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Division III
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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

ANNE K. BLOCK, APPELLANT

v.

SPOKANE COUNTY, RESPONDENT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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RESPONDENTS' RESTATEMENT OF THE ISSUES

1. Whether or not the Trial Court acted within its discretion in denying Plaintiff's CR 56(f) Motion?
2. Whether or not summary judgment was properly granted?

STATEMENT OF THE CASE

Ms. Block made a public records request to Krista Houchin, Sheriff Technical Assistant III, Public Disclosure, dated August 2, 2017 requesting: "all videos that relate to Karrie Travis (aka Fleck) that in any way relates to the incident at the mall. This shall include ALL videos that relate in any way to [incident 2017-10093386]." (CP 90)

The requested video was recorded by Old Navy on July 17, 2017 and involved the arrest of a juvenile (AF) for Assault (CP 67, 83, 92, 94 and 96).

On August 2, 2017 @ 8:30 p.m., Ms. Block sent an e-mail to Jill Fleck and ccing Public Records Officer James Emacio's legal secretary Tamara Baldwin: "I requested the same video with no responsive records. A lawsuit will be filed." (CP 91)

On August 7, 2017, Ms. Houchin responded to Ms. Block's request in part:

After an objectively reasonable search of investigative and forensic data bases, it has been found the Spokane County Sheriff's Office has no responsive records regarding this request...

Further as these **records involve a juvenile offense**, if we did have a copy of video associated with this incident, they would be considered exempt under the following exemptions [pertinent part]:

1. RCW 13.50.050(3): All records other than the official juvenile court file are considered confidential
2. RCW 13.50.010: ...who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency records ... (Emphasis added)

(CP 92-93)

By correspondence to Ms. Block dated August 15, 2017,

Tamara Baldwin stated in part:

The above referenced **video involves a juvenile offense**. Under RCW 42.56.070 and RCW 13.50.050, this office is denying your PRR for the above video. (Emphasis added)

(CP 94)

By correspondence dated August 15, 2017, Mr. Emacio advised Ms. Block in part:

I have again reviewed and concur with Ms. Baldwin's response. I have additionally closely reviewed RCW 13.50.050. After such review, I am of the opinion that is RCW 13.50.050 an "...*other statute which exempts or prohibits disclosure of specific information or records...*" as referenced in RCW 42.56.070.

Additionally, I am of the opinion that RCW 13.50.050, precludes a "juvenile justice or care agency from releasing the video except [sic] as specifically set forth in RCW 13.50.050." I do not believe that your request falls within any of the individuals to whom the video can be released.

I appreciate the obligation on the part of Public Agencies to make Public Records available and the strict construction of exemption. However, even in light of these parameter regarding the interpretation of the Public Records Act, I am constrained to exempt disclosure of the video.

(CP 96)

On September 11, 2017, Ms. Block filed a Complaint for Access to Public Records in Stevens County (CP 34-43). On October 24, 2017, venue was transferred to Pend Oreille County (CP 5).

On December 8, 2017, Spokane County filed a Memorandum in Support of Motion for Summary Judgment and Declaration of James P Emacio with attachments (CP 79-96).

On January 18, 2018, Ms. Block filed Declarations of Anne Blcok [sic] Opposition to Defendant's Dismissal and in Favor of

Plaintiff's Motions for Default and CR 56(f) Continuance Reasonable Time to Conduct Discovery (CP 60-64) and Plaintiff's Opposition to Defendant's Motion to Dismiss and in Favor of Plaintiff's CR 56(f) Motion to Continue Pending Discovery Pursuant to *Neighborhood Alliance* and Motion for Default and in Support of Fleck Motion to Intervene as a Matter of Right. (CP 65-74)

On January 25, 2018, Judge Patrick Monasmith entered an Order Denying CR 56(f) Continuance and found:

After reviewing the case record to date, and the basis for the motion, the court finds that: The declarations do not: (1) offer a good reason for the delay in obtaining the desired evidence; (2) fails to state what evidence it would establish through additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.

(CP 78)

On January 25, 2018, Judge Patrick Monasmith entered an Order Granting Defendant's Motion for Summary Judgment (CP 106-107).

On February 26, 2018, Ms. Block filed a Notice of Appeal (CP 104-105).

APPLICABLE LAW

- **RAP 10.3**

RAP 10.3(a)(5) provides:

(5) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

All of Ms. Block's alleged facts made without reference to the record should be disregarded.

- **CR 56(f)**

“A court may deny a motion for a continuance when ‘(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.’” *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989).

This court reviews a trial court's denial of a CR 56(f) motion for abuse of discretion. *Tellevik v. Real Property*, 120 Wn. 2d 68, 90, 838 P.2d 111 (1992). A court abuses its discretion if its ruling is manifestly unreasonable. *Ryan v. State*, 112 Wn. App. 896, 899, 51 P.3d 175 (2002). A court's ruling is manifestly unreasonable when it is “ ‘outside the range of acceptable choices, given the facts and applicable legal standard.’ ” *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

- **SUMMARY JUDGMENT**

This court reviews summary judgment orders de novo, engaging in the same inquiry as the trial court. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 483, 78 P.3d 1274 (2003). Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). All facts and reasonable inferences are considered in a light most favorable to the nonmoving party. *Berger v. Sonneland*, 144 Wn.2d 91, 102-03, 26 P.3d 257 (2001). When reasonable minds can only reach one conclusion, questions of fact may be determined as a matter of law. *Ruff v. County of King*, 125 Wn.2d 697, 704, 887 P.2d 886 (1995).

