No. 48378-5-II

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

DONNA ZINK,

Appellant/Cross-Respondent,

v.

PIERCE COUNTY, ET AL.,

Respondents.

BRIEF OF RESPONDENTS LEVEL II AND LEVEL III CLASS

Harry Williams IV, WSBA #41020
LAW OFFICE OF HARRY WILLIAMS
707 East Harrison
Seattle, Washington 98102
harry@harrywilliamslaw.com
206.769.1772

Attorneys for Respondents Level II and Level II Class

Amy Muth, WSBA #31862
LAW OFFICE OF AMY MUTH, PLLC
1111 3rd Ave., Ste. 2220
Seattle, WA 98101
amy@amymuthlaw.com
206.682.3053

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I. INTRODUCTION

For the Level II and Level III class, there is one outstanding issue of law: Does Chapter 70.02 RCW exempt or prohibit disclosure of the detailed psychological records requested by Donna Zink pursuant to the Public Records Act?

Release is prohibited if a record "falls within the specific exemptions" of the PRA or if "any other statute exempts or prohibits disclosure of specific information or records." RCW 42.56.070.

The PRA states that "Chapter 70.02 RCW applies to public inspection and copying of healthcare information of patients." RCW 42.56.360(2). RCW 70.02.020, in turn, provides that "an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization." This section prohibits the release of the psychosexual evaluations, including SOSSA evaluations. Disclosure is also prohibited by RCW 70.02.230(1) (stating that except under enumerated circumstances, "records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential").

The psychologists, social workers, and other professionals who are authorized to perform psychosexual evaluations are licensed health care practitioners. RCW 18.15; WAC 246-930-020, 030, 040 (outlining requirements for sex offender treatment providers). The information in any report generated by a health care provider arising out of an examination ordered under the SSOSA statute or otherwise fitting the requirements of WAC 246-930-320 is "health care information." RCW 70.02.010(16) (defining "health care information" as "any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care"). The WAC requires that the psychosexual evaluation include information about patterns of sexual arousal, preference, and interest; prior attempts to remediate and control offensive behavior, including prior treatment; risk factors (including alcohol and drug abuse, stress, mood, sexual patterns, use of pornography, and social and environmental influences); a comprehensive personal history including medical information, marital and other relationships, employment, education, military history, a family history, history of criminal behavior (even if not charged), and mental health functioning; and overall findings of psychological, physiological, and medical assessments. WAC 246-930-320(2)(e) (listing standards for SSOSA and SSODA evaluations and

reports). This information plainly relates to the offender's mental health care, and includes both past care records and information intended to be the basis of future treatment.

RCW 70.02.230 states: "Except as provided in this section [and other enumerated sections], . . . all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential." The SSOSA evaluations Zink seeks are exempt from disclosure under RCW 70.02 because they are mental health records.

Plaintiff and class members will be substantially and irreparably damaged by the release of the psychosexual evaluations. For instance, the SSOSA psychosexual evaluations will likely disclose the identity of victims and family members. Declaration of Brad Meryhew, CP 8-30; Declaration of WATSA, CP 2912-2924. The Court should affirm the Superior Court and hold that the SOSSA evaluations are exempt from disclosure under the PRA.

II. STATEMENT OF THE CASE

In enacting the SSOSA system, the Legislature "create[d] a sentencing alternative for certain first time sex offenders." *State v. Pannell*, 173 Wn.2d 222, 227, 267 P.3d 349 (2011). Eligible offenders

must submit to intensive treatment and supervision. RCW 9.94A.670(5)(b)–(d). In exchange, the sentencing court may suspend a portion of the offenders' prison time. RCW 9.94A.670(5)(a).

The SSOSA statute lays out exacting standards for SSOSA eligibility. RCW 9.94A.670(2), (4). Perhaps as a result, SSOSA sentences are uncommon. In 2005, only 35% of eligible sex offenders received a SSOSA. CP 15, ¶ 23(c). And in fiscal year 2012, only 95 offenders in all of Washington received a SSOSA. CP 15, ¶ 23(e).

