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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 REPLY BRIEF

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

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I. SUMMARY OF ARGUMENT

Appellant, Brian Davidson (hereinafter “Davidson”), filed this appeal following a denial of his Motion for Reconsideration. CP 242-44. The Motion for Reconsideration was filed in response to an Order and Judgment Awarding Attorney’s Fees and Costs, entered by the trial court on December 3, 2015. CP 213, 220.

The court entered the Order in response to Respondent’s, Pacific County, Washington (hereinafter “Pacific County”) Motion to Dismiss and Motion for Terms and Costs, filed on December 2, 2015. CP 215-18. In its Motion, Pacific County alleged that Davidson did not correctly file a cause of action to “Show Cause” in regard to a prior Public Records Act request. CP 216-17. Davidson argued that he was not notified of Pacific County’s Motion and a related hearing the following day (December 3, 2015), thereby rendering him unable to defend against same. CP 213-14. As such, he prayed the court would allow him the opportunity to challenge the motion and requested the Order and Judgment be vacated. CP 214.

As stated above, the Motion for Reconsideration was denied. CP 242-44. The denial is the basis for this appeal.

II. DISCUSSION

A. **Washington Law Errs on the Side of Disclosure In Order to Maintain an Informed Public, Thus Davidson's Public Records Requests Should Have Never Been Denied.**

Washington statutes provide that the people of the state should be able to determine what information they receive, rather than that decision resting on those who work in the public sector. RCW 42.56.030.

The Supreme Court has recognized that statutory right and stated:

Achieving an informed citizenry is a goal sometimes counterpoised against other important societal aims. Indeed, as the act recognizes, society's interest in an open government can conflict with its interest in protecting personal privacy rights and with the public need for preserving the confidentiality of criminal investigatory matters, among other concerns. Though tensions among these competing interests are characteristic of a democratic society, their resolution lies in providing a workable formula which encompasses, balances and appropriately protects all interests, while placing emphasis on responsible disclosure. It is this task of accommodating opposing concerns, with disclosure as the primary objective, that the state freedom of information act seeks to accomplish.

Spokane Police Guild v. Liquor Control Bd., 112 Wn.2d 30, 33-34 (1989) (emphasis added).

Davidson requested access to public records several times and was improperly denied by the state's officers. These unlawful denials ultimately led to Davidson defending himself in this matter and attempting to uphold the law, as it appeared the system was not going to provide him with the information he rightfully requested and deserved to obtain.

As such, from the onset of this matter, Davidson was wrongfully denied access to the public records he requested. Thus, without these improper denials which are in direct contradiction of Washington State law, this issue would not have advanced to where it is today.

B. Pacific County's Motion to Dismiss or Strike This Appeal Should Be Denied, as Davidson Did Not Receive Proper Notice of Pacific County's Filing and/or a Related Hearing on the Matter.

Per Pacific County's answer brief, a Motion to Dismiss or Strike Davidson's appeal has been filed, citing untimeliness as its grounds. (App. Answer Br. 4-8.) According to Pacific County, Davidson filed his Motion for Reconsideration, which gave way to this appeal, nearly two years following the judgment, rather than within the ten-day window prescribed by the court's rules. (App. Answer Br. 5.) However, the trial court and Pacific County failed to provide Davidson with proper notice of the matter, making it impossible for him to file this appeal in a timely manner.

Washington Court Rules provide that:

[E]very order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties.

Wash. CR 5(a).

Additionally, “[a] written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing.” Wash. CR 6(d).

Pursuant to the Rules, this Court has held that failure to provide notice to a party “is a procedural error that justifies vacation.” Spoelstra v. Gahn, 2006 Wash. App. LEXIS 2482, at *5 (Wash. Ct. App. Nov. 13, 2006) (unpublished). As indicated in Davidson’s opening brief, the record is void of any proof that he received notice that a hearing on a motion to dismiss filed by Pacific County was being conducted. CP 214; (App. Opening Br. 3.) Following the unnoticed hearing, a judgment was entered in favor of Pacific County, despite Davidson’s inability to appear and defend against same. CP 106-07. Furthermore, the motion for reconsideration was not denied as untimely and was decided on the merits.

Additionally on the matter of ex parte filings, Davidson was instructed by the trial court to only file further documents regarding Pacific County once he is able to obtain a “licensed Washington State Attorney.” CP 107. The order prevented Davidson from filing a motion in what the trial court is now calling a timely manner because he was ordered to first hire counsel. CP 107. The trial court’s subsequent ruling did not afford Davidson the opportunity to secure counsel in order to reply to Pacific County’s motion.

Also of importance is that the hearing on the motion to dismiss was scheduled the day after its filing, not even affording Davidson ample time to receive notice of either the motion's existence or the date of the hearing. CP 2, 109-10. The Washington Court Rules specifically provide that a hearing should not be held within five days of the time notice is made. Wash. CR 6(d). Here, not only is there no indication that notice was provided, it is obvious from the filing date of the motion and the date of the hearing that the Court Rules were violated.

As such, in accordance with Washington Court Rules and preceding case law, the judgment by the trial court in which Pacific County's motion to dismiss should be vacated. The proper vacation of the trial court's order would make Pacific County's instant motion to dismiss or strike Davidson's appeal ripe, as he was not afforded the opportunity to file same in a timely manner, due to the aforementioned lack of notice.

Accordingly, Pacific County's motion to dismiss or strike Davidson's appeal should be denied.

C. The Contents of Davidson's Motion for Order to Show Cause Fall Squarely Within Washington's Pleading Requirements.

Whether a civil action is properly commenced is governed by Rule 8 of the Washington Court Rules. Wash. CR 8. Rule 8 requirements, along with all other court rules, are reviewed by the

appellate court applying the de novo standard of review. Nevers v. Fireside, Inc., 133 Wn.2d 804, 809 (1997).

