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WASHINGTON STATE COURT OF APPEALS
DIVISION II

DONNA ZINK, APPELLANT

v.

JOHN DOE P, et al

REPLY BRIEF OF APPELLANT DONNA ZINK

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I. INTRODUCTION

Zink is the prevailing party concerning the records enjoined under RCW 4.24.550. Numerous records at issue in this cause concern sex offender registration records enjoined pursuant to RCW 4.24.550 by the Thurston county trial court which are still under that injunction until the mandate in this cause of action is issued. This court must reverse the trial court's order of injunction concerning those records and remand back to the trial court with orders to dissolve the injunction preventing the release of the records erroneously enjoined under RCW 4.24.550 in this cause of action.

Respondents claimed that as long as the trial court has no idea who the litigants are, justice is being administered openly since the public has access to everything filed in the court. This is an absurd reading and/or blatant disregard by our judicial system of our Washington State Constitution Article 1, section 10 (Justice in all cases shall be administered openly...) Court Rule 4(b)(1)(i)(The summons for personal service shall contain... the names of the parties to the action, plaintiff and defendant), CR 10(a)(1)(In the complaint the title of the action shall include the names of all the parties), and CR 17(a)(Every action shall be prosecuted in the name of the real party in interest). A trial court is required to know the identity of all litigants to an action.

Furthermore, once our Supreme Court made the ultimate determination concerning RCW 4.24.550 (*John Doe A v. Wash. State Patrol*, 185 Wn.2d 363 (2016)), Respondents lost their need for secrecy of their names.

Respondents claim that pursuant to RCW 9.94A.475 and 480, SSOSA and SSODA evaluations are not required to be in the prosecutor's office because SSOSA and SSODA evaluations are not always granted. Whether a SSOSA and SSODA evaluation is granted or not by the trial court, the records are still used for sentencing and it is imperative that the public has access to the sentencing documents to monitor our judicial and penal systems concerning treatment of sex offenders. This includes SSOSA and SSODA evaluation that were not granted as well as those granted. State statute requires SSOSA and SSODA evaluation to be maintained in the prosecutor's office for inspection.

Recently, it was reported by the Seattle Times that the King County Courts, in two separate and unrelated instances, gave out the wrong sentencing under the SSOSA program. Without access to SSOSA and SSODA records the mistake may never have been discovered. Furthermore, it has been discovered that some Counties are administering SSOSA and SSODA evaluations prior to conviction or a plea of guilty. RCW 9.94A.670(2) and (3), clearly states that SSOSA evaluations are only to be order by the trial court (3) **after** the sex offender is convicted or pleads guilty (2). This is a misuse of public funds and a violation of State Statues RCW 9.94A.670.

II. ARGUMENT

1. Interpretation of Rules, Statutes, Our Constitution and Case Law

In order to interpret the constitution, statute or rule, each of its provisions "should be read in relation to the other provisions, and construed as a whole."

Weyerhaeuser Co. v. Tri, 117 Wn.2d 128, 133, 814 P.2d 629 (1991) (citing *State v. Somerville*, 111 Wn.2d 524, 531, 760 P.2d 932 (1988)). Court rules and State statutes must be interpreted and construed in such a fashion as to give all the language used effect, and no portion may be rendered meaningless or superfluous in the interpretation. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010)(see also *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). The principles used to determine the meaning of statutes also applies to the interpretation of court rules *State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012). In this cause of action, the trial court without identifying any legal authority for doing so has interpreted the rules and statutes to allow a party to file in complete anonymity, to proceed in pseudonym, such that even the court does not know the true identity of the party initiating action in the court. This is error and an abuse of discretion.

2. Knowing the True Identity of All Parties Of Interest to an Action is Not Optional: It is Mandated by Court Rules, State Statutes and Our Constitution

Court rules must be followed by every court in the State of Washington without exception. If court rules dictate that a court must perform a task, the court does not have the option to do otherwise. The requirements for identification of a true party of interest being named in the caption of court records is found at CR 4(b)(1)(i), 10(a)(1) and 17(a). Each of these court rules contain language stating that the party initiating legal action against another party must provide their true legal name and be identified as the true party of

interest. Further, all parties, including the defendants, must be identified in the complaint and summons unless that party is unknown and the record must be corrected once the party is identified.

