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**Sep 21, 2016**  
Court of Appeals  
Division III  
State of Washington

No. 34190-9-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

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PALMER D. STRAND AND PATRICIA N. STRAND, APPELLANT

v.

SPOKANE COUNTY AND SPOKANE COUNTY ASSESSOR,  
RESPONDENTS

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APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

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**BRIEF OF RESPONDENTS**

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**I. RESPONDENTS' RESTATEMENT OF THE ISSUES**

Spokane County accepted Judge Clarke's Decisions and Orders challenged by Strand. Spokane County does not make any assignments of error.

The issues involved in Strand's assignments of error numbers 1, 2, 3, and 4 arise due to an expectation that the Public Records Act ("PRA") imposes on a county assessor the requirement to create, maintain and provide property information in a format that satisfies a requestor's expectations.

The issues involved in Strand's assignment of error numbers 6 and 8 relate to a court's discretion when reviewing a matter under chapter 42.56 RCW to group records and weigh evidence.

The issues involved in Strand's assignment of error number 7 involves a trial courts discretion to limit discovery.

The issues in assignment of error number 10 involve a court's discretion under the PRA to not accept a plaintiff's requested amount for attorney fees and costs without documentation after the requestor refused to file documentation as directed by the court?

The issues in assignment of error number 11 relate to the level of deference a court must give a plaintiff's proposed grouping of penalties and arguments on aggravating circumstances in a PRA case?

## **II. RESTATEMENT OF THE CASE**

Strand has made numerous public record requests of the Assessor since April 2, 2010. (P5 – email to James P. Emacio, Public Records Officer). Her public record requests generally involve multiple subparts, each containing separate requests. In this appeal, the public record requests alleged as the origin of some of her inspection report and appraisal causes of action all contain multiple subparts. The causes of action referencing request dates prior to 2013 were previously brought before another judge in an action alleging a PRA violation involving a subpart requesting policies and procedures. (CP 420-21). The trial court appears to have not fully grasped the legal questions involved in allowing a PRA litigant to pick and choose parts of a PRA request in one action and then bring a different action to litigate a different part until the trial when Judge Clarke raised the question with counsel. (RP 36:14 – 37:3).

The trial court conducted a three (3) day trial, January 20-22, 2016 to allow testimony. The testimony provided evidence that would have been difficult to reduce to affidavit.

The Honorable Assessor Vicky Horton's testimony, in addition to a general overview of her experience and the operations of the Assessor's Office, included an overview of how properties are assessed value to the trial court. (RP 100:20 – 121:6). Specifically, her explanation of how

property assessments are conducted in Spokane County by entering data into the ProVal software system in which all information regarding a parcel, inspection information, appraisal information, the value information, is all an electronic format commonly referred to as a “property record card.” (RP 100:20 – 102:4). Horton explained the Washington State Department of Revenue regulates and audits how county assessors determine values on properties. (RP 102:5 – 103:4).

Horton testified she was familiar with the property record cards provided Strand and that the cards would contain all the appraisal and inspection information maintained on a parcel by the office. (RP 103:24 – 104:17).

Horton also explained the office does not have rosters on appeals as rooster information is compiled by the Board of Equalization (“BOE”) and accessible through the BOE BEATS computer system. (RP 104:18 – 105:17). Nor does the office have statistical data on appeals, as such data is also compiled by the BOE and maintained and accessible through the BEATS system. (RP 105:18 – 105:24).

After a rather lengthy examination on the inspection/appraisal process and content of property record cards, Horton confirmed for Judge Clarke the information on the property record cards is accessible

through the Assessor's website and the appraisal process. (RP 138:15 – 141:9).

The Deputy Assessor, Byron Hodgson, provided the trial court a general overview of how the Assessor's Office keeps property information in electronic format, the proprietary software applications used, and the process of appraising and assessing property under a mass appraisal approach. (RP 146 – 162:15). Specifically, Hodgson testified all information collected on properties appears in what is called a "property record card" in the ProVal proprietary software system. (RP 149:25 – 150:14). Hodgson was called up to explain the content of the property record card twice during the trial, providing more detail in the second explanation. (RP 151:10 – 153:22; 496:5 – 493:13). Hodgson explained field notes have been incorporated into the electronic format since 2005 to 2006 period and the information appears as part of the property record card. (RP 153:23 – 154:13).

Strand testimony confirmed she had been accessing the Assessor's website since sometime in 2009. (RP 484:21-22). She also acknowledged she had been receiving property record cards from the Assessor in response to her requests since April of 2009. (RP 445:2-8). The depth of her familiarity with the website and property record cards was displayed when she testified about extracting information from the website since 2012 to

compare the website records with the property record cards provided by the assessor. (RP 345:1-19). She testified how she extracted website information to develop “cheat sheets” from which she interpreted and formed opinions. (RP 347:18 – 349:10). Strand then explained how she generated “cheat sheets.” (RP 350:2 – 350:9).

