

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 94798-8

SUPREME COURT OF
THE STATE OF WASHINGTON

In re the Dependency of E.H.;)
In re the Dependency of S.K.-P.,)
A Minor Child, Petitioner)
) **MOTION TO SEAL**
) **DEPENDENCY COURT**
) **RECORDS OF S.K.-P.**
)
_____)

I. IDENTITY OF PARTY

Petitioner S.K.-P asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to GR 15(c)(2)(A), to protect the identities of the parties, S.K.-P moves that this Court issue an order to (1) require the use of initials of the children and biological parents in motions and briefs, (2) maintain sealed the appendices and exhibits accompanying S.K.-P's Motion for Discretionary Review, (3) maintain sealed any appendices or exhibits filed in the future by S.K.-P and/or Respondent(s) before this Court, and (4) seal trial court records contained in S.K.-P.'s appellate file, including transcripts from trial court proceedings dated September 17, 2015; October 5, 2015; and October 12, 2015; the designation of clerk's papers; and the clerk's

papers.

III. FACTS RELEVANT TO MOTION

S.K.-P. is a party, is a minor child, and was subject to a dependency proceeding; sealing is necessary to protect S.K.-P.'s identity and confidential juvenile court records.

IV. ARGUMENT

a. Confidential Juvenile Court Records Automatically Maintain their Seal on Appeal.

GR 15(c)(2)(A) provides that this Court may seal files and records when sealing or redaction is permitted by statute. Pursuant to RCW 13.50.100(2), "Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010," which provides for access to juvenile court records and files under certain conditions, but mandates that anonymity and confidentiality be preserved. *See, e.g.*, RCW 13.50.010(8). Therefore, the juvenile court records are confidential in the dependency proceeding below per statute.

Our Supreme Court has held the confidentiality of juvenile court records is not relevant in determining how to treat the records on appeal. *In re Dependency of JBS*, 122 Wn. 2d 131, 856 P.2d 694 (1993) (holding a party can seal under GR 15 when compelling factors warrant closure). In 2006, a decade after *JBS* was decided, GR 15 was substantially re-written.

2 Wash. Prac., Rules Practice GR 15 (7th ed.) (“For all practical purposes, the 2006 version of GR 15 is an entirely new rule.”).

More recently, in *State v. SJC*, 183 Wn. 2d 408, 352 P.3d 749 (2015) this Court upheld sealing juvenile court records in the context of juvenile delinquency matter even without applying the *Ishikawa*¹ analysis. Citing to *JBS*, this Court held that *JBS* stands for the principal that “[w]here an individual seeks to seal a juvenile court record but does not meet the statutory requirements, the *Ishikawa* factors may still guide the court’s decision.” *Id* at 432, n.6. This Court stated the balance of relative openness and confidentiality is not the same in reviewing juvenile court records because the juvenile courts have historically limited access to the press and general public. *Id.* at 435, n.7. Therefore, it can be surmised the public’s interest in open access is reduced in the context of juvenile court records. *See also, e.g., State v. A.G.S.*, 182 Wn. 2d 273, 340 P.3d 830 (2014) (discussing confidentiality of juvenile court records).

b. Verbatim Reports and Other Documents Should be Sealed to Protect the Identity of the Parties.

As explained above, records in the juvenile court file that are confidential pursuant to statute, whether in the nature of clerk’s papers or exhibits, should remain sealed in this appeal. To the extent that GR 15 and

the five-part *Ishikawa* analysis applies to verbatim reports and other documents brought up from the dependency proceeding below and from the appellate court, these documents should be sealed to protect the identities of the parties.

Documents in a court file may be sealed when: (1) the proponent of sealing shows a need for sealing; (2) any 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.

In this case, S.K.-P. and S.K.-P.'s family have numerous fundamental rights at stake. This case involves allegations of child abuse, neglect, and other sensitive facts that, if made public, would be detrimental to S.K.-P. Second, DSHS is expected to agree that sealing is appropriate. Third, while redaction is possible, the appendices and exhibits are too voluminous to positively redact every personally identifying fact. Fourth, as the courts found in *SJC*, the public's interest in open access does not outweigh the substantial privacy interest of these vulnerable children. Finally, the order

¹ *Seattle Times Co. v. Ishikawa*, 97 Wn. 2d 30, 640 P.2d 716 (1982) (holding certain factors must be used to balance the public's right to access against other interests).

to seal applies to the appendices, exhibits, trial court records, including transcripts from trial court proceedings on September 17, 2015; October 5, 2015; and October 12, 2015; the designation of clerk's papers; and the clerk's papers, which contain personal identifying information.

V. CONCLUSION

For the foregoing reasons, S.K.-P. respectfully requests that pleadings refer to her and her family by initials and that the current as well as any additional appendices, exhibits, trial court records, designation of clerk's papers, and the clerk's papers remain under seal.

Respectfully submitted this 15th day of December, 2017.

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