As discussed in the opening brief in this matter, Washington Court Rule 8 provides:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross claim, or third party claim, shall 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. Relief in the alternative or of several different types may be demanded.

Wash. CR 8.

Davidson clearly stated his claim and entitlement for relief in his Motion and Proposed Order to Show Cause, which is precisely what the Rules require. CP 7.

Further, the case upon which Pacific County relies, Troxell v. Rainier Public School District, requires that a government entity is placed on sixty days' notice of a claim. Troxell, 154 Wn.2d 345, 347 (2005). This Court specifically stated that "RCW 4.96.020(4) forbids the commencement of a tort action against a local government defendant 'until sixty days have elapsed after' the plaintiff files a claim notice with the local government entity." Id.

Per Pacific County's own correspondence and filings, it was aware of Davidson's claims for an extended period of time. CP 13; 34-36. Additionally, even without Pacific County's admission, the record

indicates that Davidson did, in fact, file a standard tort claim form regarding this matter on December 24, 2014. CP 39-52. Not only did Davidson provide more than sixty days' notice to the county, he included detailed attachments to show the harm caused by the county's failure to supply the records requested. CP 39-52.

Washington law is silent on whether a separate standard tort claim form must be filed in a similar matter if a claimant files a new motion after a period of time passes. See Troxell, 154 Wn.2d at 347. It also does not provide that passage of a certain period of time renders the tort claim form "expired." See Id.¹

Here, the record clearly shows a tort form was filed in December 2014 with the Motion to and Proposed Order to Show Cause following in November 2015. CP 7, 39-52. This is well after the sixty-day notice period a government entity is provided under Washington state law, and Davidson's completion of the form was thorough, containing detailed information to allow Pacific County to understand his issues and remedy same prior to the filing of his subsequent motion.

Therefore, Davidson not only properly pled his claim against Pacific County, but he gave the county requisite and thorough notice of

¹ In the unpublished Troxell opinion, this Court explained when to begin counting for the sixty day period, but does not discuss the life of the tort claim form beyond the sixtieth or sixty-first day. Id. at 349.

the claim. As such, this Court should find that Davidson's claim was sufficient to bring a cause of action under the Public Records Act.

D. Davidson Has Not Displayed Behavior That Would Qualify Him as a Vexatious Litigant.

A trial court's order to limit a party's access to a court is reviewed for an abuse of discretion. Town of Skykomish v. Benz, 2016 Wash. App. LEXIS 693 at *13 (Wash. Ct. App. 2016). A court may reasonably limit somebody from filing in the court if he or she has abused the judicial process. Id.

This Court in Benz discussed multiple filings by individuals who later hid behind their own limited liability corporations to file after their individual claims were dismissed. Id. at *16. The Benz opinion went on to state that "the record shows they have filed multiple court documents, including an appeal to this court, on behalf of their limited liability companies despite **knowing Washington law prohibits them from doing so.**" Benz, 2016 Wash. App. LEXIS 693 at *16 (emphasis added). Thus, it appears that this Court considers whether the litigant is acting intentionally in his or her filings and knows that his or her actions are prohibited by law.

Here, there is no indication on the record that Davidson knows, or even believes, that he is acting vexatiously or is abusing the judicial process. Instead, Davidson was acting in good faith in filing his three

separate lawsuits, as he was not provided with proper notice and the ability to defend against Pacific County's claims in this matter. VRP 2-3.

Additionally, and as discussed in Davidson's Opening Brief, his Motion for Order to Show Cause was filed on November 30, 2015, while the Related Case Order limiting his filings was not entered until the following day, December 1, 2015. CP 7, 229. Therefore, if the Related Case Order is being considered toward the classification of Davidson being a vexatious litigant, its consideration is improper, as it cannot apply retroactively to filings. CP 7, 229.

Based on the foregoing, it was an abuse of discretion by the trial court to determine that Davidson, a claimant who acted in good faith and without intent to abuse the judicial system, was a vexatious litigant.

E. The Court Improperly Awarded Pacific County Attorneys' Fees and Costs When Davidson Did Not Abuse the Judicial System.

As provided in Davidson's Opening Brief, this Court should review the trial court's determination to award attorney's fees for an abuse of discretion. Bay v. Jensen, 147 Wash. App. 641, 659 (Wash. Ct. App. 2008). If the trial court does not "provide sufficient findings of fact and conclusions of law" to the appellate court to support the award, the appellate court "**will** vacate the judgment and remand for a new hearing." Id. (emphasis added).

The record shows that the trial court did not provide any findings of fact or conclusions of law in support of its attorneys' fees and costs award in favor of Pacific County. CP 17-18. Rather, the Order on Pacific County's Motion to Dismiss and Motion for Terms and Costs simply stated, "This Court finds Mr. Davidson's request for an order to show cause is an improper request" and "This Court finds Mr. Davidson to be a vexatious litigant as to this issue." CP 17.

The trial court's unsubstantiated award of attorneys' fees and costs in favor of Pacific County was an abuse of discretion. Therefore, this Court should, pursuant to Washington law, vacate the judgment and remand this matter for a new hearing on same.

III. CONCLUSION

For the reasons stated herein, Davidson requests that this Court (1) deny Pacific County's Motion to Dismiss or Strike Davidson's appeal; (2) determine that Davidson's Motion to Show Cause was properly pled and filed; (3) find that the lower court abused its discretion in finding Davidson to be a vexatious litigant; and (4) vacate the judgment for attorneys' fees and costs in favor of Pacific County and remand the issue for a new hearing.

Respectfully submitted this 28th day of December, 2018.

LAW OFFICE OF COREY EVAN PARKER

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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 December 28, 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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