

FILED

MAY 28 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 27908-1-III

STATE OF WASHINGTON

COURT OF APPEALS - DIVISION III

**FRANKLIN COUNTY SHERIFF'S OFFICE;
FRANKLIN COUNTY CORRECTIONAL CENTER; and
FRANKLIN COUNTY PROSECUTING ATTORNEY'S OFFICE,**

Appellants,

vs.

ALLAN PARMELEE,

Respondent.

**APPEAL FROM THE SUPERIOR COURT FOR
FRANKLIN COUNTY**

BRIEF OF APPELLANT

**STEVE M. LOWE
Prosecuting Attorney**

by: **RYAN E. VERHULP, #28902
Deputy Prosecuting Attorney**

**1016 N. Fourth Avenue
Pasco, WA 99301
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INTRODUCTION

Appellants, Franklin County et. al., respectfully requests this court review and reverse the ruling of the Franklin County Superior Court set forth below as assignments of error.

ASSIGNMENTS OF ERROR

The trial court's November 7, 2008 order finding that the court may not consider the identity of the requestor and later February 11, 2009 order denying reconsideration of the previous order. (CP 9, 40-41).

ISSUES

DOES LAW PROHIBIT THE COURTS FROM CONSIDERING THE IDENTITY OF THE REQUESTOR IN AN ACTION BROUGHT PURSUANT TO RCW 42.56.540?

DOES A RESTRICTION ON THE COURTS FROM CONSIDERING THE IDENTITY OF THE REQUESTOR DEPRIVE THE COURTS OF ITS EQUITABLE POWERS TO GRANT RELIEF?

DOES APPLICATION OF EXISTING LAW CONFLICT WITH A RULING THAT THE COURT MAY NOT CONSIDER THE IDENTITY OF THE REQUESTOR?

STATEMENT OF THE CASE

The Respondent, Mr. Allan Parmelee, has submitted approximately eighty (80) public records requests (requests) to the

Appellants generally during May through September 2008. (CP 26, 65). The Appellants are a political subdivision of the state of Washington and "agency" per RCW 42.56.010(1). The Respondent is presently an inmate in the custody of the state of Washington Department of Corrections as a result of two Arson in the First Degree convictions in 2004. (CP 65). On June 20, 2008 the Appellants filed in Franklin County Superior Court a Petition for Preliminary / Permanent Injunction to enjoin the release of records to the Respondent pertaining to some of his requests. (CP 64-69). Pursuant to such Petition an Order Granting Permanent Injunction was entered on July 1, 2008. (CP 61-63). At a hearing on October 3, 2008 the court set aside the Order Granting Permanent Injunction and issued a Preliminary Injunction enjoining the release of records which remains in effect to date. (CP 40-41). Also at said hearing the court found that it could not consider the identity of the requestor, and later affirmed that finding by denying the Appellants' Motion for Reconsideration on February 11, 2009. (CP 9, 40-41).

ARGUMENT

NO PROVISION OF LAW, INCLUDING THE PUBLIC RECORDS ACT, PROHIBITS COURTS FROM CONSIDERING THE IDENTITY OF THE REQUESTOR IN A RCW 42.56.540 ACTION.

The Appellants' action was brought in part pursuant to RCW 42.56.540 seeking to enjoin the release of records to the Respondent. RCW 42.56.540 provides that:

"The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of the record has been requested. However, this option does not exist where the agency is required by law to provide such notice."

No where in RCW 42.56.540, nor any provision of the Public Records Act, does it state the "court" may not consider the identity of the requestor in an action brought to enjoin the release of records. Rather, the Public Records Act, specifically RCW 42.56.080, omits inclusion of any reference to "courts" being restricted in considering a requestor's identity. Rather, RCW 42.56.080 provides that:

*"**Agencies** shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other*

statute which exempts or prohibits disclosure of specific information or records to certain persons.”

(emphasis added). “Agencies” are defined by RCW 42.56.010(1). No where in said RCW is the “court” defined as an “agency.” In fact it is clear that a **court is not an agency**. (emphasis added). See Spokane & Eastern Lawyer v. Tompkins, 136 Wash.App. 616, 617 (2007) (stating that “[A] superior court is not any agency for purposes of the Public Disclosure Act.”), See e.g., Nast v. Michels, 107 Wash.2d 300, 307 (1986). Rules of statutory construction provide that a statute which is clear on its face is not subject to judicial interpretation. In re Marriage of Kovacs, 121 Wash.2d 795, 804, 854 P.2d 629 (1983). In this instance RCWs 42.56.010(1), .080, and .540 are all clear on their face in that no where is it provided that “courts” are “agencies,” nor is it provided that they are prohibited from considering the identity of the requestor. When the meaning of statutory language is plain on its face, we must give effect to that meaning. City of Spokane v. Spokane County, 158 Wn.2d 661, 673, 146 P.3d 893 (2006). Subsequently, RCWs 42.56.010(1), .080, and .540 are all subject to a plain meaning interpretation that only “agencies,” not “courts,” are prohibited from considering the identity of the requestor. As a result, the trial

court's ruling is contrary to law and amounts to prejudicial error as the Appellants' action will be substantially limited if the identity of the requestor can not be considered.