“Every action shall be prosecuted in the name of the real party in interest” (CR 17(a)). The court is required to know the identity of each party in order to ensure that the action is prosecuted in the name of the real party.

The summons for personal service must contain the names of all plaintiffs and the defendants (CR 4(b)(1)(i)). In order to summon Zink into this action, the summons was required to provide the true name and identity of the party summoning her into court in the caption of the summons.

CR 10(a)(1) requires the names of all parties, both plaintiffs and defendants by included in the complaint. The complaint filed by the court clerk was required to contain the true names and identity of the Respondents in order for the lawsuit to be filed.

Clearly, allowing litigant to file anonymously or under false names is not an option in our justice system and there is no legal authority allowing courts to do so. The trial court’s decision that the records are not sealed is error and an abuse of discretion. The decision and order must be overturned and this case remanded back with instructions for the trial court to unseal records and identify the true parties of interest; the unidentified sex offenders if any.

3. **Our Constitution Does Not Allow Secrecy In Our Judicial System Without Proper Application of GR 15 and the Ishikawa Factors**

Our Constitution, Article 1, §10 assures open justice. However, it has been recognized by our Court that there may be times a party has a legal just cause for closure. In order to balance open justice with the need to protect vulnerable litigants our Courts adopted GR 15¹ and set forth factors allowing for sealing court records under specific circumstances and after application of factors set for by our Supreme Court in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982)(*Ishikawa Factors*). This mandate for open justice, unless a party can meet the qualifications of GR 15 and the *Ishikawa Factors*, was reinforced in a recent decision by our Supreme Court in *Hundtofte v. Encarnación*, 181 Wn.2d 1, 330 P.3d 168 (2014).

None-the-less, Respondents argued that based on decisions of other Washington State Superior Courts and the decisions made in *Bodie v. Conneticut*, 401 W.S. 371, 91 S.Ct. 780, 785, 28 L.Ed.2d 113 (1971) and *Does I thru XXIII v Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000)(CP 85-115), federal courts permit proceeding in pseudonym without application of GR 15 and *Ishikawa Factors* if the parties need for anonymity outweighs prejudice to the oppoing party and the public's interest in knowing the parties identity.

¹ To seal means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal. GR 15.

In *Physicians Ins. Exch. V. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993) our Supreme Court mandated that State laws are not to be superseded by federal law unless that is the clear and manifest purpose of Congress (*Id.* 327). Declaring that federal preemption of state law may not occur unless Congress passes a statute expressly preempting state law. *Physicians Ins. Exch. V. Fisons Corp.*, 122 Wn.2d 299, 326-27, 858 P.2d 1054 (1993). Our Supreme Court has instructed courts to be very reticent to preempt state regulations and laws based on an ambiguous implication of a federal law. *Inlandboatmen's Union of Pac. v. DOT*, 119 Wn.2d 697, 702, 836 P.2d 823 (1992) (footnote removed). Rsponents continued use of federal cases as the legal authority allowing a trial court to “use false names” to protect a privacy interest. This is false. Furthermore, once RCW 4.24.550 was determined to not shield convicted sex offender’s identities from the public, Respondents need for secrecy to protect their privacy interest sine there is no privacy interest to protect.

4. Open Administration is Guaranteed by the Washington State Constitution

Open administration in our judicial system includes the trial court and trial court are required to know the true identity of a party to an action. The *summons* for personal service must contain the names of all plaintiffs and the defendants CR 4(b)(1)(i). CR 10(a)(1) requires the names of all parties, both plaintiffs and defendants by included in the compliant. Finally, CR 17(a) requires that the true identity of the parties must be known to the trial court.

Court rules must be followed by every court in the State of Washington without exception and the trial court's conclusion that the records are not sealed is erroneous and a violation of our Washington State Constitution, Art. 1, §10.

5. The Trial Court's Decision That the Redacted Court Records Are Not Sealed is Unjustified and the Trial Court Provided No Basis For Its Decision.

