

FILED
SUPREME COURT
STATE OF WASHINGTON
1/24/2018 2:34 PM
BY SUSAN L. CARLSON
CLERK

SEALED

NOs. 94798-8, 94970-1

SUPREME COURT OF THE STATE OF WASHINGTON

Consolidated cases of:

In re Dependency of E.H.

and

In re Welfare of S.K.-P.

**JOINT MOTION TO SEAL APPENDICES TO
COURT OF APPEALS MOTION FOR DISCRETIONARY
REVIEW AND RESPONSES**

ROBERT W. FERGUSON
Attorney General
Peter B. Gonick, WSBA 25616
Deputy Solicitor General
Office ID 91087
PO Box 40100
Olympia, WA 98504-0100
360-753-6245
peterg@atg.wa.gov

Jan Transen WSBA 41177
Washington Appellate Project
Attorneys for Petitioner R.R.
1511 Third Avenue, Suite 701
Seattle, WA 98101
206-587-2711

Kathleen C. Martin, WSBA 25636
Attorney for CASA Laura Clough
King County Superior Court
Dependency CASA Program
Maleng Regional Justice Center
401 4th Avenue N, Suite A-2239
Kent, WA 98032
206-477-2768

I. IDENTITY OF MOVING PARTY

Petitioner R.R., Respondent State Department of Social and Health Services, and Respondent CASA for E.H. (collectively “Parties”) jointly move to seal records filed at the Court of Appeals in Cause No. 76000-9-I.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to GR 15(c)(2)(A), the Parties seek to have sealed the following documents filed at the Court of Appeals in Cause No. 76000-9-I:

1. Appendices A through H, attached to Motion for Discretionary Review, filed July 24, 2017;
2. Memorandum Opinion and Order on Mother’s Motion for Revision, *In re Dependency of E.H.*, Superior Ct. Cause No. 14-7-01413-7 SEA, attached to Notice of Discretionary Review, filed November 7, 2016;
3. Appendix 1, attached to Department’s Response to Motion for Discretionary Review, filed February 10, 2017;
4. CASA Appendix, attached to Brief of Court Appointed Special Advocate [in Response to Motion for Discretionary Review], filed February 21, 2017;
5. Appendices A through G, attached to Motion for Discretionary Review, filed January 30, 2017;

6. Any additional documents containing the name or likeness of E.H. or his minor siblings.

The Parties request that the Court order these documents sealed at this Court and for any copies retained at the Court of Appeals to also be sealed.

In addition, the Parties move to require the use of initials of the children and parents in pleadings filed with this Court.

III. FACTS RELEVANT TO MOTION

Clerk's Papers have not been designated in this case because the Court of Appeals did not accept discretionary review. *See* RAP 9.6(a) (requiring designation of clerk's papers "after . . . discretionary review is granted"). Instead, the parties attached trial court records to motions and responses filed at the Court of Appeals. The parties filed a joint appendix for this Court's review, which comprised the appendices to the Court of Appeals pleadings. *See* Joint Appendix, filed with Petitioner's Supplemental Brief, January 22, 2018. The documents in the Joint Appendix were redacted to remove the name, images, and other identifying information of E.H. and his family members. *Id.*

In a letter to the parties in *In re Dependency of E.H.*, the Supreme Court Deputy Clerk noted the documents filed at the Court of Appeals that included the name and likeness of E.H. and his siblings, and invited counsel

to file a motion regarding those documents, if desired. Letter, Erin L. Lennon to counsel in Supreme Court Cause No. 94798-8, dated January 19, 2018. The letter advised that these documents would not be posted on the Court's website until February 2, 2018. *Id.*

This Court has consolidated the instant case with Supreme Court Cause No. 94970-1, *In re Dependency of S.K.-P.* The Court of Appeals in *S.K.-P.* granted a similar request to that made here, in light of GR 15(c)(2), which this Court has acknowledged remains in effect. *See* Letter, Erin L. Lennon to parties in consolidated cases, December 20, 2017. Thus, in *S.K.-P.*, the Parties are required to use initials for children and parents in motions and briefs and the appendices and exhibits accompanying *S.K.-P.*'s motion for discretionary review and appendices in responsive pleadings are sealed. *Id.* There is currently pending before this court in the *S.K.-P.* matter a motion to seal other trial court records in the appellate file. *Id.*