**THE COURTS EQUITABLE POWERS TO GRANT
INJUNCTIVE RELIEF ARE
UNCONSTITUTIONALLY LIMITED IF COURTS ARE
UNABLE TO CONSIDER THE IDENTITY OF THE
REQUESTOR.**

In the Appellants' course of seeking a permanent injunction per RCW 42.56.540 the trial court ruled that it may not consider the identity of the requestor. (CP 9, 40-41). Although no citations were referenced by the court, such ruling presumably was based in part on an interpretation that law limits court authority to consider the identity of the requestor. Yet, a request for injunctive relief invokes the equitable powers of the court. Mains Farm Homeowners Ass'n v. Worthington, 121 Wn.2d 810, 815 (1993); Hagemann v. Worth, 56 Wn.App. 85, 89 (1989). Trial courts have broad discretion and great flexibility to fashion equitable relief. Friend v. Friend, 92 Wn.App. 799, 804 (1998). The writ of injunction is the principal, and most important, process issued by courts of equity, it being frequently spoken of as the strong arm of equity. Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 418, 63 P.2d 397 (1936). Injunctive relief is subject to the sound discretion of the trial court

“to be exercised according to the circumstances of each case.”
Waremart, Inc. v. Progressive Campaigns, Inc., 139 Wn.2d 623, 628 (1999) (quoting Washington Fed'n of State Employees, Council 28 v. State, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983)). For example, in review of a legislative action that placed limitation on courts from issuing injunctions in labor disputes the Washington Supreme Court held that:

“[t]he legislature cannot indirectly control the action of the court by directing what steps must be taken in the progress of a judicial inquiry, for that is a judicial function.”

Id. at 418. Judicial power over equity cases, being vested in the courts by Article 4, §§ 1, 6, of the Washington Constitution **cannot be** abrogated or **restricted** by the legislative department, in the absence of contrary constitutional provisions. Id. at 415. (emphasis added).

Notably, RCW 42.56.540 provides in part that “[t]he examination of any specific public record may be **enjoined**...” if a court finds examination is not in the public interest and substantially and irreparably damages a person or vital government interests. (emphasis added). This language of the RCW authorizes court ordered injunctive and equitable relief. No language in this RCW

places limitation on what the court may consider in granting such relief, reason being that such would be a unconstitutional restriction on the court's equitable powers as set forth in Blanchard, 188 Wash. at 415. If the trial court's ruling were to be affirmed the courts' ability to consider all relevant factors would cease even if identity was relevant. Such result conflicts with Washington court decisions that have specifically interpreted the Public Records Act as allowing consideration of all relevant factors bearing on whether the records are of legitimate public concern. See City of Tacoma v. Tacoma News, Inc., 65 Wash.App. 140, 151 (1992); Spokane Police Guild v. Washington State Liquor Control Bd., 112 Wash.2d 30, 35-36 (1989) (finding that the injunction statute by its terms contemplates that the court may go beyond the confines of any agency record in making its decision). Such a ruling would erroneously affirm that in those instances when identity is a relevant factor the court can not grant equitable relief and can not prevent substantial and irreparable harm despite RCW 42.56.540 providing an equitable remedy. Such a result would impair the court's ability to provide relief on a case by case basis or to fashion an equitable result to the circumstances of the case. Thus, the trial court's ruling amounts to an obvious and reversible error that

deprives the court of its constitutional powers to dispense equity and limits the Appellants' action to seek equitable relief.

APPLICATION OF EXISTING LAW CONFLICTS WITH PROHIBITIONS ON COURT AUTHORITY TO CONSIDER THE IDENTITY OF REQUESTORS.

RCW 13.50.100(7) serves as a clear point of conflict between existing law and the trial court's ruling. For example such RCW provides in part that:

"A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except..."

Id. Therefore, should a juvenile, his or her parent, or legal counsel make a request to inspect juvenile justice records, and such request is erroneously denied by the agency, the court must be able to determine the requestor's identity since such RCW makes access contingent upon identity as a juvenile, parent of, or legal counsel of.

Of further example, both RCW 42.56.070 and 10.97.080, concurrently allow a person subject of a criminal record maintained by an agency to inspect criminal history record information pertaining to that person. Therefore, in the event an agency were to receive a request for inspection and the agency misapplied the

law and denied inspection concluding the person was not subject of the criminal record, it then becomes impossible for the court to later determine whether the requestor is subject of the record without considering the requestor's identity. Subsequently, the courts' ability to consider the identity of the requestor is necessary for the operation of existing laws like RCW 13.50.100(7), RCW 42.56.070, and RCW 10.97.080. The trial court's ruling erroneously negates operation of such existing laws necessitating reversal.

CONCLUSION

The trial court's ruling that the "court" may not consider the identity of the requestor amounts to obvious error rendering further proceedings useless by limiting the Appellants' action and relief available thereto. Said ruling is inconsistent with the plain meaning of RCW 42.56.080 and Spokane & Eastern Lawyer stating a court is not any "agency" in regards to considering the identity of the requestor. 136 Wash. App. at 617. The ruling is in opposition to Spokane Police Guild finding the injunction statute contemplates that the court may go beyond the confines of any agency record in making its decision. 112 Wash.2d at 35-36. The ruling restricts the equitable powers of the court in violation of Article 4, §§ 1, 6, of the Washington Constitution and Blanchard. 188 Wash. at 413-416.

98271-0777, address verified through the Department of Correction's inmate locator website on May 27, 2010, by depositing in the mail of the United States of America a properly stamped and addressed envelope.

Deborah L. Fore

Signed and sworn to before me this 27th day of May, 2010.

Paul Hunter

Notary Public in and for
the State of Washington,
residing at Chubbuck

My appointment expires:

10-09-2011

df