The trial court's decision and order is an absurd reading and/or blatant disregard by our judicial system of our Washington State Constitution Article 1, section 10 (Justice in all cases shall be administered openly...) Court Rule 4(b)(1)(i)(The summons for personal service shall contain... the names of the parties to the action, plaintiff and defendant), CR 10(a)(1)(In the complaint the title of the action shall include the names of all the parties), and CR 17(a)(Every action shall be prosecuted in the name of the real party in interest). There is absolutely no legal authority or justification for the decision and order of the trial court.

6. Openness In Our Judicial System Is Mandatory and Not Optional

The importance of openness in our judicial system was revisited in a recent Supreme Court decision, *Hundtofte v. Encarnación*, 181 Wn.2d 1, 330 P.3d 168 (2014). Our Supreme Court's mandate for open justice was reinforced and clearly identified that redaction of court records is sealing court records.

An order to redact a court record is treated as an order to seal. GR 15 (b)(4)..

(*Id.* ¶9). Clearly the records in question were redacted through use of pseudonym to obscure the identity of plaintiffs to this action (CP 118-122). Therefore, application of GR 15 and the Ishikawa Factors was required.

Article I, section 10 of our constitution states that “[j]ustice in all cases shall be administered openly, and without unnecessary delay.” Const. art. I, § 10. **The openness of our courts “is of utmost public importance” and helps “foster the public’s understanding and trust in our judicial system.”** Dreiling v. Jain, 151 Wn.2d 900, 903, 93 P.3d 861 (2004). Thus, we must start with the presumption of openness when determining whether a court record may be sealed from the public. Rufer, 154 Wn.2d at 540. Any exception to this “vital constitutional safeguard” is appropriate only in the most unusual of circumstances. In re Det. of D.F.F., 172 Wn.2d 37, 41, 256 P.3d 357 (2011) (plurality opinion). **The party moving to override the presumption of openness and seal court records usually has the burden of proving the need to do so.** Rufer, 154 Wn.2d at 540.

(*Id.* ¶10)(emphasis added). Furthermore, the trial court must justify any decision and order to allow any party to file redacted and sealed documents.

Under the General Rules, a court record may be sealed if a court “enters written findings 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.” GR 15(c)(2). **“Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records.”** *Id.* But GR 15 is not, by itself, sufficient—the rule must be harmonized with article I, section 10 of our constitution. *State v. Waldon*, 148 Wn. App. 952, 966-67, 202 P.3d 325 (2009). Thus, **a court must analyze a motion to redact using both GR 15 and the five-step framework**

for evaluating a closure outlined in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982). Waldon, 148 Wn. App. at 967.

(*Id.* ¶11)(emphasis added). Respondents argue that they were not required to follow the tests to determine their need for secrecy. Referencing numerous federal court cases, Respondents argue that federal courts permit proceeding in pseudonym without application of GR 15 and *Ishikawa Factors* if the parties need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the parties identity. As previously discussed Federal law is not dispositive here. Further, while it may be true that Federal Courts allow for secrecy, it is unknown whether a party seeking protection of their identity during litigation under Federal law must meet a similar form of GR 15 and *Ishikawa* test to determine whether they qualify for that anonymity. If Respondents are entitled to secrecy of their identity, they would meet the requirements of GR 15 and *Ishikawa*. Their argument is entirely without merit. Finally, Respondents argued that RCW 4.24.550 was an other statute exemption providing them privacy in their identity as a convicted sex offender. RCW 4.24.550 was found to not provide such protection and there is no more need for secrecy of Respondents identity.

Respondents argued that if a court does not know the true identity of the party, the records are not sealed because the public has access to everything the trial court reviews in rendering its decision. As previously argued, whether trial court knows the true identity of all litigants is not optional. Trial courts are

required to know the true identity of all parties and use of a false name is not legal.

7. SSOSA and SSODA Evaluations Are Created For Use In Sentencing Sex Offenders

The statutory declared purpose of SSOSA and SSODA evaluations is to determine whether to sentence a sex offender into jail or release them under the condition that they receive treatment. Respondents argue that SSOSA and SSODA evaluation of Level I offenders should not be released because those offenders are the least likely to reoffend. Our Supreme Court has already made determination on the application of Level I, II and III sex offenders and determined that RCW 4.24.550 is not an exemption. Therefore, the continued use of Level I² of the sex offenders in release of SSOSA and SSODA evaluations has no legal basis. If SSOSA and SSODA evaluation are exempt is makes no difference what level the offender is assessed at. Further SSOSA and SSODA evaluations are used to sentence offenders while the leveling of the sex offender does not occur until after release from prison when the offender is to be returned to the community.