During examination, Strand acknowledged she was aware Byron Hodgson, Deputy Assessor, estimates over a 1,000 hours of staff time have been expended on processing her public record requests since 2010. (RP 456:9-20).

### **III. RELEVANT PROCEDURAL HISTORY**

At the conclusion of the evidentiary portion of the trial on January 20-22, 2015, the trial court closed the record and after discussion with counsel, directed counsel to file written closing arguments. (RP 509:24 – 509:8). After closing the record, on February 17, 2015, Strand filed a Motion to Reopen, which was subsequently denied.

On June 18, 2015, the trial court issued a Memorandum Decision finding three (3) PRA violations.

On June 29, 2015, County filed a Motion to Alter or Amend and Strand filed a response. Judge Clarke accepted this as a Motion for Reconsideration.

On July 6, 2015, Strand terminated Mr. Burns’ representation

On October 1, 2015, the trial court entered a series of Orders, including an Order granting in part County's Motion for Reconsideration, and issued an Order awarding costs and fees to Strand and postponed the decision on file briefs on penalties, fees, and costs.

On October 9, 2015, Strand filed a Motion for Reconsideration, which was subsequently denied.

On January 26, 2016, a second Memorandum Decision was issued addressing the post-trial motions and awarding penalties. Strand filed a Motion to Amend Judgment on February 18, 2016 (no ruling due to appeal).

On March 2, 2016, a Final Order and a Judgment were entered. On March 30, 2016, a Satisfaction of Judgment was entered.

#### **IV. ARGUMENT**

##### **A. STANDARDS OF REVIEW**

Strand's assignments of error involve multiple standards of review. The general review standard for actions under RCW 42.56.550 is de novo. *Belenski v. Jefferson County*, No. 92161-0, 2016 WL 4574356 at \*3 (Wash. Sept. 1, 2016) citing *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 536, 199 P.3d 393, 398 (2009) (citing RCW 42.56.550(3)). However, when findings of fact based on testimony is involved, the trial court has the opportunity to assess credibility of witnesses and weigh conflicting testimony, and reviewing courts grant

greater deference and review testimonial findings of fact only for abuse of discretion or substantial evidence. *Braam ex rel. Braam v. State*, 150 Wn.2d 689, 706, 81 P.3d 851 (2003) (citing *Davis v. Globe Mach. Mfg. Co.*, 102 Wn.2d 68, 76, 684 P.2d 692 (1984)).

When penalties are imposed, the PRA provisions clearly grant trial courts discretion in determining the per day penalty and review is under an abuse of discretion standard. *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 431, 98 P.3d 463 (2004), *as amended* (Jan. 25, 2005). Whereas, the PRA does not grant discretion in determining the number of days in a penalty period, and review is de novo. *Id.* at 436.

#### **B. JUNE 18, 2015 MEMORANDUM DECISION**

The trial court issued a Memorandum Decision following the trial on June 18, 2015 and filed it with the court clerk on June 19, 2015. Under RAP 5.2, a decision may be appealed within 30-days of its entry or the entry of an order deciding a timely motion for reconsideration.

Strand filed a Motion to Alter or Amend, which the trial court treated as a Motion for Reconsideration. The County filed a Response, and the trial court denied reconsideration by Order filed with the Court Clerk on October 1, 2015. Pursuant to RAP 5.2, Strand's appeal of the trial court's June 18, 2015 Memorandum Decision is untimely and dismissal of assigned errors is appropriate.

In arguendo, if the Court does not dismiss errors assigned to the June 18, 2015, Memorandum Opinion, County responds as follows:

The PRA does not require an agency to create public records, it merely mandates a requestor be allowed an opportunity to view and copy public records that are not specifically exempt. *Sperr v. City of Spokane*, 123 Wn. App. 132, 136–37, 96 P.3d 1012 (2004) citing to *Smith v. Okanogan County*, 100 Wn. App. 7, 13–14, 994 P.2d 857 (2000). RCW 42.56.080 dictates facilities must be available for viewing and copying of an agency’s public records. WAC 44-14-04004(2) interprets RCW 42.56.080 as to allow an agency’s use of websites as a means to provide the public access to public records. The legislature, enacting updates to the PRA recognized the merits of providing access through Web postings, in the following findings in the Note to RCW 42.56.520:

**Finding—2010 c 69:** "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [ 2010 c 69 § 1.]

Here there is no question that Strand had access to the Assessor’s property information she was requesting from the website. It is also undisputed the “property record cards” contain all the property parcel

information relating to inspections and appraisals maintained by the Assessor. It is undisputed Strand has been provided property record cards in response to her requests as well as accessed the property record cards on the website. Here the issue is not whether she was provided access to the inspection and appraisal information requested. The issue was whether the Assessor was required under the PRA to create records that did not exist. The PRA contains no such requirement and the trial court's findings should be upheld.

