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I. INTRODUCTION

Kevin Anderson (Anderson) hereby replies to the Department of Social and Health Services' Division of Child Support ("DSHS" or "DCS") response.

II. STATEMENT OF UNCHALLENGED FACTS

DCS has conceded the following facts, which were presented to the trial court, cited in Anderson's opening brief, and neither refuted nor addressed in DCS' response brief:

1. DCS is an agency and is subject to the Public Records Act (PRA) [Appellant's Opening Brief at 11-12];

2. Anderson's requested case-comment printout is a public record [Id at 12];

3. Anderson's requested e-mail is a public record [Id at 19];

4. RCW 74.20A.080(13) "entitles" Anderson to notice of garnishment orders served in his support case [CP 70 (Fifth Declaration of Kevin Anderson at ¶7, Plaintiff's First Set of Requests for Admissions and Defendant's Amended Responses Thereto (RFAs) at RFA nos. 16-18)];

5. In response to Anderson's public-disclosure request for a copy of his case-comment printout, DCS withheld the garnishment information found therein, under six different claims of exemption [Id at 10-15];

6. After denying two administrative appeals and eight months after Anderson filed suit, DCS released the garnishment information found in Anderson's case-comment printout [Id at 15-18; and

7. After denying two administrative appeals, after denying Anderson's request to the Attorney General's Office, and nine months after filed suit, DCS released the e-mail [Id at 18-21].

III. ARGUMENT

A. DCS ARGUES RCW 26.23.120 CATEGORICALLY EXEMPTS A "PARTICULARLY SENSITIVE" CLASS OF INFORMATION, BUT IT FAILS TO SHOW HOW GARNISHMENT INFORMATION, WITHHELD FROM THE DEBTOR OF THE ACTION, QUALIFIES AS "PARTICULARLY SENSITIVE."

In its brief, DCS argues: "RCW 26.23.120 exempts a particularly sensitive class of information and records from disclosure under the PRA. It applies not to all records held by DCS, but specifically to records and information 'concerning individuals who owe a support obligation...'" Respondent's Brief at 23-24. This is an incorrect interpretation of this provision.

Also, DCS argues RCW 26.23.120 is an "other statute" that allows it to withhold garnishment information --from the debtor of the action. In support of this argument, DCS cites Progressive Animal Welfare Society v. University of Washington (PAWS), 125 Wn.2d 243, 884 P.2d 592 (1995). Respondent's Brief

at 16. However, PAWS is not analogous.

PAWS dealt with trade secrets --not garnishment orders that have admittedly been served on garnishees but withheld from the debtor, and the Uniform Trade Secrets Act, RCW 19.08, expressly prohibits the disclosure of trade secrets; in fact, in PAWS, the Court stated:

The legislature... recognizes that protection of trade secrets, other confidential research, development, or commercial information concerning products or business methods promotes business activity and prevents unfair competition. Therefore, the legislature declares it a matter of public policy that the confidentiality of such information be protected and its unnecessary disclosure be prevented.

PAWS, 125 Wn.2d at 263 (quoting Laws of 1994, ch. 42, §1, page 130 (information about product liability claims)).

Accordingly, the PAWS Court held the PRA "simply an improper means to acquire knowledge of a trade secret." Id at 262.

Here, there is^a no similar protection of already-served garnishment orders. In fact, DCS admits having an affirmative duty to provide a copy of the order, to the debtor. See: Section II, Statement of Unchallenged Facts at no. 4.

Accepting DCS' interpretation of RCW 26.23.120 would effectively grant Anderson's employers and bankers, who were admittedly served with the garnishment orders, greater access to Anderson's support records than to Anderson, himself: DCS' argument must fail.

Furthermore, DCS has waived all possible claims of exemption by admittedly serving the orders, filing liens with the County Auditor, and submitting the "exempt" records in this open court proceeding. CP 65-67.

"A waiver is the intentional and voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right...." Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, 409, 259 P.3d 190 (2011)(quoting Bowman v. Webster, 44 Wn.2d 667, 669, 269 P.2d 960 (1954)).

Here, in theory, Anderson could obtain some of his support records through past employers, bankers, or through the County Auditor's Office. The question before the Court is whether DCS has a duty, under the PRA, to afford Anderson equal access to his own support information as DCS' has already provided other non-interested parties. Here too, DCS' argument must fail.