When they are imposed, SSOSA sentences reduce recidivism. CP 15, ¶ 24 ("sex offenders who complete SSOSA have the lowest recidivism rate of sex offenders across sex offense categories"); CP 16 at ¶ 25 (those with a SSOSA sentence present the "lowest risk of reoffense of any other felony offense, sexual or nonsexual").

Offenders seeking a SSOSA undergo an evaluation and must be found amenable to treatment. CP 1405, ¶ 8. To determine amenability, the trial court orders a detailed SSOSA evaluation. RCW 9.94A.670(3). These evaluations must be performed by certified treatment providers—health care professionals who have been specifically licensed by the Department of Health to evaluate and treat sex offenders. See RCW 9.94A.820(1); RCW 18.155.020.

A SSOSA evaluation assesses "the offender's amenability to treatment and relative risk to the community," and proposes a "treatment plan." RCW 9.94A.670(3)(b). This requires detailed personal information. SSOSA evaluations describe, among other things, the offender's crime; sexual history; perceptions of others; risk factors, including the offender's alcohol and drug abuse, sexual patterns, use of pornography, and social environmental influences; personal history, including the offender's relationships, employment, and education; a family history; a history of the offender's violence or criminal behavior; and the offender's mental health functioning. WAC 246-930-320(2)(e). A SSOSA evaluation will include psychosexual evaluations that identify past sexual partners, any past victims, and details of their sexual activities. CP 13, ¶19. Based on these factors, the SSOSA evaluation must assess the appropriateness of community treatment, summarize the examiner's diagnostic impressions, gauge the offender's risk of reoffending, appraise the offender's willingness for outpatient treatment, and propose a clear and detailed treatment plan. WAC 246-930-320(2)(f), (g)

After receiving the evaluation, the trial court decides whether to impose a SSOSA. See RCW 9.94A.670(4). A SSOSA sentence must include certain terms, such as a period of treatment of up to five years. RCW 9.94A.670(5)(c). It must also impose "[s]pecific prohibitions and

affirmative conditions" relating to behaviors that may trigger recidivism, such as viewing pornography or using intoxicants. RCW 9.94A.670(5)(d).

The Request of Pierce County

In 2014, Donna Zink sent a PRA request to Pierce County requesting all SSOSA evaluations. CP 2853-54. Not long thereafter, Plaintiff William Duncan filed this action to enjoin the mass release of SSOSA evaluations for Level II and Level III sex offenders. CP 2829-2843; CP 2868-2881.

Plaintiff Duncan is a Level III sex offender. CP 2903-04, Duncan sought a temporary restraining order, and then a preliminary injunction, both of which were granted. CP 2813-15; CP 3067-69.

The trial court certified a registration class of level II and III sex offenders who submitted sex offender registration forms in the possession of Pierce County on or after the date of the public records request, and a mental health records class of level II and III sex offenders who had undergone psychosexual mental health evaluations that were in Pierce County's possession on or after the date of the request. CP 3079-83. The Level II and II class moved for summary judgment and a permanent injunction under RCW 42.56.540. CP 1469-1502. The Level II and Level III class argued that RCW 70.02 prohibits the release of SSOSA evaluations. CP 1481-1482. After full briefing and argument, the trial

court granted the Level II and Level III classes' motion. CP 2550-2564. This appeal followed.

III. ARGUMENT

The SSOSA evaluations, and any other psychosexual evaluations in the possession of Pierce County, are exempt from disclosure because they are health care information. On this issue, and on class certification, the analysis is identical for Level I, Level II, and III offenders. The Court should affirm for the injunctions regarding SSOSA evaluations for all certified classes.

A. Standard of Review

This Court reviews a superior court's grant of summary judgment de novo, performing the same inquiry as the superior court. *Failla v. FixtureOne Corp.*, 181 Wn.2d 642, 649, 336 P.2d 1112 (2014). Summary judgment is proper when there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). A material fact is one that affects the outcome of the litigation. *Elcon Constr., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 164, 273 P.3d 965 (2012).

