury by Mr. Davidson." CP 105. Davidson did just that.

On January 21, 2016, Davidson filed his declaration, seeking reconsideration of the Order and Judgment. CP 108-110. An attorney filed his Notice of Appearance on January 26, 2016, representing Davidson. CP 199. The Clerk's Papers do not reflect any action in this case until September 26, 2016, when Davidson, through an attorney, filed "Plaintiff's Motion and Declaration for Reconsideration," asking the court to reconsider the Order and Judgment. CP 213-214. Davidson's

attorney filed his Notice of Intent to Withdraw on October 12, 2016, and Davidson continued pro se. CP 210. Nearly a year later, on September 7, 2017, Davidson moved to have Judge Sullivan disqualify himself. CP 212. On the same day, Davidson again filed his “Motion and Declaration for Reconsideration [*sic*].” CP 213. The County filed its “Response to Plaintiff’s Motion for Reconsideration” and Davidson filed a reply. CP 225; CP 234.

The Court held a hearing on November 16, 2017 to give Davidson “an opportunity to present whatever argument you would have presented had you been at the hearing on December 3rd to respond to the Pacific County Prosecutor’s motion to dismiss your case.” VRP 2:24 to 3:2. The Court acknowledged that it appeared that Davidson had not had a chance to respond to the County’s motion to dismiss or appear before the court on the matter. VRP 2. During Davidson’s allotted ten minutes at the hearing, the Court focused on an order entered in a related case, Case No. 15-2-00266-1 (the “Related Case”), that was entered just two days prior to the Dismissal Order in this case. VRP 3, 4.

The Related Case was initiated by Davidson prior to the case at issue here, and was proceeding at the same time. That case was also initiated by a motion for order to show cause seeking compliance with the Washington Public Records Act, which Pacific County moved to dismiss.

CP 23. The Court sought clarification on what records Davidson sought in this case, asking, “Are the records that you’re seeking in the case that’s before the court today the same records that you had sought in one of your earlier lawsuits?” RP 4. Davidson stated that “[t]he records are all the same.” RP 4. He further stated that “[t]hey’ve been requested since at least 2010.” RG 5. However, the filings in the Clerk’s Papers demonstrate that the case at issue only involved one request. CP 7-10.

Prior to filing the case at issue, Davidson filed two previous lawsuits. In 2014, he filed a motion for order to show cause, that involved multiple public records requests. CP 59-102 (Case No. 14-2-00368-6). That 2014 case was dismissed on October 29, 2015. CP 228.

Davidson filed a second Public Records Act case in 2015, prior to the filing of the case at issue. (the “Related Case”). In the Related Case, the court dismissed the case and entered its “Order on Pacific County’s Motion to Dismiss and Motion for Terms and Costs” on December 1, 2015 (“Related Case Order”). RP 17-18. The court made three findings in the Related Case Order. First, that “Mr. Davidson has, again, failed to properly initiate a law suit against Pacific County.”² RP 17. Second, that “Mr. Davidson’s request for an order to show cause is an improper

² The Court appears to be referring to the 2014 case against Pacific County that was dismissed on October 29, 2015. CR 228 (Case No. 14-2-00368-6).

request.” RP 17. Third, the Court found “Mr. Davidson to be a vexatious litigant as to this issue.” RP 17. The Court ordered the cause of action to be “dismissed with prejudice” and further ordered that “Mr. Davidson shall not file any further Public Records suit against Pacific County without (1) such suit being initiated by a licensed Washington State Attorney and only then pursuant to CR 11, or (2) Mr. Davidson receiving in writing the Court’s permission to file any documents.” RP 17-18. Finally, the court ordered that “Mr. Davidson shall reimburse Pacific County for the cost of defending this suit pursuant to CR 11 in an amount to later be determined.” RP 18. Davidson asserted in his declaration in this case that that the dismissal order was entered “without giving me proper notice.” CP 109.

In the hearing on Davidson’s motion for reconsideration in this case, the court focused on the Related Case Order issued on December 1, 2015, telling Davidson that “We’re not here to reconsider Judge Sullivan’s order. Judge Sullivan’s order is the law of this case, and that order says you can’t file another lawsuit without getting his permission or the permission of the Court. Did you comply with that order? You did not, did you?” VRP 4. Davidson stated he never received that order and that he did not participate in a hearing on that order. VRP 4. However, at the time the Related Case Order was entered (December 1, 2015), the case at

issue was already underway, having been filed on November 30, 2015.