² The class certified by the trial court is a class of Level I sex offenders. Therefore, the Level II and III SSOSA and SSODA evaluations were not enjoined from release in this cause of action. (CP 686-689).

8. The SSOSA and SSODA Systems

Respondents claim that SSOSA and SSOSA sentences are rarely used and are remarkably effective; claiming that release of these evaluations will eviscerate the SSOSA program and cause harm to those convicted of sex crimes, their victims and their families. Other than a claim that an evaluator assessing a convicted sex offender must be trained and licensed by the state under RCW 9.94A.670(1)(a), as opposed to a lay person, Respondents have provided no evidence that SSOSA and SSODA evaluations are mental health records pursuant to RCW 70.02,³ Respondents' "expert" testimony does not speak to the issue of whether an SSOSA evaluation is exempt under the PRA or whether SSOSA evaluations can be enjoined under RCW 42.56.540. This case is not about whether SSOSA evaluations should be exempt. The case is about whether SSOSA evaluations are exempt.

The "experts" Respondents cite to, are all involved in defending or treating those convicted of sex offenses and are hardly in a position to render an unbiased opinion. For instance, Respondents argue that their "experts" clearly state that victims of sex offenders will suffer if the evaluations are made public. Yet no victim has come forward, no victim is a named third party seeking to enjoin the requested records and the victim impact statements,

³ "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another. RCW 70.02.010(44).

which identify both the victim and the sex offender, are not exempt and must be released (*Koenig*, ¶30). Under RCW 42.56.540, Respondents can only argue the substantial and actual harm that will occur to them.

Without access to sex offender sentencing documents showing how any given sex offender was sentenced in our judicial system, the public cannot ascertain whether the courts, prosecutors, defense attorneys and treatment providers are following state statutes and appropriately sentencing sex offenders. Recently it was reported that in two different and separate instances King County was not using the SSOSA evaluations properly and sex offenders were released without having to complete the entire treatment plan.

Furthermore, despite Respondents arguments otherwise, not all sex crimes are equal and not all victims respond in the same manner. None-the-less, victims of a sex crime have been given a voice in the sentencing of person sexually offending against them. The statutory requirements set forth by our legislature in order to receive a lenient sentence under an SSOSA is clear and unambiguous.

After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. **The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment**

disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

RCW 9.94A.670(4)(emphasis added). While one victim may recommend a lenient sentence under the SSOSA program, another may recommend prison. Each sex offender conviction is different, has different factors involved and different victims. Each case must be determined on a case-by-case basis. If a trial court deviates from the recommendation of the victim concerning whether to issue a SSOSA sentence, that court is mandated to state in writing the reasons for not following the opinion of the victim.

The information from the studies provided by the “experts” are over ten years old and without access to the SSOSA evaluations the public has no way of determining their reliability or credibility or even whether the statistical data says what the “experts” say it says and/or continues to show the success of SSOSA sentencing. In other words, without any oversight by the people, the “experts” defending, evaluating and treating sex offenders can report anything they like

It is up to our legislature to determine whether SSOSA evaluations are exempt from disclosure and not those who prosecute, defend, evaluate, judge and treat convicted sex offenders. Our Supreme Court has made it abundantly clear that:

In rejecting a broad reading of the PRA's injunction statute, former RCW 42.17.330 (2005) (now RCW 42.56.540), in PAWS II, we said that it did

not make sense to imagine the legislature believed judges would be better custodians of open-ended exemptions because they lack the self-interest of agencies. The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to ... judges the [power to imply] extremely broad and protean exemptions ... 125 Wn.2d at 259-60. Therefore, if the exemption is not found within the PRA itself, we will find an "other statute" exemption only when the legislature has made it explicitly clear that a specific record, or portions of it, is exempt or otherwise prohibited from production in response to a public records request.

Doe v. WSP, 185, ¶10, Wn.2d 363 (2016)(emphasis added).