This Court interprets all of the facts and draws all reasonable inferences from those facts in the favor of the nonmoving party. *Lyons v. U.S. Bank Nat'l Ass'n*, 181 Wn.2d 775, 783, 336 P.3d 1142 (2014).

Summary judgment is appropriate if, after considering all of the evidence, reasonable persons could reach only one conclusion. *O.S.T. v. Regence Blueshield*, 181 Wn.2d 691, 703, 335 P.3d 416 (2014).

The burden of proof lies with the moving party to establish that there is no genuine issue of material fact, and once satisfied, the burden then shifts to the nonmoving party to present evidence demonstrating a material fact. *Walston v. Boeing Co.*, 181 Wn.2d 391, 395-96, 334 P.3d 519 (2014). The "nonmoving party may not rely on speculative or argumentative assertions that unresolved factual issues remain." *FDIC v. Uribe, Inc.*, 171 Wn. App. 683, 688, 287 P.3d 694 (2012). If the nonmoving party fails to present evidence of a material fact, summary judgment is appropriate. *Walston*, 181 Wn.2d at 396.

If "the record indicates the court properly considered all CR 23 criteria," a reviewing court will not disturb its decision. *Schnall v. AT&T Wireless Servs., Inc.*, 171 Wn. 2d 260, 266, 259 P.3d 129, 131 (2011), quoting *Nelson v. Appleway Chevrolet, Inc.,* 160 Wn.2d 173, 188, 157 P.3d 847 (2007). A "trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds." *Dix v. ICT Grp., Inc.,* 160 Wn.2d 826, 833, 161 P.3d 1016 (2007).

B. RCW 70.02 prohibits the release of psychosexual evaluations

RCW 70.02 "applies to public inspection and copying of health care information of patients," thus exempting the "health care information of patients" from the PRA's disclosure mandate. RCW 42.56.360(2); *see also Prison Legal News, Inc. v. Dep't of Corr.*, 154 Wn.2d 628, 644, 115 P.3d 316 (2005). SSOSA evaluations qualify as "health care information of patients."

A SSOSA or other psychosexual evaluation fits RCW 70.02's definition of health care information: "any information . . . recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care." RCW 70.02.010(16).

SSOSA evaluations must be performed by certified health care professionals who are licensed by the Department of Health to evaluate and treat sex offenders. RCW 9.94A.820(1); RCW 18.155.020. These professionals must "possess an underlying credential as a licensed health care professional," and must "have extensive training in a mental health field, as well as specialty training in the evaluation and treatment of sexual offense behavior." CP 2919, ¶ 18.

As the unrebutted expert testimony here demonstrates, a SSOSA evaluation is no different from any other clinical evaluation by a mental health care provider. The declaration prepared by the Washington Association for the Treatment of Sexual Abusers (WATSA), states that a SSOSA evaluation contains, among other things, the provider's diagnostic impressions; an assessment of psychological, behavioral, and lifestyle factors; and a written treatment plan. CP 2917-18, ¶¶ 15-17. And, critically, "the evaluator's "clinical approach" to a SSOSA evaluation "is the same as the clinical approach of an evaluator conducting an intake for a non-criminal justice involved person seeking mental health treatment for a sexual behavior problem." CP 2918, ¶ 15. The WATSA experts described in detail how SSOSA evaluations contain health care information protected by federal and state confidentiality laws. CP 2919-20, ¶¶ 18-20 (describing consent forms, releases, and other confidentiality requirements for SSOSA evaluations).

This unrebutted testimony is consistent with the purpose of SSOSA evaluations: to determine if offenders are amenable to treatment. RCW 9.94A.670(3). To make this determination, the evaluator must prepare a medical evaluation of the offender. See, e.g., CP 2918, ¶ 17 ("a necessary part of SSOSA treatment is to target the individual's changeable psychological, behavioral, and lifestyle factors that are associated with

recidivism risk") (emphasis omitted). This is information that "directly relates to the patient's health care." RCW 70.02.010(16).