CP 7.

While Davidson made three attempts at filing a lawsuit for denial of records under the Washington Public Records Act, he was not ordered to cease filing law suits until December 1, 2015. Davidson claims that when he refiled his second lawsuit (the Related Case identified above), that he “was not given no hearing, no nothing, anything. All that – all those orders just came out of, as I understand, ex parte communications with Mr. McClain and whatever they figured out. So I- like I said, I was not party of that.” VRP 5. The court asked whether Davidson appealed any of the early orders, “either the order of Judge McCauley or the order of Judge Sullivan?” VRP 5. Davidson did not appeal the judgment of Judge McCauley (the 2014 lawsuit) because he believed he had remedied “the paperwork” and refiled the case. VRP 5-6. Davidson asserted that he did attempt to appeal the order of Judge Sullivan, with the help of an attorney who quickly withdrew from the case. VRP 6. The Court ended Davidson’s oral argument by stating, “So the order of Judge Sullivan is final. Mr. McClain, you’re next.” VRP 6. The Court did not ask any questions concerning the substance of Davidson’s claims of the County’s non-compliance with the Public Records Act.

At the conclusion of the hearing, the court stated that Davidson did not handle his attempt at civil litigation correctly. VRP 9. “There is case law directly in support of the county’s position in this case that filing a motion and order for show cause is not the proper way to initiate new litigation under the Public Records Act.” VRP 9. “But the problem becomes more complicated for you in that you have filed multiple lawsuits involving the same records. And nobody has that right. You know. Once you bring an action under the Public Records Act pertaining to a particular set of records that you believe were not provided to you in compliance with the Act, the final decision in that case becomes the final decision. And if you’re unhappy with it, your remedy is not to start another lawsuit over the same records. And you’ve done that.” VRP 9. “And because of that, Judge Sullivan ultimately signed an order that said no more. You can’t do that anymore. If you want to file lawsuits in Pacific County, you need to get permission of the judge before you do so.” VRP 9.

The holding of the court from the bench was that “the Judgment and Order entered on December 3rd is valid. The motion to set it aside is denied. And that concludes the hearing on the motion for reconsideration.” RP 9. The court denied Davidson’s motion for reconsideration and entered its “Order on Reconsideration of Defendant’s Motion to Dismiss and Motion for Terms.” CP 242 (filed on Dec. 5,

2017). The Court held that “the Order of December 3, 2015 is valid and reinstated.” CP 242. Davidson timely appealed the Order on Reconsideration. CP 244.

V. ARGUMENT

A. Standard of Review

Appellate courts “review a trial court’s order limiting a party’s access to the courts for an abuse of discretion.” Bay v. Jensen, 147 Wash.App. 641, 657, 196 P.3d 753, 761 (2008). “Decisions regarding application of civil rules are reviewed for an abuse of discretion.” Sprague v. Sysco Corp., 97 Wash.App. 169, 171 (1999). However, this court interprets whether the pleading requirements under Court Rule 8 is met de novo. Estate of Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, P.L.L.C., 177 Wash. App. 828 (2013).

Questions of law involving the interpretation of the Public Records Act are reviewed de novo. See, e.g., Rental Housing Ass’n of Puget Sound v. City of Des Moines, 165 Wash.2d 525, 536 (2009)

B. The Intent and Purpose of the Public Records Act

The Washington Public Records Act’s purpose is to “ensure the sovereignty of the people and the accountability of the governmental agencies that serve them’ by providing full access to information concerning the conduct of government.” Mechling v. City of Monroe, 152

Wash.App. 830, 841-842, 222 P.3d 808, 813 (2009) (quoting Amren v. City of Kalama, 131 Wash.2d 25, 31, 929 P.2d 390 (1997)). The legislature was quite clear about how the Public Records Act should be construed.

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. **This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.**

RCW 42.56.030.