This cause of action involves the PRA and a request for public records. The PRA controls in all questions of exemption of public records regardless of whether or not an agency or "experts" would like the information or documents withheld. (RCW 42.56.030). Agencies unwilling to release public records are subject to penalties for unreasonable delays (RCW 42.56.550(4)). Absent an exemption neither a court or a private party can enjoin the public records from a requesting member of the public. In this case the records have already been determined to be not exempt by our Supreme Court. This is evidenced by the dissent by Justice Chambers who stated:

Like the VIS, serious privacy concerns are implicated by the release of a SSOSA evaluation to the public. These SSOSA evaluations contain, among other things: a detailed sexual history section; mental health history; medical history; drug and alcohol history; a social history section, which may contain details of "abuse the individual may have suffered in the past, including physical, sexual, and emotional abuse"; results of a polygraph examination, which may be "extremely detailed" regarding past and current sexual practices; and results of a phallometric test that measures the defendant's arousal response to a variety of pornography. Clerk's Papers at 112 (Decl. of Amy Muth). Making public much of this information would be highly offensive to a reasonable person, and the legitimacy of the public's interest in this information is minimal. See RCW 42.56.050.

The problems that arise when we attempt to apply the PRA to ever expanding types of information and documents are well illustrated by the present case. The PRA was a great idea. Unfortunately, too many terms are undefined. This court has followed the legislative command to interpret the PRA liberally and its exceptions narrowly, and the result is that the few protections found in the PRA have been steadily eroded. We have now reached the point where it is not even possible to redact the name of a sex crime victim from material provided to the public. **This dissent does not have the force of law. Only the legislature can amend the act and establish appropriate protections. I urge the legislature to do so.**

(*Koenig* at ¶43-44)(emphasis added). The legislature did not address the issue brought forward by Justice Chambers in his dissent from 2012. Clearly our legislature did not intend SSOSA evaluations to be exempt.

Despite the dissents concerns about mental and medical health information contained in SSOSA evaluations our Supreme Court determined SSOSA evaluation are sentencing decisions. *Koenig v. Thurston County*, 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012). Our Supreme Court's decision is in keeping with our legislatures mandate that SSOSA evaluations must be kept in the court records (RCW 9.94A.480) as well as maintained the Prosecuting Attorney's Office as public records (RCW 9.94A.475 and 480). SSOSA evaluations are public records subject to the PRA and the question before the court of whether the records are exempt from disclosure has already been asked and answered by our Supreme Court.

9. SSOSA and SSODA Are Not Mental Health or Medical Records

Despite our Supreme Court's decision concerning SSOSA evaluation in *Koenig*, Respondents continue to claim the records must be exempt because the very persons the public should be able to scrutinize, the trial court, the defense and prosecuting attorney and the evaluators ("experts") have determined that SSOSA evaluations are mental and health care records. Respondents claim that Special Sex Offender Alternative Sentencing evaluations are mental health records and are exempt pursuant to Chapter 70.02 RCW because they are confidential treatment records. This is false.

Pursuant to RCW 70.02.010(31) a "patient" is defined as an individual who receives or has received health care. RCW 9.94A.670 (13) clearly and unequivocally states that the SSOSA evaluator cannot be the sex offender's treatment provider or "any person who employs, is employed by, or shares profits with the person who examined the offender." (*Id.*). Although it may be that only a qualified health care professional with special training can evaluate a convicted sex offender for the purpose of sentencing, that evaluator may not be the treatment provider and the convicted offender is not their "patient."

Respondents claimed SSOSA evaluations must contain a proposed treatment plan (RCW 9.94A.670(3)(b)) so they are most certainly health records. While it is true that a proposed treatment plan must be included in a SSOSA evaluation in order for a court to consider alternative sentencing, the proposed treatment plan is merely a proposal for the trial court to consider in deciding whether to sentence the convicted sex offender under RCW

9.94A.507 or 9.94A.670 and is not the final treatment plan as established by the assigned treatment provider. The treatment provider actually providing psychosexual therapy under a SSOSA sentence must perform a new evaluation and finalize a treatment plan at the time treatment begins.