### **C. OCTOBER 1, 2015 ORDERS**

The trial court issued a series of Orders on October 1, 2015, which were all entered the same day.

Strand's assigned error number 7 relates to the denial of her Motion for Post-Trial Discovery. The County filed Defendants' Response in Opposition to Plaintiffs' Motion for Discovery. (CP 459-465)<sup>1</sup>. The trial court has great discretion in regulating discovery. The Order denying the Motion clearly states the court would only consider "appropriate evidence and appropriate post-trial filings."

Strand's assigned error number 8 relates to the court granting in part County's Motion to Alter or Amend, which the court treated as a motion for

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<sup>1</sup> Respondents, consistent with RAP 9.6(a), supplemented the Designation of Clerk's Papers to include CP 459-465.

reconsideration. The basis for the court granting in part are supported by the County's Memorandum filed in support of the motion. (CP 126-136).

**D. JANUARY 26, 2016 DECISION**

Strand's assigned error number 9 relates to the court's denial of her Motion for Reconsideration. The County filed a Response in opposition. (CP 350-362). The trial court considered the dictates of CR59 in its decision to deny Strand's Motion for Reconsideration and committed no error.

Strand's assigned error number 10 relates to the court's denial of attorney fees and other costs. The trial court first instructed the parties they were permitted to file memorandums on fees in the final paragraph on page 5 of the June 18, 2015 Memorandum Decision when the court found violations. The trial court instructions:

The parties may submit a memorandum as to their position on penalties and fees, if any, given the Court's decision. These submittals are due by Friday, July 10, 2015 at 3:00 p.m. parties

On October 1, 2015, after amending its June 18, 2015 decision, the court issued an Order awarding Strand costs and attorney fees. (CP 437-439 - copy attachment to final Order). The last paragraph of the Order instructs the Parties:

Plaintiffs are directed to submit a proposal, with appropriate documentation as to these items to which the Defendants may respond. The Court will decide the issue without oral argument. The parties are directed to keep the

submissions to the point, given the previous filings of briefs on penalties and fees.

(CP 438-439).

The PRA provides for award of reasonable attorney fees when a prevailing party is represented by counsel, the courts have accepted the “lodestar” method for calculating the amount to be awarded for attorney fees. *Sanders v. State*, 169 Wn.2d 827, 869, 240 P.3d 120 (2010). Here, the trial court was awarding the Strands reasonable attorney fees related to the issues on which a violation was found. Strand’s Memorandum on Penalties and Fees filed August 11, 2015, requested penalties of \$6,731,660.00, attorney fees of \$42,100.00, and costs of \$3,354.31 for a total award of \$6,777,114.31. The trial court found one violation and awarded penalties of \$7,380.00. Application of the lodestar methodology requires documentation for the court to determine a reasonable amount.

CR 54(d) requires the court clerk to enter tax costs and disbursements pursuant to CR 78(e) if a party to whom costs have been awarded, fails to file a cost bill or detailed affidavit within 15-days after entry of the award. At least one court has found noncompliance with the cost bill requirement under CR 54(d) does not apply to PRA. In *Gale v. City of Seattle*, 179 Wash. App. 1027, *review denied*, 181 Wash. 2d 1004, 332 P.3d 984 (2014). *Gale* was a pro se litigant who prevailed in part in a

PRA action. On appeal, one of the minor issues addressed was the denial of attorney fees. While *Gale* did not remand for determination of attorney fees, it did remand with instructions that the lower court determine reasonable costs. Here, unlike *Gale*, the trial court gave clear direction to file documentation and Strand failed to do so.

The review standard on fees and costs is abuse of discretion.

V. **CONCLUSION**

Spokane County requests the Court affirm the trial court's decision.

Dated this 21<sup>st</sup> day of September, 2016.

LAWRENCE H. HASKELL  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "D. Catt", written over a horizontal line.

DAN L. CATT, WSBA #11606  
Sr. Deputy Prosecuting Attorney  
Attorneys for Respondents

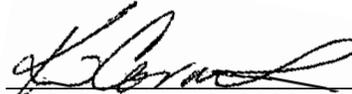
**PROOF OF SERVICE**

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 21<sup>st</sup> day of September 2016, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Palmer D. Strand	<input type="checkbox"/>	Personal Service
Patricia N. Strand	<input checked="" type="checkbox"/>	U.S. Mail
P.O. Box 312	<input type="checkbox"/>	Hand-Delivered
Nine Miles Falls, WA 99026	<input type="checkbox"/>	Overnight Mail
<a href="mailto:pnstrand@hotmail.com">pnstrand@hotmail.com</a>	<input checked="" type="checkbox"/>	Electronic Mail
(Plaintiffs Pro Se)	<input type="checkbox"/>	Facsimile

Dated this 21<sup>st</sup> day of September 2016, in Spokane, Washington.

  
Kim Cornelius