Finally, even if the trial court's order on summary judgment were absolutely correct, the State Supreme Court has called DCS' withholding "clearly unnecessary." Resident Action Council v. Seattle Housing Authority, 177 Wn.2d 417, 327 P.3d 600 (2013). In Resident Action Council, the Court stated:

In the case of a categorical exemption, the legislature has established a presumption that the specified type of information or record generally warrants exemption. That presumption can be overcome only if a court finds the exemption 'clearly unnecessary' to protect any privacy rights or vital government interests in a particular case.

Id at 177 Wn.2d 434.

Here, there could be no better example of a "clearly unnecessary" withholding. Anderson has an obvious due process right to notice of garnishment actions, taken against him, by the State; DCS admits Anderson is entitled to the withheld information. See: Section II, Statement of Unchallenged Facts at no. 4.

In closing, DCS has failed to show any authority or need for the withholding of the garnishment information; DCS' argument must fail.

B. DCS' ARGUMENT REGARDING ANDERSON'S PURPORTED INABILITY TO OBTAIN HIS OWN SUPPORT RECORDS VIA A PUBLIC DISCLOSURE REQUEST IS ABSURD.

Here, DCS argues: "Mr. Anderson is not entitled to any of the case comments under the PRA.... RCW 26.23.120 establishes a separate, exclusive means of obtaining the DCS records it governs.... [E]ven if [DSHS] fails to provide records to an individual who is allowed access under RCW 26.23.120, [DSHS] does not violate the PRA and is not subject to PRA sanctions." Respondent's Brief at 31, 27, and 28.

Foremost, admitted agencies that possess admitted public records are subject to PRA sanctions for violations thereof. RCW 42.56.550(4). See: Koenig v. Thurston County, 155 Wn.App. 398, 229, P.3d 910 (Div. II, 2010)(The PRA requires disclosure of all public records unless an exemption applies). The question is whether or not the rules created under the legislative grant of rule-making authority entirely excludes Anderson's support records from public disclosure.

DCS argues RCW 26.23.120 grants DSHS "broad discretion to adopt rules governing the disclosure of DCS records."

Respondent's Brief at 17. Thus, the rules:

WAC 388-14A. Division of Child Support Rules:

388-14A-2110: How do I request for disclosure of of DCS public records?

388-14A-2110(1): Request public records via a written or oral request unless requesting whereabouts information [in some cases, "whereabouts" information may be sensitive; however, that is not the case here, DCS has made no showing otherwise, Anderson did not request "whereabouts" information, and whereabouts information is not at issue].

DCS chose not to address this authority in its brief.

WAC 388-01. DSHS Organization / Disclosure of Public Records:

388-01-130: What are an individual's options if DSHS denies a public records request?

388-01-130(1): Administratively appeal;

388-01-130(2): Ask the Attorney General's Office to review the withholding; and

388-01-130(3): File a PRA lawsuit.

Anderson filed two administrative appeals (Appellant's Opening Brief at 1) and asked AAG Joseph Christy to review the withholding of his requested e-mail (Appendix A); all were denied.

Finally, DSHS Policy 5.02 - Public Disclosure of and Access to DSHS Records:

Scope: This policy applies to all DSHS administrations[,] employees[,] and to all records held by DSHS.

DSHS Policy 5.02(B)(5)(a): Any redaction of a public record is a denial of access to that record...

DSHS Policy 5.02(D)(1): DSHS must grant access to client records by the client or person authorized by the client as allowed by state and federal law.

DCS also chose not to address this authority in its brief.

Clearly Anderson's DCS records are not meant to be excluded from the PRA's requirements. DCS' argument must fail, and Counsel should be subject to sanctions for raising such a frivolous argument.

C. UNDERMINING DCS' ARGUMENT, THE TRIAL COURT DETERMINED THE REQUESTED E-MAIL, WHICH WAS PRODUCED AFTER ANDERSON SUED, TO BE ENTIRELY EXEMPT UNDER THE ATTORNEY-CLIENT PRIVILEGE --NOT RCW 26.23.120.

Here, DCS argues: "Like the case comment history, the March 2010 e-mail 'regarding [Mr. Anderson's] DCS case is a record

'obtained or maintained by DCS' 'concerning an individual who owes a support enforcement obligation or for who [sic] support enforcement services are being provided.' RCW 26.23.120. As such, the e-mail is 'private and confidential and shall only be subject to public disclosure as provided in [RCW 26.23.120], ' [DSHS'] withholding of the e-mail cannot be a PRA violation." Respondent's Brief at 33-34. DCS' argument is completely contradicted by the record.

