

City of Federal Way v. Koenig

No. 82288-3

Stephens, J. (dissenting)—As the majority and concurring opinions make clear, this case turns on how we read the 1986 decision in *Nast v. Michels*, 107 Wn.2d 300, 730 P.2d 54 (1986). In my view, *Nast* should be read narrowly as construing the Public Records Act (PRA)¹ within the context of the records at issue there: court case files. Accordingly, it does not bind us to an interpretation of the current act, chapter 42.56 RCW, that categorically excludes the judicial branch of government from the mandate for open government. Because I believe our branch of government is an “agency” subject to the strictures of the PRA, I respectfully dissent.

The issue before the court in *Nast* was whether a King County policy requiring 24-hour notice before checking out court case files, as well as charges for copying files, violated the PRA. *Nast*, 107 Wn.2d at 301. The court held that the PRA did not apply in this context but that the common law provided citizens a right

¹ The PRA was initially codified as the public disclosure act, in chapter 42.17 RCW, and later recodified as the PRA in chapter 42.56 RCW. Consistent with the majority and concurring opinions, I refer simply to the PRA.

of access to court case files. *Id.* at 307. It articulated three reasons for this decision:

We hold the [PRA] does not apply to court case files because the common law provides access to court case files, and because the [PRA] does not specifically include courts or court case files within its definitions and because to interpret the [PRA] public records section to include court case files undoes all the developed law protecting privacy and governmental interests.

Id.

Notably, in interpreting the PRA, the court recognized that the act broadly defines “agency” and “public record” and that these definitions could be read to include court case files. *Id.* at 305. This is significant because the issue before us in this case is not whether the PRA applies to court case files but whether the judicial branch is an “agency” at all. *Nast* did not answer, indeed could not have answered, this question because it was not before the court at that time. Thus, while I agree with the majority and concurrence that portions of the *Nast* opinion contain broader language than its holding required, I believe we should follow the narrowest possible reading of the opinion consistent with the issue addressed. *See State ex rel. Wittler v. Yelle*, 65 Wn.2d 660, 670, 399 P.2d 319 (1965) (recognizing, “[g]eneral statements in every opinion are to be confined to the facts before the court, and limited in their application to the points actually involved”); *accord In re Estate of Burns*, 131 Wn.2d 104, 113, 928 P.2d 1094 (1997) (“[G]eneral statements . . . are to be confined to the facts and issues of that particular case.” (citing *Wittler*, 65 Wn.2d at 670)). Moreover, a narrow reading should prevail when we are

interpreting the PRA, as it remains “a strongly worded mandate for broad disclosure of public records.” *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978).

Nor am I persuaded that we should broadly construe *Nast* and exempt the judicial branch from the PRA simply because two Court of Appeals opinions have done so and the legislature has not reacted. *See Spokane & E. Lawyer v. Tompkins*, 136 Wn. App. 616, 150 P.3d 158 (2007); *Beuhler v. Small*, 115 Wn. App. 914, 64 P.3d 78 (2003). In point of fact, another Court of Appeals opinion has held that the PRA applies to a disclosure request for judicial oaths to a superior court administrator. *Smith v. Okanogan County*, 100 Wn. App. 7, 13, 994 P.2d 857 (2000). And, the Washington attorney general’s *Open Government Internet Manual*, observes that there is “no clear decision” as to the scope and effect of the PRA with respect to judicial records other than court case files. Wash. State Attorney Gen., *Open Government Internet Manual* ch. 1, § 1.3, <http://www.atg.wa.gov/OpenGovernment/InternetManual/Chapter1.aspx> (last visited Oct. 6, 2009). The majority and concurrence make too much of the legislature’s failure to modify the PRA’s definitions of “agency” and “public record” since *Nast*, given the debatable scope of that decision and its recognition that the present definitions are certainly broad enough to include judicial records. *See Nast*, 107 Wn.2d at 305.

In the end, I believe we do a disservice to interpret the PRA, a broad mandate for open government, to exempt entirely the judicial branch of government. *Nast* is

not stare decisis on this question, and courts plainly meet the statutory definition of “agency” in RCW 42.56.010. It seems to me the PRA speaks for itself:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCW 42.56.030. I would reverse the Court of Appeals.

AUTHOR:

Justice Debra L. Stephens

WE CONCUR:

Chief Justice Gerry L. Alexander