An offender undergoing a SSOSA evaluation also qualifies as a "patient." RCW 42.56.360(2) (exempting health care information "of patients"). Chapter 70.02 RCW defines a "patient" as "an individual who receives or has received health care." RCW 70.02.010(31). And "health care," in turn, is defined broadly to include "any care, service, or procedure provided by a health care provider" in order to "diagnose, treat, or maintain a patient's physical or mental condition." RCW 70.02.010(14). Only health care providers may perform SSOSA evaluations. RCW 9.94A.820(1); RCW 18.155.020; see also RCW 70.02.010(18) (defining "health care provider"). And in performing a SSOSA evaluation, the health care provider is providing a service that is intended to "diagnose" and "treat" the offender's condition. In determining whether the offender is amenable to treatment, the health care provider is necessarily diagnosing the offender. See RCW 9.94A.670(3) (evaluation is needed to "determine whether the offender is amenable to treatment"); CP 2917, ¶ 15 (evaluation "identif[ies] and describe[s] an individual's psychological, behavioral, and lifestyle factors . . . to determine amenability to treatment"). And, in proposing a treatment plan,

see RCW 9.94A.670(3)(b), the health care provider is helping to treat the offender; an offender cannot be treated without a plan of treatment.

A SSOSA evaluation is

- performed by a health care professional
- for the treatment
- of a patient
- using clinical methods

The SSOSA evaluation is treated by the health care provider and patient as confidential health information protected by federal and state laws.

Chapter 70.02 RCW contains another exemption that applies to SSOSA evaluations. RCW 70.02.230 provides that "[i]nformation and records related to mental health services are confidential." "Information and records related to mental health services," in turn, are defined as "a type of health care information . . . compiled, obtained, or maintained in the course of providing services by a mental health service agency or mental health professional to persons who are receiving or have received services for mental illness." RCW 70.02.010(21). The professionals who perform SSOSA evaluations certainly qualify as "mental health professional[s]," RCW 70.02.010(27), since only certified sex offender treatment providers may perform SSOSA evaluations. CP 2919, ¶ 18 ("CSOTPs are required to have extensive training in a mental health

field"); *id.* ("[i]t is the position of WATSA that SSOSA evaluators and treatment providers are mental health professionals who are required by law to comply with the legal requirements of ...mental health evaluations and treatment."). Mental health professionals conducting SSOSA evaluations for offenders take the same clinical approach as they would for any person seeking mental health treatment for a sexual behavior problem. CP 2918, ¶¶ 15, 18. And mental health professionals treat SSOSA evaluations as mental health records, the release and distribution of which is governed by federal and state laws regarding mental health records. *Id.* For this reason too, SSOSA evaluations are exempt from disclosure under RCW 70.02.230.

The trial court found that "SSOSA evaluations…are health care records, specifically records of specialized mental health treatment." CP 2559, ¶ 29. The trial court also found that Plaintiff submitted declarations from experts that were "credible and compelling evidence of the irreparable harm that will result from blanket or generalized disclosure of the requested records." CP 2555, ¶ 14.

Plaintiffs submitted testimony of experts in the form of declarations explaining how SSOSA evaluations contain medical, mental health, and other personal information, along with the evaluator's

diagnostic assessment of that information. Ms. Zink failed to submit any evidence rebutting the expert's testimony on this point.

For example, the Plaintiffs submitted a declaration from Brad Meryhew, an attorney who is a member of the Sex Offender Policy Board and who has represented hundreds of sex offenders over a distinguished career. CP 9-10, ¶¶ 2-7. Based on his expertise, he testified that SSOSA evaluations "include not only an offender's history and details about their crime, but also intimate details about an offender's entire life," such as "past sexual partners, victims and non-victims, and the details of their sexual activities." CP 11, ¶ 11. They "also include the intimate details of an offender's marriage or significant relationships." CP 11 at ¶ 12.