IV. ARGUMENT

GR 15(c)(2)(A) permits the Court to seal files and records when permitted by statute. In cases involving juvenile dependency, RCW 13.50.100(2) requires that records "shall be confidential and shall be released only pursuant to this section and RCW 13.50.010." RCW 13.50.010, in turn, provides for access to juvenile court records and files in limited circumstances, but requires that anonymity and

confidentiality must be preserved. *See* RCW 13.50.010(8). Sealing the records identified above is an appropriate step to assure the anonymity of the child who is the subject of this appellate litigation, and that of his family members.

This Court recently upheld sealing juvenile records in the context of a juvenile offender's record. *State v. S.J.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015). In applying the experience and logic test to determine whether article I, section 10 applied, the Court determined that "[t]he legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records" and that the Court "has always given effect to statutory provisions providing enhanced confidentiality for juvenile court records[.]" *Id.* at 417, 422. The Court explained that "the legislature is in the unique and best position to publicly weigh the competing policy interests raised in the juvenile court setting, particularly as it pertains to the openness of juvenile court records." *Id.* at 422. Consistent with its past decisions, the Court held that article I, section 10 does not apply to juvenile court records. *Id.* (citing, *inter alia*, *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982)).

The Court's reasoning in applying the experience and logic test in *S.J.C.* is even more compelling in this case. Dependency and termination of parental rights cases are unlike other areas of the law. The children and

infants involved in these cases have done nothing to bring themselves within the court system, yet risk significant humiliation if their identities are publicized. As in *S.J.C.*, the legislature's statutory determination that the children should be given confidentiality should be afforded effect. RCW 13.50.100(2). Because juvenile records are not subject to article I, section 10, the records should be sealed.

B. Application of the *Ishikawa* Factors Shows That the Records Should Be Sealed

Because article I, section 10 is inapplicable to the juvenile records, the Court is not required to apply the *Ishikawa* factors before sealing the record. *S.J.C.*, 183 Wn.2d at 411. But even if those factors were applied, it would confirm that the dependency records identified above should be sealed.

Under the *Ishikawa* test, documents in the court file may be sealed if: (1) the proponent of sealing shows a need for sealing; (2) opponents of sealing are given an opportunity to object; (3) sealing is the least restrictive means available to protect the interests at stake and will be effective; (4) the Court weighs the competing interests, considers alternative methods, and makes findings; and (5) the order is no broader in application or duration than necessary. *Ishikawa*, 97 Wn.2d at 37-39.

With respect to the first factor, juvenile records, including those at issue here, contain sensitive information about juveniles and their family members that would be detrimental to the children involved and the dependency process in general if made public. This motion and the opportunity for any interested person to file a response objecting to the sealing satisfies the second factor. As to the third factor, sealing the documents will be effective in protecting confidential information, and is the least restrictive means available other than redaction. Given that the Parties have already filed a joint appendix with the documents in redacted form, sealing is the most effective means of protecting the confidentiality of the records, and re-filing redacted copies is unnecessary for the public to have access to relevant information.

As to the fourth factor, the Parties respectfully submit that given the redacted materials filed with the Court, there are no interests to compete with the importance of confidentiality. There is no public interest reason for revealing the identities of the particular children and families involved in these cases, and considerable interest in maintaining confidentiality. The redacted records filed in the Joint Appendix and the filing of pleadings with initials provide the information necessary for the public to be informed of the information available to the Court and that might impact its consideration of the legal issues. The Court's weighing of these

considerations and the limits on the scope of the order will satisfy the fourth and fifth *Ishikawa* factors.

V. CONCLUSION

Pursuant to GR 15(c)(2)(A) and RCW 13.50.100(2), the Parties request that the Court grant the motion to seal and order the relief requested in Section II above.

RESPECTFULLY SUBMITTED this 24th of January 2018.