C. Davidson Had a Good Faith Basis for Initiating the Lawsuit as a Motion for Order to Show Cause and its Allegations Meet Notice Pleading Requirements

Davidson initiated the case at issue below through the filing of a motion for order to show cause. CP 7. Just a few months ago, the Court of Appeals recognized that a motion for an order to show cause is sufficient to initiate a lawsuit seeking review under the Public Records Act. Kittitas County v. Allphin, 2 Wash.App.2d 782 (2018). The Public Records Act, “RCW 42.56.550(1) and (2) expressly make a show cause procedure available to public record requestors wishing to require an agency to demonstrate why it refuses to allow inspection or copying, or

why its estimate or response time is reasonable.” Id. at 789. Davidson properly relied on RCW 42.56.550(1) in the motion to show cause that he filed to initiate the action. CP 7. “[A] show cause procedure that has not prejudiced a responding party is reviewed as if the moving party had followed court rules.” Id. at 792. Here, just as in Kittias, Pacific County has suffered no prejudice by the use of a show cause procedure. The County had notice of the type of action and the relief sought, as explained below. Moreover, the County was quite familiar with the substance of the motion and states that it was “the third attempt” by Davidson, which “encompassed the same materials as did the [previously] dismissed matter.” CR 13-14.

The Superior Court Rules state that “a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 *or by filing a complaint*...An action shall not be deemed commenced for the purpose of tolling any statute of limitations except as provided in RCW 4.16.170” CR 3(a) (emphasis added). Washington “follows notice pleading rules and simply requires a ‘concise statement of the claim and the relief sought’” in the complaint to initiate a lawsuit. Champagne v. Thurston County, 163 Wash.2d 69, 84, 178 P.3d 936, 944 (2008) (citing Pac. Nw. Shooting Park Ass’n v. City of Sequim, 158 Wash.2d 342, 352, 144 P.3d 276 (2006); CR 8(a)). “A complaint fails

to meet this standard if it neglects to give the opposing party ‘fair notice.’” Id. (citations omitted). A claim for relief is required to contain “(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled.” CR 8(a). While Davidson’s pleading was entitled a “Motion and Proposed Order to Show Cause,” it met the pleading requirements for a complaint by clearly stating that he was asserting a violation of the Public Records Act and demanding attorneys fees, costs and a monetary award.

This court reviews whether the Rule 8 requirements are met under a de novo standard of review. Estate of Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, P.L.L.C., 177 Wash. App. 828 (2013). The motion for order to show cause meets the requirements of Rule 8(a). The pleading stated:

The Plaintiff in this matter respectfully moves the court to grant an Order directing the Defendant to appear and show cause, per RCW 42.56.550(1), by giving any legal reason why a violation of RCW 42.56.520(1) has not occurred and to give any legal reason why the Plaintiff should not be awarded reasonable attorney fees, all costs, and up to the maximum daily award of \$100 dollars for each day Defendant is found in violation of Washington State Public Records Act (“PRA”), per RCW 42.56.550(4).

CP 7. This statement asserts a claim under the Public Records Act that entitles him to relief and he demands judgment. Because the motion and

proposed order to show cause met the notice pleading requirements under Rule 8, it should have been construed by the lower court as a complaint for purposes of commencing a civil action under CR 3.

Under the Rules of Civil Procedure, “[f]rom the time of the commencement of the action by service of summon, *or by the filing of a complaint*, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings.” RCWA 4.28.020 (emphasis added). Moreover, Davidson was not required by the court rules to serve a summons and complaint at the same time as the filing of the complaint. See RWA 4.28.020; CR 3. Under RCWA 4.16.170, “[f]or the purposes of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint.” RCWA 4.16.170. Two days after Davidson filed the motion to commence the lawsuit, the County moved to dismiss. CP 13.

In its Judgment and Order, the lower court relies on its finding contained in the Dismissal Order that Davidson “failed to properly initiate

a lawsuit against Pacific County.” CP 106; CP 221. The Judgment and

Order incorporates the Dismissal Order as follows:

This matter came before the above-entitled Court on the application of the Defendant, Pacific County, for an order and judgment awarding attorney’s fees and costs pursuant to RCW 4.84.185, and pursuant to the Court’s Order granting involuntary dismissal to the Defendant, dismissing the Plaintiff’s complaint. This Court further found that the Plaintiff’s action was frivolous and advanced without reasonable cause.

CP 221. The Judgment and Order does not explain how Davidson failed to properly initiate the lawsuit. In fact, the court did refer to Davidson’s initiating pleading as a “complaint” in its Judgment and Order. CP 221 (“pursuant to the Court’s Order granting involuntary dismissal to the Defendant, dismissing the Plaintiff’s Complaint.”).