The trial court's order on summary judgment states: "[T]he e-mail sought is protected from disclosure by attorney/client privilege, RCW 5.60.060(2)." CP 58.

Also, the e-mail was produced nine months after Anderson sued. Appellant's Opening Brief at 18-21. Obviously it cannot be released to the public via a disclosure request and after-the-fact held to be entirely exempt.

D. THIS COURT CAN CONSIDER DCS' MOST-WANTED WEBSITE WHEN DETERMINING WHETHER DCS RECORDS ARE CATEGORICALLY EXEMPTED FROM THE PRA'S DISCLOSURE REQUIREMENTS.

Here, DCS argues: "[T]his Court should disregard Mr. Anderson's discussion of [DCS' most-wanted] website. See RAP 9.12 (limiting appellate review of an order granting summary judgment to evidence and issues called to the attention of the trial court)." Respondent's Brief at 22-23.

Contrary to DCS' argument, RAP 9.12 does not bar this Court from consulting the rules DCS claims authorizes its withholding of admitted public records. Ellis v. City of Seattle, 142 Wn.2d 450, 13 P.3d 1065 (2000) (Rule under which appellate court will only consider issues called to the attention of the trial court does not bar appellate court from consulting laws that were not cited to trial court).

Obviously, DCS' withholding of admitted public records has always been at issue. CP 1-10. DCS argues that some unnamed "rules" exclude its records from disclosure. Anderson argues that those "rules" are WAC 388-14A, and one such rule is WAC 388-14A-4600. The Court may look at the rules Anderson has maintained allow his records to be disclosed via a public disclosure request. Appellant's Opening Brief at iii, iv.

E. BECAUSE DCS DOES NOT REFUTE ANDERSON'S HAVING PRESENTED EVIDENCE FOR THE TRIAL COURT'S CONSIDERATION, ANDERSON ABANDONS HIS ABUSE OF DISCRETION ASSIGNMENT OF ERROR.

DCS argues: "A review of the documents listed by the court on its order for summary judgment reveals that the Response filed directly with the court... included Mr. Anderson's Fifth Declaration and attachments.... Thus, the trial court did not refuse to consider Mr. Anderson's evidence..." Respondent's Brief at 37.

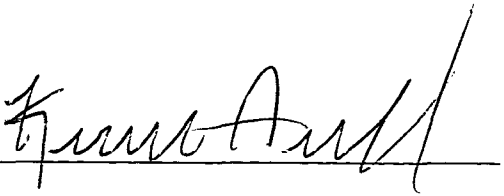
Based on their being no dispute in regard to whether or not Anderson presented the evidence, Anderson abandons this assignment of error, but this Court should take the Fifth Declaration of Kevin Anderson into account. Goodwin v. Wright, 100 Wn.App. 631, 6 P.3d 1 (Div. I, 2000) (So long as evidence is called to the attention of the trial court, it may be considered on appeal).

IV. CONCLUSION

In response to Anderson's public disclosure request, DCS violated the PRA by failing to identify a specific claim of exemption applicable to each of the redactions it applied to Anderson's case-comment printout; neither RCW 26.23.120 nor any "rules" allow DCS to not comply with this basic PRA requirement. Also, DCS violated the PRA by wrongfully withholding non-exempt garnishment information --from the debtor of the action, which DCS admittedly produced after Anderson sued. Finally, DCS violated the PRA by wrongfully withholding the requested, non-exempt e-mail, which, again, DCS admittedly produced after Anderson sued.

This Court should find DCS to have violated the PRA and remand the action for further proceedings.

DATED this 29th day of December, 2015.

A handwritten signature in cursive script, appearing to read "Kevin Anderson", is written over a horizontal line.

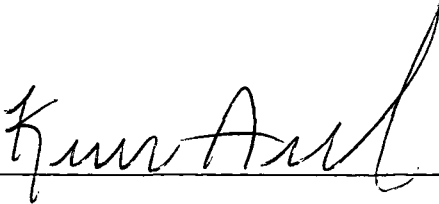
Kevin Anderson
Appellant, pro se

CERTIFICATE OF SERVICE

I, Kevin Anderson, hereby swear under the penalty of perjury of the laws of the State of Washington that on this day I did mail, via U.S., postage prepaid, a true and correct copy of the foregoing document, addressed as follows:

AAG Anne Miller
Attorney General of Washington
PO Box 40124
Olympia, WA 98504

DATED this 29th day of December, 2015.



