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SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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Supreme Court No. _____
Court of Appeals No. 74055-5-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JENNIFER DREEWES,

Movant/Appellant.

ON APPEAL FROM DIVISION ONE OF
THE COURT OF APPEALS

MOTION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF MOVANT AND DECISION BELOW

Jennifer Dreewes, the appellant from convictions following trial in King County, respectfully asks this Court to grant review of the Court of Appeals decision denying her motion to modify a Clerk's ruling that denied Ms. Dreewes's motion to seal limited portions of the appellate briefs that include detailed information about her personal finances.

Under GR 15(c), GR 31, and in the interest of respecting the privacy and confidentiality of Ms. Dreewes and her estranged husband, Ms. Dreewes moved the Court to seal the section of the State's response brief that incorporates Ms. Dreewes's personal financial information, and that portion of Ms. Dreewes's reply brief responding to the State's argument. Ms. Dreewes brought her motion following the grant of her motion to seal her financial declaration and attached documents in the Superior Court divorce proceedings under Cause No. 16-3-00771-8. The appellate motion to seal was not limited to financial account numbers, but was specifically aimed at making private the details of her and her estranged husband's personal financial circumstances. Review should be granted and the details of Ms.

Dreewes's and her estranged husband's personal finances should be sealed.

A copy of the order denying the motion to modify is attached as Exhibit 1; a copy of the Clerk's Ruling denying the motion to seal is attached as Exhibit 2. Commissioner Kanazawa's March 13, 2017 ruling denying sealing without prejudice because the documents were not yet sealed in the underlying divorce proceedings is attached as Exhibit 3.

B. ISSUE PRESENTED FOR REVIEW

Whether the Court should grant review of the Court of Appeals Order declining to seal personal financial details, which have been sealed in the underlying superior court proceeding, contained in two pages of the State's publicly available response brief and the corresponding section of Ms. Dreewes's reply brief.

C. STATEMENT OF RELEVANT FACTS

Because her opening brief was filed before the change to RAP 14.2, Ms. Dreewes argued appellate costs should not be imposed if the State is the prevailing party in her opening brief. Br. of App't at 35-36 (filed Aug. 29, 2016). She did not disclose details of her personal financial circumstances in that section of the brief.

In response, the State filed contested financial declarations from Ms. Dreewes and her estranged husband's ongoing divorce action and included details of her personal finances in the body of the response brief. Br. of Rep't at 22-24 (filed Jan. 12, 2017).

Ms. Dreewes moved the Court of Appeals to seal the newly-filed documents and to seal the argument that incorporates the information in the response brief at pages 22 to 24. Motion to Seal (filed Jan. 24, 2017). By a separate motion filed at the same time as her reply brief, Ms. Dreewes moved the Court to seal Section 5 of her reply, which replies to the State's argument and therefore also incorporates her personal financial information. Motion to Seal Section of Reply Brief (filed Feb. 15, 2017)

After oral argument, by ruling dated March 13, 2017, Commissioner Kanazawa denied the motion to seal, indicating that Ms. Dreewes could move for sealing if the underlying documents are sealed in the divorce proceedings. Exhibit 3 (Ruling at 3-4). The ruling also strikes the State's supplemental designation of clerk's papers and grants the State permission to submit copies of the documents with redactions of any financial account numbers. *Id.* (Ruling at 4).

Thereafter, the superior court sealed her and her estranged husband's financial declarations. App. A to Motion to Seal (filed Aug. 16, 2017). Thus, the information incorporated into the State's response brief at pages 22 to 24 was now sealed in the underlying superior court action.

Ms. Dreewes again moved to seal pages 22 to 24 of the State's response brief and Section 5 of her reply brief, which incorporate this now-sealed information. Motion to Seal (filed Aug. 16, 2017). On October 23, 2017, the Clerk denied Ms. Dreewes's motion, finding "that neither [appellate brief] includes any financial account number or other personal identification numbers." Exhibit 2 (Ruling at 2).

Ms. Dreewes moved to modify the Clerk's ruling, but a panel of the Court denied the motion on the same day an opinion was issued on the substantive issues in the appeal. Exhibit 1 (Order Denying Motion to Modify). The State filed a petition for review of the Court of Appeals opinion on February 21, 2018.