The SSOSA evaluation and proposed treatment plan submitted to a trial court for a decision on sentencing of a convicted sex offender is required to be maintained as a public record in the official court of record and in the Prosecuting Attorney's Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a "most serious offense." SSOSA evaluations are required to be open and available to the public pursuant to statute and cannot be enjoined from release. The trial court's decision otherwise is error of law and must be reversed.

10. The Trial Court Did Not Apply RCW 42.56.540 To Each Requested Record

Under RCW 42.56.540 if this Court finds the Supreme Court's decision was erroneous or did not consider the health and mental aspects of SSOSA evaluations records are exempt, then, since the Thurston County (TC) has claimed they are going to release the records absent a court order, the court must decide whether the records are in the public interest. RCW 42.56.540.⁴ In

⁴ If it is another party, besides an agency, that is seeking to prevent disclosure, then that party must seek an injunction. RCW 42.56.540. In such a case, the party must prove (1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function. *Id.*; see *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 757, 174 P.3d 60 (2007); see also *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 591, 243 P.3d

this case the answer is yes. SSOSA evaluation are of great importance to the public in determining whether our courts are following our laws and sentencing requirements for sex offenders. Furthermore, a trial court must rely on whether the victim

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

Respondents claim that Special Sex Offender Alternative Sentencing evaluations are mental health records and are exempt pursuant to Chapter 70.02 RCW because they are confidential treatment records. This is false. Pursuant to RCW 70.02.010(31) a "patient" is defined as an individual who receives or has received health care. RCW 9.94A.670 (13) clearly and unequivocally states that the SSOSA evaluator cannot be the sex offender's treatment provider or "any person who employs, is employed by, or shares profits with the person who examined the offender." (*Id.*). Although it may be that only a qualified health care professional with special training can evaluate

919 (2010). *Ameriquest Mortg. Co. v. Office of Att'y Gen*, 177 Wn.2d 467, ¶35, 300 P.3d 799 (2013).

a convicted sex offender for the purpose of sentencing, that evaluator may not be the treatment provider and the convicted offender is not their “patient.”

Respondents claimed SSOSA evaluations must contain a proposed treatment plan (RCW 9.94A.670(3)(b)) so they are most certainly health records. While it is true that a proposed treatment plan must be included in a SSOSA evaluation in order for a court to consider alternative sentencing, the proposed treatment plan is merely a proposal for the trial court to consider in deciding whether to sentence the convicted sex offender under RCW 9.94A.507 or 9.94A.670 and is not the final treatment plan as established by the assigned treatment provider. The treatment provider actually providing psychosexual therapy under a SSOSA sentence must perform a new evaluation and finalize a treatment plan at the time treatment begins.

The SSOSA evaluation and proposed treatment plan submitted to a trial court for a decision on sentencing of a convicted sex offender is required to be maintained as a public record in the official court of record and in the Prosecuting Attorney’s Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a “most serious offense.” SSOSA evaluations are required to be open and available to the public pursuant to statute and cannot be enjoined from release. The trial court’s decision otherwise is error of law and must be reversed.

11. The Decision in Koenig is Binding on the SSOSA Evaluations and Respondent's Claim Otherwise if Frivolous

Zink made a request for non-exempt criminal sentencing documents (RCW 9.94A.475). Respondents argued that numerous trial courts across the State of Washington have enjoined the release of SSOSA evaluation in response to a request for access by Zink. Whether every trial court in the State of Washington finds SSOSA evaluations private and exempt pursuant to RCW 70.02, our Supreme Court has determined SSOSA evaluations are sentencing documents, are not exempt and must be released to a requesting member of the public. This mandate by our Supreme Court cannot simply be ignored and considered irrelevant.

Review under the PRA as previously discussed is de novo. Whether the issue of an SSOSA being a mental health record was brought up at the trial level or on appeal is irrelevant as the issue could have been brought before the Supreme Court without having gone through the trial court. A review of the briefs filed in Koenig as well as the dissents plea to the legislature to make SSOSA evaluations exempt clearly show that the issue was brought before the Supreme Court and that our Legislature chose not to make SSOSA evaluation exempt. The issue concerning whether SSOSA evaluation are exempt has already been decided and the trial court was required to follow case law mandates of our Supreme Court.