Davidson had a good faith basis for initiating his lawsuit with a motion for order to show cause. In his January 21, 2016 Declaration filed in support of his motion for reconsideration of the Order to Dismiss, Davidson asserts that he believed that the filing of a motion for order to show cause was the proper way to have the Superior Court review the agency’s lack of response to his public records request. He stated, “I believe the laws described in the attached documents grant me authority to proceed with a show cause hearing in this case The procedure for this type of case is clearly written in plain language under 44-14-08004(3), this case type is referenced in 44-14-08004(5) . . . “ CP 109-110. What

Davidson refers to is the version of the Model Rules on Public Disclosure in effect at the time of filing (and dismissal) of the case. CP 196; see also <https://www.atg.wa.gov/model-rules-public-disclosure>; <http://lawfilesexternal.wa.gov/law/wsr/2018/06/18-06-051.htm>. That version of the model rules was replaced in 2018.

<https://www.atg.wa.gov/model-rules-public-disclosure>. The model rule in effect at the relevant time states:

44-14-08004 Judicial Review.

- (1) **Seeking judicial review.** The act provides that an agency's decision to deny a request for final purposes of judicial review two business days after the initial denial of the request. . . .
The act provides a speedy remedy for a requestor to obtain a court hearing on whether the agency has violated the act. . . . The purpose of the quick judicial procedure is to allow requestors to expeditiously find out if they are entitled to obtain public records. **To speed up the court process, a public records case may be decided on the "motion" of a requestor and "solely on affidavits."** RCW 42.17.340(1) and (3)/42.56.550(1)³ and (3). . . .
- (2) **Statute of Limitations**
- (3) **Procedure. To initiate court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. RCW 42.17.340(1) and (2)/42.56.550(1) and (2).** The

³ The section of the Public Records Act that addresses "judicial review of agency actions" states, "(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. . . . " RCW 42.56.550. This language was not revised prior to the revised 2018 model rules.

case must be filed in the superior court in the county in which the record is maintained. . . . The show-cause procedure is designed so that a nonattorney requestor can obtain judicial review himself or herself without hiring an attorney. A requestor can file a motion for summary judgment to adjudicate the case. However, most cases are decided on a motion to show case.

CP 196 (emphasis added); see also Mitchell v. Washington State Dept. of Corrections, 164 Wash.App. 597, 601, 277 P.3d 670, 672 (2011) (referring to the initiation of the case as follows: “On November 13, 20018, Mitchell filed a motion for an order to show cause in Thurston County Superior Court, arguing that the DOC [Dept. of Corrections] violated the PRA [Public Records Act] by denying access to records”; there is no mention of the filing of a complaint in that case). The Model Rules were adopted in 2006, which were not updated until 2018.

<https://www.atg.wa.gov/model-rules-public-disclosure>. The current version of the Model Rules strikes the details regarding judicial review and replaces the language above with the following:

44-14-8004. Judicial Review. A full discussion of judicial review is not provided in these comments. RCW 42.56.550 provides for judicial review, including possible penalty awards, and awards of attorneys’ fees and costs. RCW 42.56.540 provides for court actions for injunctions from disclosure. For a brief discussion about judicial review, see <http://www.atg.wa.gov/open-government-resource-manual>.

The new version of the model rules were not in place when Davidson filed his case through a motion for order to show cause. While it is clear that

model rules are not binding, and that a pro se claimant must follow the rules of civil procedure, and all other rules and statutes governing the filing of a lawsuit, Davidson had a good faith belief that filing a motion for order to show cause was proper. CP 109-110. The model rules state that “[w]hile the model rules and comments are nonbinding, they should be carefully considered by requestors and state agencies. Local agencies should consider them in establishing local ordinances implementing the act. RCW 42-56-570. The Washington courts have also considered the model rules in several appellate opinions.” WAC 44-14-00003 (footnotes and citations omitted). Based on the model rules and language in the Public Records Act itself under “judicial review of agency actions” that references a motion for order to show cause, Davidson had a good faith basis for initiating the case as a motion for order to show cause.

The court’s dismissal of the case was an abuse of discretion because the lower court made no findings to support its assertion that the action filed by Davidson was frivolous or improperly initiated. To the contrary, Davidson presented testimony explaining why he filed three lawsuits, and the justification for proceeding under a motion for order to show cause. There is no evidence demonstrating bad faith intent. Moreover, while the initial pleading filed by Davidson was filed as a

motion for order to show cause, it met the requirements of a complaint and should not have been dismissed as insufficient.