The State's response brief incorporating the <u>information about Ms. Dreewes's personal finances</u> from the sealed declarations is easily accessible on the Court of Appeals' website and both the response and reply briefs remain publicly filed. Br. of Rep't, No. 74055-5-I,

http://www.courts.wa.gov/content/Briefs/A01/740555%20Respondent%20State%20of%20Washington's%20.PDF (last visited Feb. 27, 2018).

D. ARGUMENT IN SUPPORT OF GRANTING REVIEW

Review should be granted because the personal financial information sealed in the superior court should be sealed in the Court of Appeals.

The Court should grant review pursuant to RAP 13.5(b)(2) and (3). The Court of Appeals refusal to seal the State's recitation and misrepresentation of Ms. Dreewes and her estranged husband's personal financial circumstances, derived from files sealed in the superior court, violates the General Rules and the sealing procedure set forth in *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). The Court of Appeals probably erred and so departed from the accepted and usual judicial course. RAP 13.5(b)(2), (3). The decision substantially alters the status quo because this financial information is sealed in the superior court divorce proceedings from which it derives, yet, it is now publicly available in the appellate court files and easily accessible on the Court of Appeals website.

1. **The Court of Appeals ruling departs with the presumption in GR 15(g) that matters sealed in the superior court remain sealed on appeal.**

Under GR 15 and GR 31, this Court's files and the Court of Appeals file is open for public examination. Because Ms. Dreewes's financial declaration and attached documents contain personal financial information, the Superior Court sealed the documents in her divorce proceedings pursuant to *Ishikawa*, 97 Wn.2d 30 and GR 22(e).

General Rule 15(g) sets forth a presumption that records sealed in the Superior Court remained under seal on appeal. "Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court." GR 15(g).

The argument sections of the State's response brief and Ms. Dreewes's reply brief specifically incorporate the sealed financial information. The State cannot be permitted to evade GR 15(g) by repeating the information sealed in the superior court in its appellate briefing. Such a rule would gut the presumption in GR 15(g).

This Court should grant review and order those portions of the briefs be sealed. The Court should further order that if the State refiles the financial documents from Ms. Dreewes's divorce proceedings,

which are now under seal in the Superior Court, those documents must be filed under seal in the Court of Appeals.

2. The Court of Appeals ruling departs with *Ishikawa*, which factors compel sealing.

This Court and the Court of Appeals may seal a court record if "justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2). In so doing, our courts use the guidelines set forth in *Ishikawa*, 97 Wn.2d 30. The Court must consider: (1) the need for closure and sealing; (2) the opportunity to object to closure; (3) an analysis of the alternatives to sealing; (4) weighing the competing interests of sealing to the public's right to access; and (5) limitations in both the application and duration of the order. *Ishikawa*, 97 Wn.2d at 37-39.

These factors compel the sealing pages 22 to 24 of the State's response brief (Argument E), which recites the personal financial information contained in the sealed financial declarations, and Section 5 of Ms. Dreewes's brief, which replies to the State's argument and also incorporates her personal financial circumstances.

(1) The need for sealing. Sealing is necessary here because the documents contain personal financial information and details of Ms.

Dreewes's personal financial circumstances. As set forth in Ms. Dreewes's reply brief, Ms. Dreewes contends the State's argument misrepresents her finances. GR 31(e) requires the redaction of personal account numbers because they provide access to the account itself. The need for privacy related to personal financial information in addition to account numbers is paramount. Ms. Dreewes successfully sealed these documents (not just the account numbers) in the Superior Court proceedings. GR 22(c)(2) restricts access to some of this information for this very reason.

Because of its personal, sensitive nature, *State v. Parvin*, 184 Wn.2d 741, 777-78, 364 P.3d 94 (2015) recognizes personal financial information is generally and universally presumed private. Sealing of this information and these records is, accordingly, appropriate.

(2) The opportunity to object to closure. The State had the opportunity to object to the sealing, and did so, by responded to Ms. Dreewes's motion. The State also has the opportunity to respond to this motion for discretionary review.

(3) An analysis of the alternatives to sealing. No viable alternative to sealing the records exists. Ms. Dreewes requests the Court seal only two pages from the response brief and the final section

of Ms. Dreewes's reply brief, both of which repeatedly and explicitly discuss the details of Ms. Dreewes's personal finances. While the two pages of the response brief could theoretically be redacted, the remaining words would be sparse. Redacting the final argument section of the reply brief similarly would not leave much for the public purview as the entire argument in this section relies upon Ms. Dreewes's (and her husband's) financial state. Sealing, rather than redacting, seems most appropriate the limited sections of these briefs.