As the Court of Last Resort, Supreme Court decisions are binding on all lower courts; including the Court of Appeals. It is a generally understood, that when a point has been settled by a decision of a higher court, it forms a precedent which is not

afterwards to be departed from. The trial court must abide or adhere to decisions made by our Supreme Court in this case and not on other trial court decisions. It is not within this court's discretion under the doctrine of stare decisis to second guess or disregard a Supreme Court mandate.

Stare decisis means, literally, "[t]o stand by things decided." BLACK'S LAW DICTIONARY 1443 (8th ed. 2004). It involves following rules laid down in previous judicial decisions unless they are found to contravene the ordinary principles of justice.

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶22, 150 P.3d 545 (2007). [T]he decisions of the courts of last resort are held to be binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996).

Stare decisis furthers unity in the system of justice, assuring that decisions by courts of last resort are reliably binding. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996); *State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665, 384 P.2d 833 (1963).

We have recognized that without the stabilizing effect of stare decisis, "law could become subject to . . . the whims of current holders of judicial office." *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). . . .

Continued adherence to precedent also reflects the important consideration that when a legal principle has been long established, it allows citizens to choose their courses of action with a reasonable expectation of future legal consequences. *Crown Controls, Inc. v. Smiley*, 110 Wn.2d 695, 704-05, 756 P.2d 717 (1988). See also Stephen Markman, *Precedent: Tension Between Continuity in the Law and the Perpetuation of Wrong Decisions*, 8 TEX. REV. L. & POL. 283, 284 (2004) (suggesting factors for determining when the presumption favoring precedent may be overcome, including "consideration of the reliance interests of the people, all of whom must carry out their personal and business affairs within the constraints of the legal system").

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶¶24-25, 150 P.3d 545 (2007)(emphasis added).

Through stare decisis, the law has become a disciplined art--perhaps even a science--deriving balance, form and symmetry from this force which holds the components together. It makes for stability and permanence, and these, in turn, imply that a rule once declared is and shall be the law. Stare decisis likewise holds the courts of the land together, making them a system of justice, giving them unity and purpose, so that the decisions of the courts of last resort are held to be binding on all others.

Without stare decisis, the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declarations and assertions--a kind of amorphous creed yielding to and wielded by them who administer it. Take away stare decisis, and what is left may have force, but it will not be law.

State v. Ray, 130 Wn.2d 673, 677, 926 P.2d 904 (1996)(quoting opinion given by Justice Hale in *State ex rel. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665-66, 384 P.2d 833 (1963)(emphasis added). The relevant facts of this case are that Ms. Zink requested sentencing documents (SSOSA evaluations); records of conviction required to be freely disseminated (RCW 10.97.050(1)). See also the Sentencing Reform Act of 1981 Chapter 9.94A RCW. The trial court's determination that the records were exempt despite the Supreme Court ruling was error and an abuse of discretion and must be reversed so that these public records are once again available to the public for public inspection.

1. **Supreme Court Decision in *State v. A.G.S.*, 182 Wn.2d 273, 278, 340 P.3d 830 (2014) Is Not Applicable to This Cause of Action**

In enjoining the SSODA evaluation the trial court used the Supreme Courts decision in *State v. A.G.S.*, 182 Wn.2d 273, ¶2, 340 P.3d 830 (2014). Our Supreme Court noted that in the sentencing of AGS, the court ordered a Special Sex Offender Disposition Alternative (SSODA) evaluation at the behest of the State (*Id.* ¶2). At the same time AGS had a separate SSODA evaluation performed by an independent psychologist (¶2).

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. **The evaluator shall be selected by the party making the motion.** The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

RCW 13.40.162(2)(c)(emphasis added). The victim received a copy of the State's SSOSA evaluation from the Prosecuting Attorney's Office. The parents of the victim requested a copy of the SSODA evaluation ordered and paid for by AGS. The question put before the Supreme Court was in which juvenile file should the SSODA evaluation, bought and paid for by AGS, be placed.

Should a juvenile offender's SSODA evaluation be filed in the official juvenile court file and thus be available to the public?

(¶7). This is abundantly clear since the Court noted the court ordered SSODA evaluation had already been released to the parents. The AGS Court was solely discussing the SSOSA evaluation performed by a psychologist of AGS's choosing and provided independently by AGS to the trial court for consideration during sentencing. The AGS Court clearly identified the

difference between the two documents by continually noting that there were two different and separate SSODA evaluations performed.