ARGUMENT

1. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN DENYING PLAINTIFF'S CR 56(F) MOTION.

CR 56(f) provides as follows:

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that, for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may

make such other order as is just.

Discovery is permitted in PRA actions. If a party needs to conduct discovery to respond to a motion for summary judgment a CR 56(f) motion should be brought. *Building Industry Ass'n of Washington v. McCarthy*, 152 Wn. App. 720, 735-37, 218 P.3d 720 (2009)

A CR 56(f) motion is directed to the situation where an opposing party cannot present by affidavit facts necessary to oppose a motion for summary judgment. The rule provides that if the party sets forth the factual basis for its request in an affidavit, the court may (1) refuse the motion for summary judgment; or (2) order a continuance to allow the opposing party to obtain affidavits or take depositions; or (3) make such other orders as may be just.

A trial court may deny a continuance if (1) the requesting party fails to offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party fails to state what evidence it would establish through additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact. *Tellevik v. Real Property*, 120 Wn. 2d 68, 90, 838 P.2d 111 (1992).

Ms. Block's declaration did not offer any good reason for the delay¹ in obtaining evidence and did not state what evidence would be established through discovery. (CP 60-64 and CP 65-74) Ms. Block's August 2, 2017 public records request was denied because chapter 13.50 RCW provides the exclusive means of obtaining the juvenile record.

On January 25, 2018, Judge Monasmith entered an Order Denying CR 56(f) Continuance and found:

After reviewing the case record to date, and the basis for the motion, the court finds that: The declarations do not: (1) offer a good reason for the delay in obtaining the desired evidence; (2) fails to state what evidence it would establish through additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.

(CP 78)

Ms. Block argues discovery was necessary to determine whether the requested video was a juvenile record. This argument is belied by Ms. Block's declaration that the juvenile AF was charged with assault arising out of the incident video recorded at Old Navy.

(CP 67)

¹ Ms. Block's first discovery request was served January 11, 2018. (CP 68)

Judge Monasmith acted well within his discretion in denying the CR 56(f) motion.

2. SUMMARY JUDGMENT WAS PROPERLY GRANTED

Ms. Block did not make any assignment of error or argument relative to the Summary Judgment.

Ms. Block's August 2, 2017 public records request was denied because chapter 13.50 RCW provides the exclusive means of obtaining the juvenile record requested by Ms. Block.

RCW 42.56.070(1) provides:

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing. (Emphasis added)

Chapter 13.50 RCW is an “ ‘other statute’ ” that “ ‘exempts or prohibits’ ” disclosure “of particular documents to particular people under [the PDA].” *Deer v. Department of Social and Health Services*,

122 Wn.App. 84, 89–90, 93 P.3d 195 (2004) (quoting (former) RCW 42.17.260). *Wright v. State*, 176 Wn. App. 585, 597, 309 P.3d 662, 667 (2013)

The video, which captured an incident at Old Navy resulting in the arrest of the juvenile AF for assault, falls under the purview under RCW 13.50.050 captioned “Records relating to commission of juvenile offenses – Maintenance of, access to, and destruction” which provides in relevant part:

(1) This section and RCW 13.50.260 and 13.50.270 govern records relating to the commission of juvenile offenses, including records relating to diversions.

...

(3) **All records² other than the official juvenile court file are confidential** and may be released only as provided in this chapter, RCW 13.40.215 and 4.24.550.

...

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could

² RCW 13.50.010(1) provides in part:

(b) “Juvenile justice or care agency” means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the oversight board for children, youth, and families, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, the department of children, youth, and families and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under [RCW 72.05.415](#);

(d) “Records” means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

not reasonably be expected to identify the juvenile or the juvenile's family.

(Emphasis and Footnote added)

The Court noted that the legislature passed chapter 13.50 RCW to specify the exclusive “process, including sanctions, for obtaining juvenile justice and care agency records, after the PRA.” *KB.*, 150 Wn. App. 912, 923, 210 P.3d 330 (2009). *Wright v. State*, 176 Wn. App. 585, 597–98, 309 P.3d 662, 668 (2013)

Consequently, Ms. Block cannot use the PRA's public record request procedures or seek remedies for the County's alleged PRA noncompliance because chapter 13.50 RCW is the exclusive means of obtaining the juvenile record at issue. The PRA does not apply to Ms. Block's request for the video and does not require the County to produce that record.

Summary judgment was properly granted.

CONCLUSION

Spokane County requests the Court of Appeals affirm the Trial Court's Orders.

Dated this 3rd day of October, 2018.

LAWRENCE H. HASKELL
Spokane County Prosecuting Attorney

/s/ Robert B. Binger
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PROOF OF SERVICE

I hereby certify that on the 3rd day of October, 2018, I electronically filed the foregoing with the Clerk of the Court using the Washington State Appellate Courts' Portal, which in turns automatically generates an e-mail to Anne Block.

Dated this 3rd day of October, 2018, in Spokane, Washington.

s/ Donna Monroe
Donna Monroe

SPOKANE COUNTY PROSECUTOR

October 03, 2018 - 1:24 PM

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