(4) Weighing the competing interests of sealing and the public's right to access. Ms. Dreewes is sensitive to the public's general right to access appellate proceedings. The appellate court decision, all but a few pages of the briefing, the orders and the remainder of the court file would remain open to the public. In light of the amendment to RAP 14.2 since the filing of the appellate briefing, the public's interest in reviewing the details of Ms. Dreewes's personal financial circumstances is even more diminished. Any decision on appellate costs would not be issued as a result of the appellate briefing, but only following proceedings before an appellate clerk or commissioner. RAP 14.2. A conscientious weighing of these factors

should lead the Court to conclude that the request to seal is well founded.

(5) Limitations in the application and/or duration of the order. The order must be no broader in its application or duration than necessary to serve its purpose. The purpose of this order is to protect the privacy and confidentiality of Patrick and Jennifer Dreewes's personal financial information and circumstances. This purpose cannot be served by a more limited remedy than sealing the portions of the briefing that incorporate Ms. Dreewes's personal financial information.

E. CONCLUSION

Under RAP 13.5 and in light of GR 15, GR 31 and *Ishikawa*, this Court should grant review and seal the noted documents containing details of Ms. Dreewes's personal financial circumstances.

DATED this 28th day of February, 2018.

Respectfully submitted,

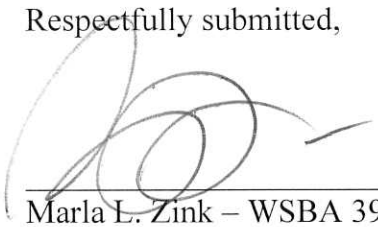

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EXHIBIT 1

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2018 JAN 29 AM 11:30

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

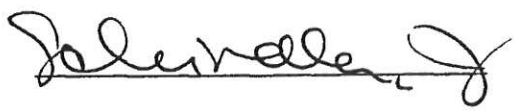
THE STATE OF WASHINGTON, Respondent, v. JENNIFER CATHRYN DREEWES, Appellant.	)))))))))	No. 74055-5-I ORDER DENYING MOTION TO MODIFY RULING DENYING MOTION TO SEAL PORTIONS OF BRIEFING WITH PERSONAL FINANCIAL INFORMATION SEALED BELOW

Appellant Jennifer Dreewes filed a Motion to Modify Ruling Denying Motion to Seal Portions of Briefing with Personal Financial Information Sealed Below. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the Motion to Modify Ruling Denying Motion to Seal Portions of Briefing with Personal Financial Information Sealed Below is hereby denied.

Dated this 29th day of January, 2018.

FOR THE COURT:



Judge

EXHIBIT 2

RICHARD D. JOHNSON,
Court Administrator/Clerk

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CASE #: 74055-5-I
State of Washington, Respondent v. Jennifer Cathryn Dreewes, Appellant

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on October 3, 2017:

> This case was heard on July 21, 2017. On August 16, 2017 counsel for appellant filed a "motion to seal portions of briefing that incorporate personal financial sealed below." The State filed a response to the motion on September 8, 2017.
>
> Specifically, Counsel for appellant requests the Court to seal pages 22 to 24 of the Brief of Respondent and Section 5 of Ms. Dreewes's reply brief. A similar motion was denied by Commissioner Kanazawa on March 13, 2017.
>
> Counsel for appellant argues that these documents should be sealed because they incorporate personal financial information, "including documents containing account numbers." In her opening brief the appellant asked that if the State prevailed on appeal that an award of costs be denied. In response, the State noted that the defendant's declaration in support of an order of indigency was contrary with her financial declaration filed in her pending dissolution action. The State filed a supplemental designation of clerk's papers designating the appellant's declaration from her dissolution action, however, the supplemental designation was stricken in the March 13, 2017 ruling.

A review of pages 22 – 24 of the Brief of Respondent and Section 5 of the Appellant's Reply reflect that neither document includes any financial account numbers or other personal identification numbers. Therefore, the motion to seal is denied.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

LAW

EXHIBIT 3

RICHARD D. JOHNSON,
Court Administrator/Clerk

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March 13, 2017

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CASE #: 74055-5-I
State of Washington, Respondent v. Jennifer Cathryn Dreewes, Appellant

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on March 13, 2017, regarding appellant's motion to seal section of reply brief relying on personal financial information:

"Defendant Jennifer Dreewes has filed motions to seal her personal financial information. In her opening brief of appellant, Dreewes argues that appellate costs should not be imposed if the State prevails on appeal. In its brief of respondent, the State argues that there is sufficient evidence of Dreewes's current ability to pay. The State designated clerk's papers in Dreewes's divorce case currently pending in Snohomish County Superior Court, No. 16-3-00771-8. The documents have not been sealed in the divorce case. Citing GR 15(c)(2) and 31(e), Dreewes seek to seal the documents as well as sections of the State's brief and her reply brief addressing her ability to pay the costs on appeal. The State agrees that Dreewes's financial account numbers that appear in the documents filed in the divorce case should be redacted under GR 31(e)(1)(B). But the State argues that this Court should otherwise deny Dreewes's motion to seal. On March 10, 2017, I conducted a hearing in open court on Dreewes's motion to seal. Both parties appeared.

1. Clerk's Papers Filed in the Divorce Case (No. 16-3-00771-8)

As a preliminary matter, the clerk's papers in the divorce case are not part of the record on review in this criminal case. Thus, the State's designation of clerk's papers is improper and is stricken.

However, Dreewes's current ability to pay is relevant to this Court's determination as to whether to award the costs on appeal *should the State prevails on review*. See RAP 14.2. Dreewes's current financial information is relevant on this issue. Dreewes does not argue otherwise. With the redactions discussed below, the State may submit copies of the documents filed in the divorce case for this Court's consideration on the appellate cost issue.

2. Motion to Seal

Under GR 15(c)(2), a court may, after a hearing with notice, may seal or redact a portion of its record when it finds that the specific sealing or redaction is "justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." Under GR 31(e)(1)(B), parties shall not include, and if present shall redact from all documents filed with the court, "Financial Account Numbers."

Even if GR 15 is satisfied, a court considering whether to seal or redact a court record must determine if the sealing or redaction would violate article 1, section 10 of the Washington State Constitution, which provides, "Justice in all cases shall be administered openly, and without unnecessary delay." State v. Parvin, 184 Wn.2d 741, 765, 364 P.3d 94 (2015). "In determining whether court records may be sealed from public disclosure, we start with the presumption of openness." Rufer v. Abbott Laboratories, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). In ruling on a motion to seal under article 1, section 10, a court must consider the five factors set forth in Seattle Times Company v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982). Rufer, 184 Wn.2d at 765. Specifically, the court must consider the following factors:

1. whether the proponent of sealing has established a serious and imminent threat to some important interest;

2. whether everyone present was given the opportunity to object to sealing;

3. whether the requested sealing is the least restrictive means available to effectively protect the threatened interest;

3. the weight of the competing interests of the proponent, the public, and the alternative methods suggested;

5. the scope of the order to ensure that it is no broader necessary.

In re Marriage of Treseler, 145 Wn. App. 278, 287, 187 P.3d 773 (2008).

In submitting copies of the documents filed in the divorce case, the State must redact the financial account numbers pursuant to GR 31(e)(1)(B). There is no compelling state or public interest in having access to Dreewes's account numbers. The State does not argue otherwise.

As to Dreewes's motion to seal the sections of the parties' appellate briefs on the appellate cost issue, the briefs address Dreewes's statements in her declaration openly filed in the divorce court about her husband's salary, their business in common, and their community assets. Although Dreewes has privacy interests in keeping her financial information outside public access, the public has a "fundamental interest in the open administration of justice," and "the expenditure of public funds . . . is of interest to both the State and the public." State v. Parvin, 184 Wn.2d 741, 771, 364 P.3d 94 (2015). The requested sealing of the entire sections on the appellate cost issue in the parties' appellate briefs would be too broad and would not be justified in light of the competing interests of the State and the public in the open administration of justice and the proper expenditure of public funds. Thus, considering the Ishikawa factors, I deny Dreewes's request to seal sections of appellate briefs. If the trial court in the divorce case seals her declaration at issue, Dreewes may renew her motion to seal.

Therefore, it is

ORDERED that the State's designation of clerk's papers in the separate divorce case is improper and is stricken. It is further

ORDERED that the State may submit copies of the documents filed in the divorce case on the issue of appellate costs, with the redactions of any financial account numbers. Otherwise, Dreewes's motion to seal is denied at this time."

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

emp

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Motion for Discretionary Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court (COA Case No. 74055-5-I)**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
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Date: February 28, 2018

WASHINGTON APPELLATE PROJECT

February 28, 2018 - 4:41 PM

Filing Motion for Discretionary Review of Court of Appeals

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