To the extent that this Court's review involves the interpretation of the Public Records Act and the effect of the Model Rules in effect at the time Mr. Davidson initiated the lawsuit, this Court should use a de novo standard of review. Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wash.2d 525, 536 (2009). Under the de novo standard of review, the trial court's dismissal of the complaint was improper because Davidson was following the Model Rules in effect at the time of filing, and did not act counter to the Public Records Act, any court rule or rule of civil procedure.

D. The Court Abused its Discretion by Finding Davidson a “Vexatious Litigant” and Limiting His Ability to File Future Cases Without Sufficient Findings of Fact to Support its Order

The Appellate courts “review a trial court's order limiting a party's access to the courts for an abuse of discretion.” Bay v. Jensen, 147 Wash.App. 641, 657, 196 P.3d 753, 761 (2008). In order to limit a party's ability to engage in litigation, the court was required to make “*a specific and detailed showing of a pattern of abusive and frivolous litigation.*” Bay v. Jensen, 147 Wash. App. at 657 (quoting Yurtis v. Phipps, 143 Wash. App. 680, 693, 181 P.3d 849 (2008)); Whatcom County v. Kane, 31 Wash.App. 250, 640 P.2d 1075 (1981). The lower court made no

specific findings of fact justifying its finding that Davidson was a “vexatious litigant” (CP 106) or that his lawsuit was “frivolous and advanced without reasonable cause” (CP 221). Instead, Davidson explained why he filed three separate lawsuits, his good faith basis for filing them as motions for orders to show cause, and the lack of notice he received when motions to dismiss and subsequent orders were filed against him. The lower court admitted that in this case, it appeared that Davidson had not received notice of the County’s motion to dismiss, nor was he given an opportunity to be heard before it was initially dismissed. VRP 2-3. The certificate of mailing filed by the County shows that they filed and mailed their motion to dismiss one day prior to the court’s ruling. CP 205; CP 209.

In the Order and Judgment, the Court found that it had “previously found this action by the Plaintiff was frivolous and advanced without reasonable cause,” appearing to rely on its Dismissal Order that found that Davidson is a “vexatious litigant.” CP 221; CP 106. There were no facts to support the holding that Davidson was a “vexatious litigant” in the Dismissal Order, merely a conclusory statement. CP 106. While a finding of vexatiousness is different from a finding that a case is frivolous, the court links these concepts. See Coyle v. Goins, 180 Wash.App. 1040, *9 (2015) (unpublished opinion) (citing United States v. Heavrin, 330 F. 3d

723, 729 (6th Cir. 2003)) (vexatious means a case was brought for the purpose of “irritating, annoying, or tormenting the opposing party,” while frivolous means a case is filed “without bad faith or a wrong motive, but which lacks foundation or a basis for belief that it might prevail.”). The lower court made no specific findings explaining why Davidson acted in a frivolous or vexatious manner. It appears from the transcript of the hearing, that the sole basis for dismissing Davidson’s case and awarding attorneys fees and costs against him was the court’s belief that Davidson filed the case at issue in direct violation of the Related Case Order, which enjoined Davidson from filing any future claims pro se. However, as explained below, that Related Case Order was entered *after* Davidson had already filed the case at issue and thus had no bearing on the case at issue.

1. Davidson Did Not Disobey the December 1, 2015 Order Entered In the Related Case that Required Him to Obtain Court Approval to File a New Cause of Action Because the Case at Issue Was Filed Prior to That Related Case Order

Davidson filed his motion for order to show cause, which initiated this case, on November 30, 2015. CP 7. The Related Case Order limiting Davidson’s ability to file lawsuits without court permission or through an attorney was entered on December 1, 2015. CP 229. Thus, the December 1, 2015 Related Case Order has no preclusive effect on the case at issue, which was filed on November 30, 2015. The case at issue was pending prior to the Related Case Order. Thus, the Court’s finding from the bench

that Davidson disobeyed that order has no legal or factual basis. To the extent that this finding led to the dismissal of this case below, it is an abuse of discretion.