The statute does not contain any specific provisions regarding who can conduct the assessment, but in this case, both SSODA evaluations were performed by independent psychologists.

State v. A.G.S., 182 Wn.2d 273, ¶9, 340 P.3d 830 (2014). Our Supreme Court determined that the SSODA evaluation ordered by AGS was not part of the official court file and was therefore exempt. This is not dispositive of this case. Zink is asking for the SSODA evaluation maintained by the trial court in the juvenile's court file and the prosecuting attorney's office which must be available for public inspection and copying in the Prosecuting Attorney's Office as well as in the trial court. (RCW 9.94A.475 and .480).⁵

Although our Supreme Court has emphasized the importance of confidentiality of juvenile offender files in the possession of public agencies holding "[a]ll records related to a juvenile offender must be kept confidential unless they are part of the official juvenile court file or meet another statutory exemption (*State v. A.G.S.*, 833, 340 P.3d 830 (2014)). A Juvenile Court file must be open and available to the public for inspection and copying.

"The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection...

RCW 13.50.050(2). Court ordered SSODA evaluations paid for by the people and used to sentence a juvenile offender are found in the court file as

⁵ If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. RCW 9.94A.670(14).

sentencing documents and must be available for public inspection unless the records are sealed. All juvenile records requested by Ms. Zink are found in the “juvenile court file” as required by RCW 9.94A.480 and must be open to public inspection. RCW 13.50.050(2). The trial court’s decision to enjoin the SSODA evaluation was error and an abuse of discretion and must be reversed.

2. Class Action Certification is Not Appropriate or Allowable Under RCW 42.56.540

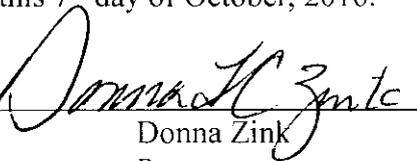
RCW 42.56.540 requires that only a person named in or to whom a record specifically pertains to can enjoin a public record. Respondents argue that the PRA is not “statutes applicable to special proceedings.” While this may be true, Zink is not arguing that a “special proceeding” is necessary for a class action suit. Respondents apparently misunderstand the argument. Zink is not arguing a special proceeding is needed, Zink argues that the statutory language in RCW 42.56.540 precludes class action since only the individual named in the record can request the record to be enjoined and cannot enjoin public records in the name of another. That is not a special proceeding it is the requirements of the statute. For instance, pursuant to RCW 42.56.550, a party can recover attorney fees and court cost. Under other statutes recovery of attorney fees is not allowed and in fact, even under the PRA recovery of attorney fees is only allowed if the action is between a requester and an agency. Although RCW 42.56.540 does not require a special proceeding it does limit the injunction to only the person named in the record. Just as RCW

42.56.550 limits recovery of attorney fees to only the requester if the action is filed against an agency rather than between the requester and a third party.

III. CONCLUSION

The trial court's decision and orders do not comply with State Statutes, Court Rules, our Constitution and well established case law. The trial courts decision on the documents pertaining to the registration records must be reversed and remanded back with instructions to dismiss the injunction. The orders concerning class certification, sealing and injunction of the SSOSA and SSODA evaluations must also be reversed and remanded back with instructions to decertify the class, unseal all sealed records and identify all parties to this cause of action and the order enjoining only the Level I SSOSA and SSODA evaluation must be reversed and remanded with orders to dismiss the injunction and release the requested records.

RESPECTFULLY SUBMITTED this 7th day of October, 2016.

By 
Donna Zink
Pro se

FILED
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DIVISION II
2016 OCT 11 PM 1:21
STATE OF WASHINGTON
BY _____
CLERK/DEPUTY

IV. CERTIFICATION OF SERVICE

I, Donna Zink, declare that on the 7th day of October, 2016, I did send a true and correct copy of appellant's "*Reply Brief of Appellant Donna Zink*" via e-mail service to:

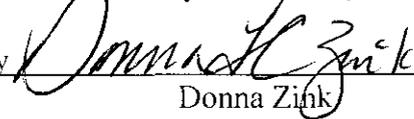
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