Plaintiffs submitted similar particularized testimony from WATSA, through its experts explaining that SSOSA evaluations "include a personal history (including a psychosexual history), an assessment of current functioning, a mental health diagnosis (when indicated), and a proposed set of treatment goals...." 18 CP 2917, ¶ 15. The SSOSA evaluations are a necessary part of developing a treatment plan to decrease the patient's risk to sexually reoffend and "almost always includes other treatment goals as well." CP 2918, ¶ 17.

Plaintiffs' experts also testified regarding the irreparable harm that disclosure of this private information would cause on the sex offenders

and any third-parties (like spouses, past sexual partners or victims) mentioned in the SSOSA evaluations. Mr. Meryhew testified:

> Psychosexual evaluations include not only an offender's history and details about their crime, but also intimate details about an offender's entire life. This often includes identifying all of their past sexual partners, victims and non- victims, and the details of their sexual activities. It includes uncharged offenses that have often been committed against family members, neighbors, and others who are easily identifiable in the evaluation.

CP 13, ¶ 19 (emphasis added). The expert concluded that "[d]isclosure of one's past sexual history, often including embarrassing and very detailed accounts of sexual activity, would no doubt be traumatizing and humiliating for past sexual partners and others named in a defendant's life history." CP 14, ¶ 20.

This testimony from both expert and fact witnesses describing the disastrous harm in disclosing SSOSA evaluations is detailed and unrebutted. The trial court did not err by finding it credible.

C. Detailed, unrebutted testimony supports the trial court's finding that release of SSOSA evaluations would not be in the public's interest

The trial court found that "'blanket' or generalized disclosure of the Requested Records would not be in the public interest." CP 2559, ¶ 33. This finding was based on substantial evidence. Plaintiffs submitted evidence showing that mass disclosure of SSOSA evaluations would

injure the public interest because it would (1) discourage offenders from seeking evaluations, or from being candid with their evaluators; (2) re-traumatize victims; and (3) disclose sensitive health information.

First, the public has an interest in the proper operation of the SSOSA system, which requires that offenders actually seek evaluation and be candid in their evaluations. *See Koenig*, 175 Wn.2d at 847 ("We do not doubt the value of SSOSA evaluations. Indeed, we have recognized that the legislature developed this sentencing alternative for first time offenders to prevent future crimes and protect society."). Experts who have represented sex offenders in the SSOSA process testified that

> general public disclosure of very intimate, personal details about themselves, their family, and all of their past sexual partners will undoubtedly lead many offenders to refuse to participate in valuation and assessment, and will lead others to offer less than complete information. This erosion of the quality of information available to the courts, treatment providers, corrections, and law enforcement will negatively affect public safety.

CP 16-17, ¶ 28.

WATSA also testified by declaration that if an exception is made [to RCW 70.02 and HIPAA] for SSOSA treatment records and these become subject to public disclosure, "this could significantly and negatively impact our ability to meaningfully engage offenders in the treatment process. It is further our position that by deterring meaningful participation in SSOSA treatment, release of these mental health records

to the public would ultimately result in an increased – not decreased – risk to the community." CP 2920, ¶ 21. Plaintiffs trusted that their SSOSA evaluations would be confidential which motivated them to seek the alternative treatment and complete it successfully. See CP 2865, ¶ 18 ("I would have been discouraged from undertaking treatment and being completely honest during treatment if I knew everything I said would be released to the public."). The testimony on which the trial court relied consisted of lay testimony and expert predictions rationally based on past experience and unrebutted by countervailing testimony.

Second, the public has an interest in not re-traumatizing victims of sex offenses by exposing them to the public. *See, e.g., State v. Kalakosky*, 121 Wn.2d 525, 547, 852 P.2d 1064 (1993) (noting that sexual assault victims need privacy in order to successfully recover, and observing that "[o]f recent years, legislatures and courts have attempted to provide rape victims some privacy rights"). The record supports that mass disclosure of SSOSA evaluations would re-traumatize a substantial number of victims and third parties.