2. Davidson Had a Good Faith Belief that Filing the Motion for Order to Show Cause Was the Proper Procedure For Obtaining Judicial Review

As detailed above in Section A, Davidson relied upon the model rules that identified a motion for order to show cause as the proper procedure for obtaining judicial review. Because of this good faith belief, and no evidence to the contrary, the lower court's findings of vexatiousness or frivolousness is not supported by the record.

Davidson had filed a motion for order to show cause in 2014, which he believed was dismissed for a clerical error. VRP 5 ("I originally brought the lawsuit with Mr. [Judge] McCauley. And it was dismissed because the paperwork wasn't in order, as I understand it. I thought I had corrected the paperwork issue and refiled in the Superior Court of Pacific County.") The 2014 case was dismissed by the court's order issued on October 29, 2015, stating "Mr. Davidson has failed to properly initiate a cause of action and the matter should be dismissed." CP 228. No explanation of the error was given, and Davidson did not participate in a hearing on the issue. VRP 4. Because of the perceived clerical error, he filed the same motion, correcting what he believed to be the reason it was

not proper, thereby initiating the Related Case. VRP 5. There is no evidence in the record that Davidson was ignoring a court order, seeking revenge, or filing what he knew to be an improper pleading when he filed the lawsuit in the Related Case in 2015. While the Court believes that Davidson filed the third case in defiance of an order in connection with the related case, the timing shows that is not possible.

3. The Related Case Order is Not the “Law of the Case” and the Court Abused its Discretion by Not Making Independent Findings of Facts to Support its Conclusion that Davidson is a Vexatious Litigant

The lower court held that the Related Case Order was the “law of the case.” VRP 4. The doctrine of law of the case is not applicable here. “In its most common form, the law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation.” Roberson v. Perez, 153 Wash.2d 33, 41, 123 P.3d 844, 848 (2005). The finding by a court in the Related Case is not an appellate holding, nor is it even a finding in the case at issue here. To the extent the Related Case Order is a binding final order on Davidson for future cases, it cannot serve as justification to find Davidson vexatious in this case.

E. The Court Abused its Discretion by Awarding Attorney’s Fees and Costs to the County Without Sufficient Findings of Fact to Support Its Order

The court awarded attorneys fees and costs to the County pursuant to RCW 4.84.185, that allows a court to award expenses to a prevailing party, after considering “all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause.” RCW 4.84.184. An award of attorney fees is reviewed for an abuse of discretion. Bay v. Jensen, 147 Wash.App. at 762, 196 P.3d at 659. The challenger must demonstrate that the court “used its discretion in an untenable or manifestly unreasonable manner.” Id. If court does not “provide sufficient findings of fact and conclusions of law,” the appellate court “will vacate the judgment and remand for a new hearing to gather adequate information and for entry of findings of fact and conclusions of law regarding the fee award.” Id. Here, the court made no findings of fact, but merely piggybacked conclusory statements that that Davidson was vexatious, and that his claim was frivolous. The court’s misunderstanding of the timing of the entry of the Related Case Order in relation to the filing of the case at issue, and the court’s failure to construe the motion for order to show cause as sufficient under the rules of notice pleading, the court’s conclusions dismissal of Davidson’s explanation of his filing of the

motion for order to show cause, demonstrate that attorneys fees and costs are not warranted. There is no basis in the record for a finding of vexatiousness or frivolous filings. The award of attorneys fees and costs should be reversed.

VI. CONCLUSION

For the reasons stated herein, Davidson requests that this Court (1) find that the lower court abused its discretion in dismissing the case at issue and remand the case for it to continue to be heard on the merits; or in the alternative, that it remand for Davidson to amend his initial pleading; (2) find that the lower court abused its discretion in finding Davidson's case to be frivolous and that it reverse the judgment of attorneys fees and costs against Davidson; and (3) find that the lower court abused its discretion in finding Davidson to be a vexatious litigant and that it strike the limitations placed on Davidson for future filings. In addition, Davidson seeks attorneys fees and costs.

Respectfully submitted this 31st day of August, 2018.

LAW OFFICE OF COREY EVAN PARKER


Corey Evan Parker, WSBA #40006
Attorney for Appellant, Brian Davidson

CERTIFICATE OF SERVICE

I, Corey Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on August 31, 2018, I caused to be served the document to which this is attached to the parties listed below in the manner shown next to their names:

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- By Messenger
- By Email

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