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No. 54300-8

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

BELLEVUE JOHN DOES et al.,
Appellants/Cross-Respondents,

v.

BELLEVUE SCHOOL DISTRICT NO. 405, FEDERAL
WAY SCHOOL DISTRICT NO. 210 AND
SEATTLE SCHOOL DISTRICT NO. 1,
Respondents,

And

THE SEATTLE TIMES COMPANY,
Respondent/Cross-Appellant

SEATTLE SCHOOL DISTRICT'S RESPONSE TO
SEATTLE TIMES COMPANY'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

I.	Statement of the Case.....	1
II.	Argument	1
	A. An award of attorney’s fees and statutory penalties cannot be made against a public agency where a third party brings suit to enjoy the release of public records.....	1
	B. There is no evidence that the Seattle Public Schools was “against” the Times or opposed to the release of records in this case.....	1
	C. The Times brought no material new evidence to the trial court in support of its CR 60 Motion	4
III.	Conclusion	5

TABLE OF AUTHORITIES

Cases

Confederated Tribes of the Chehalis Reservation v. Johnson,
135 Wn.2d 734, 958 P.2d 260 (1998).....4

Vance v. Offices of Thurston County Comm'rs,
117 Wn.App. 660, 71 P.3d 680 (2003),
review denied, 151 Wn.2d 1013 (2004)5

Statutes

RCW 42.17.3404

Other Authorities

CR 604

I. Statement of the Case

Seattle Public Schools joins in the Statement of the Case submitted by Federal Way School District (“FWSD”) in its Response to Seattle Times Company’s Supplemental Brief (filed September 17, 2004).

II. Argument

A. An award of attorney’s fees and statutory penalties cannot be made against a public agency where a third party brings suit to enjoin the release of public records.

Seattle Public Schools joins in the Argument (Section A) submitted by FWSD in its Response to Seattle Times Company’s Supplemental Brief (filed September 17, 2004).

B. There is no evidence that Seattle Public Schools was “against” the Times or opposed to the release of records in this case.

The Superior Court in its “Findings of Fact and Conclusions of Law on Order for Injunction” dated April 25, 2003 ruled that “[a]ttorney’s fees are not appropriate under the PDA because the government agencies involved, the School Districts, did not oppose the Times’ request.” CP 114. This finding is accurate and should be affirmed. Seattle Public Schools was not against the production of documents to the Times. To the contrary, Seattle Public Schools agreed to release the requested information to the Times. CP at 348 (Letter from Mark Green, Seattle Public School General Counsel, to Ray Rivera, Seattle Times Company

(Jan. 30, 2003). The Plaintiffs, not Seattle Public Schools, objected to the release of information or documents and it was the Plaintiffs, not Seattle Public Schools that obtained a court order prohibiting the release of information or documents. See e.g., CP 97-115 (Findings of Fact); CP 116-119 (Order).

The Times, in a strained attempt to obtain fees from the school districts, is now asserting that school districts are against the Times. This is simply not true. The ambiguous evidence offered by the Times in its brief does not even come close to making Seattle Public Schools an adverse party against the Times. More importantly, the Times has not prevailed against Seattle Public Schools in this litigation.

First, the Times argues that it prevailed against the school districts by getting the records and names of 22 teachers. Times Supplemental Brief, at 20. This is not accurate. If the Times prevailed, it prevailed against the Plaintiffs, not the school districts. As the record clearly indicates, the school districts were willing to produce information and documents, but the Plaintiff teachers obtained an injunction.

Second, in an apparent attempt to impugn Seattle Public Schools' motives, the Times suggests that a remark by an assistant general counsel in open court during an initial factual proceeding somehow makes the District against the Times. See Times Supplemental Brief, at 24 ("one

district argued for a gag order”). The Superior Court happened to allow one of the names at issue in the injunction proceedings to be said in open court. The attorney for Seattle Public Schools, obviously knowing the name of the employee, remarked: “[y]our honor, if there was an accidental admission of the name, I would like to make a motion that you bar the Seattle Times or counsel for the Times to destroy the notes or to order them to not use that name in any fashion to collect other data on this particular individual.” RP 3/25/03, at 40-41. Counsel was merely operating in his capacity as an officer of the court to alert the court of an inadvertent disclosure; the simple suggestion that if the Superior Court did not wish to accidentally moot the injunction with respect to that individual, the court might consider imposing a protective order. This action does not make the District adverse to the Times with respect to this Plaintiff, particularly when Seattle Public Schools previously informed the Plaintiff that it would disclose his or her identity and name to the Times.

Third, the Times argues that declarations filed by school district employees is somehow an act against the Times. Not true. Foremost, the Superior Court was conducting hearings on whether school district staff engaged in misconduct and whether they were disciplined. Testimony was taken by live witnesses and declarations were filed. See e.g., RP 3/25/03 and CP at 67-69. Many of these declarations were filed by

Plaintiffs in support of their position of non-disclosure. Providing factual information to the Superior Court does not make Seattle Public Schools against the Times. These and other allegations hardly smack of being adverse or against the Times.

In any event, the Times' analysis of motive and interest are misplaced. The key term in the statute is not "against" but prevails. See RCW 42.17.340(4). Under Confederated Tribes of the Chehalis Reservation v. Johnson, 135 Wn.2d 734, 958 P.2d 260 (1998), once an agency expressly agrees to release the requested records, the requestor cannot "prevail" against the agency. Instead, either the requestor "prevails" against the private party, or the private party "prevails" against the requestor. In neither case is RCW 42.17.340(4) relevant. Confederated Tribes, 135 Wn.2d at 757.

C. The Times brought no material new evidence to the trial court in support of its CR 60 Motion.

Seattle Public Schools joins in the Argument (Section C) submitted by FWSD in its Response to Seattle Times Company's Supplemental Brief (filed September 17, 2004). Seattle Public Schools adds that the Superior Court Memorandum Decision denying the Times' motion to vacate under CR 60 is well reasoned. CP 3044-45 (Order Denying the Seattle Times company's CR 60 Motion to Vacate). The Superior Court concluded that

“the evidence put forward by the Times is not material to the award of attorneys fees” and denied the motion to vacate. CP 3044. Vance v. Offices of Thurston County Comm’rs, 117 Wn.App. 660, 671, 71 P.3d 680 (2003), review denied, 152 Wn.2d 1013 (2004). This conclusion is accurate and should be affirmed.

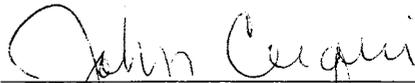
III. Conclusion

For all of the foregoing reasons, the Superior Court’s decision to not award any attorney fees to Times and to deny the CR 60 motion to vacate should be affirmed.

Respectfully submitted this 17th day of September 2004.

Office of General Counsel

By:



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CERTIFICATE OF SERVICE

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