ROBERT W. FERGUSON
Attorney General

s/ Peter B. Gonick

Peter B. Gonick, WSBA 25616
Deputy Solicitor General

Office ID 91087
PO Box 40100
Olympia, WA 98504-0100
360-753-6245
peterg@atg.wa.gov

s/ Jan Trasen

Jan Trasen WSBA 41177
Washington Appellate Project
Attorneys for Petitioner R.R.
1511 Third Avenue, Suite 701
Seattle, WA 98101
206-587-2711

s/ Kathleen C. Martin

Kathleen C. Martin, WSBA 25636
Attorney for CASA Laura Clough
King County Superior Court
Dependency CASA Program
Maleng Regional Justice Center
401 4th Avenue N, Suite A-2239
Kent, WA 98032
206-477-2768

CERTIFICATE OF SERVICE

I certify that I served a copy of the Joint Motion To Seal Appendices To Court Of Appeals Motion For Discretionary Review and Reponses, via electronic mail, upon the following:

Fred@FETHornelaw.com
BrianW4@ATG.WA.GOV
shstacappeals@ATG.WA.GOV
KellyT1@ATG.WA.GOV
AlanC@ATG.WA.GOV
ZacharyB@ATG.WA.GOV
SHSSeaEF@ATG.WA.GOV
SGOOlyEF@ATG.WA.GOV
zydekbe@gmail.com
candelaria.murillo@columbialegal.org
sujatha.branch@columbialegal.org
jan@washapp.org
wapofficemail@washapp.org
aburton@co.pierce.wa.us
april.rivera@kingcounty.gov
kathleen.martin@kingcounty.gov
casa.group@kingcounty.gov
andrea.bradford@foster.com
tacy.hass@gmail.com
adrienne.mckelvey@foster.com
debip@nwjustice.org
bannail@seattleu.edu
levinje@seattleu.edu
changro@seattleu.edu

I certify under penalty of under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of January 2017, at Olympia, Washington.

s/ Wendy R Scharber

WENDY R. SCHARBER
Legal Assistant

SOLICITOR GENERAL OFFICE

January 24, 2018 - 2:34 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94798-8
Appellate Court Case Title: In re the Dependency of: E.H.
Superior Court Case Number: 14-7-01413-7

The following documents have been uploaded:

- 947988_Motion_20180124142922SC447869_9214.pdf
This File Contains:
Motion 1 - Seal
The Original File Name was 180124JointMotToSeal.pdf

A copy of the uploaded files will be sent to:

- Fred@FETHornelaw.com
- ZacharyB@ATG.WA.GOV
- aburton@co.pierce.wa.us
- adrienne.mckelvey@foster.com
- alanc@atg.wa.gov
- andrea.bradford@foster.com
- april.rivera@kingcounty.gov
- bannail@seattleu.edu
- brian.ward@atg.wa.gov
- casa.group@kingcounty.gov
- changro@seattleu.edu
- debip@nwjustice.org
- jan@washapp.org
- jessica.levin@gmail.com
- kathleen.martin@kingcounty.gov
- kellyt1@atg.wa.gov
- levinje@seattleu.edu
- litdocket@foster.com
- pcpatvecf@co.pierce.wa.us
- shsseaef@atg.wa.gov
- shstacappeals@atg.wa.gov
- tacy.hass@foster.com
- tacy.hass@gmail.com
- wapofficemail@washapp.org
- zydekbe@gmail.com
- Sujatha Jagadeesh Branch (Undisclosed Email Address)
- Candelaria Murillo (Undisclosed Email Address)

Comments:

Joint Motion To Seal Appendices To Court Of Appeals Motion For Discretionary Review And Responses

Sender Name: Kristin Jensen - Email: kristinj@atg.wa.gov

Filing on Behalf of: Peter B. Gonick - Email: peterg@atg.wa.gov (Alternate Email: PeterG@atg.wa.gov)

Address:

PO Box 40100

1125 Washington St SE

Olympia, WA, 98504-0100

Phone: (360) 753-4111

Note: The Filing Id is 20180124142922SC447869