Kevin Anderson
Appellant, pro se

APPENDIX A

January 13, 2015

AAG Joseph Christy
Attorney General of Washington
PO Box 769
Olympia, WA 98504

RE: Anderson v. DSHS,
Pierce County Superior Court No. 14-2-09395-6

Mr. Christy:

I have received your client's answers and responses to my first ROG's and RFP's, and I am hereby requesting a CR 26(i) conference regarding this discovery. Either you can schedule this through CRCC, or you can let me know when you will be available, and I will attempt to access one of the inmate phones somewhat near that time.

Also, I do not believe that you have any legal basis for demanding payment for incidental copying costs. Eventually, costs will be determined and awarded to the prevailing party by the court according to RCW 4.84. Please be prepared to discuss this issue as well.

Lastly, before I motion for in camera review, in light of RCW 26.23.120(3)(b), I ask you to please review the redaction applied to my case comment history, dated March 10, 2010, which your client claimed exempt under RCW 26.23.120. Obviously, I am authorized, according to this statute, to obtain my own DCS records. Furthermore, the e-mail referenced here, which your client has withheld in its entirety should also be reviewed and if appropriate released to me.

Thank you for your time.

Sincerely,

Kevin Anderson
727189 HA-36
CRCC, PO Box 769
Connell, WA 99326



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
7141 Cleanwater Dr SW • PO Box 40124 • Olympia WA 98504-0124

January 23, 2015

Kevin Anderson, #727189
Coyote Ridge Correction Center
PO Box 769
Connell, WA 99326

RE: *Anderson v. DSHS*
Pierce County Superior Court No. 14-2-09395-6

Dear Mr. Anderson:

Thank you for your letter dated January 13, 2015.

Per your request, the Department of Social and Health Services (the Department) is reviewing redactions to your case comment history.

The Department also reviewed the e-mail that you referenced, as you requested. As the Department previously noted, this e-mail is a confidential attorney-client communication, which is exempt from disclosure under RCW 5.60.060(2)(a). By statute, the Department may take legal action “through the attorney general or prosecuting attorney,” and when the “prosecuting attorney appears in, defends, or initiates actions to establish, modify, or enforce child support obligations he or she represents the state.” RCW 74.20.220(1), (4). Accordingly, this communication between the Department and the prosecutor is protected by attorney-client privilege, is exempt from disclosure under chapter 42.56 RCW, and is not disclosable to the subject of a confidential DCS record under RCW 26.23.120. *See Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004).

With regard to your expressed concern about copying costs of records responsive to your requests for production, the civil rules of discovery allow parties to request another party “to produce and permit the requesting party or the party’s representative, to inspect, copy, test, photograph, record, measure, or sample... designated documents.” CR 34. Notably, the duty to inspect, copy, etc., rests with the party requesting discovery. The party from whom discovery is sought is merely required to make the documents available.

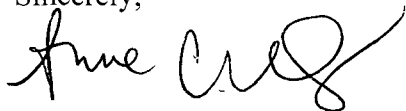
ATTORNEY GENERAL OF WASHINGTON

Kevin Anderson
January 23, 2015
Page 2

As stated in the January 7, 2015 letter which accompanied Defendant's objections and responses to your first set of interrogatories and requests for production, the Department has identified over 2,400 pages which are responsive to your discovery requests. Accordingly, costs of copying and delivering these documents are not merely incidental. Typically, the Department would provide such a large number of documents via compact disc (CD), but it is the Department's understanding that inmates such as yourself are unable to receive CDs at Department of Corrections facilities. Under these circumstances, the Department is willing to provide a discovery CD to a representative of your choosing, so that you can make arrangements with that person to obtain copies of the documents. As previously stated in my January 7, 2015 letter, if you would like to receive the documents on a CD, please provide the address to which you would like the CD mailed.

With regard to your request for a phone conference to discuss the Defendant's responses and objections to your first set of interrogatories and requests for production, we are available on Thursday, January 29, 2015 at 2:00 p.m. at (360) 586-6565 (ask for Assistant Attorney General Joe Christy). If you are unavailable at that time, please provide a time on Thursday, February 5, 2015, when you are available. Additionally, it would be helpful if you would provide a brief overview of issues you wish to discuss during our conference. This will allow us to prepare and facilitate an efficient discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Miller", written in a cursive style.

ANNE MILLER
Assistant Attorney General

AM/mk