SSOSA evaluations contain sensitive information about not just the offenders themselves, but also their victims and third parties. See CP 13, ¶ 19. The victim's identity will often be obvious from a SSOSA evaluation; disclosure of the SSOSA evaluation will thus disclose their identity and

re-traumatize them. CP 14, ¶ 20-21. Innocent spouses, children, and past sexual partners are also at risk of harm. *Id.*

D. SSOSA evaluations are not sentencing or plea agreements

RCW 9.94A.475 states that for certain felonies, "all recommended sentencing agreements or plea agreements and the sentences for [ ] felony crimes shall be made and retained as public records," not all documents recommending a particular sentencing alternative or disposition. Brad Meryhew's unrebutted testimony is that a SSOSA evaluation does not always result in a SSOSA. *See* CP 12, ¶ 16. Instead, the number of sex offenders meeting the requirements for SSOSA sentencing has declined from approximately 40% to 15% between 1986 and 2004. CP 23, ¶ 15(d).

The courts have recognized this distinction as well: *Koenig* describes the SSOSA evaluation not as a sentencing agreement but as "a basis for the court to impose sentencing alternatives." *Koenig*, 175 Wn.2d at 849. Further, the Sentencing Reform Act contains standards "solely for the guidance of prosecutors" and may not be relied upon to create any enforceable rights." RCW 9.94A.401.

E. The Doe decision does not affect the trial court's injunction

Earlier this year, in another Zink PRA case, the Supreme Court held that the Washington State Patrol was required to release sex offender

registration records under the PRA, and that RCW 4.24.550 was not an "other statute," RCW 42.56.070(1), prohibiting their release. *Doe ex rel. Roe v. Wash. State Patrol*, 185 Wn.2d 363, 385, 374 P.3d 63 (2016). These records did not include SSOSA evaluations, and instead consisted principally of a copy of the State Patrol's sex offender database. *See id.* at 367.

This decision does not affect the prohibition on releasing SSOSA evaluations. While *Doe* allows the public to learn class members' identity as current or former registered offenders, it does not give the public access to SSOSA evaluations themselves, which are medical records far more sensitive than the fact of registration. Those evaluations contain extremely personal information about offenders, their victims, and their families that cannot be gleaned from registration itself. As discussed above, Doe thus leaves unaffected the findings that Zink challenges here: that SSOSA evaluations contain extraordinarily sensitive personal and medical information about both the offender and others; that blanket disclosure of evaluations would discourage offenders from undergoing SSOSA evaluations or being candid in them; that disclosure would re-traumatize victims; that disclosure of such sensitive information would hinder reintegration of offenders into the community; and that all these things

would undermine the successful SSOSA system, thereby making the public less safe.

F. The trial court acted well within its discretion by certifying a class

The trial court certified a registration class of level II and III sex offenders who submitted sex offender registration forms in the possession of Pierce County on or after the date of the public records request, and a mental health records class of level II and III sex offenders who had undergone psychosexual mental health evaluations that were in Pierce County's possession on or after the date of the request. CP 3079-83. Zink challenges this class certification. She does not argue that the trial court misapplied CR 23. Rather, she argues that the PRA forecloses class actions altogether. According to Zink, each "person who is named in the record or to whom the record specifically pertains," must be joined as a party under RCW 42.56.540. This argument should be rejected. It conflicts with the civil rules and binding precedent interpreting those rules, and it also misunderstands the nature of class actions.

Rule 23 exists to avoid multiplicity of litigation, save members of the class the burden of filing individual suits, and free defendants from having to respond to identical future litigation. *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 278, 267 P.3d 998 (2011). A trial court

should err in favor of certifying a class, and its decision to grant certification is reviewed for abuse of discretion. *Id.* Here, class certification serves the purposes of CR 23. Zink has made numerous similar PRA requests for blanket release of documents regarding sex offenders. *See* CP 1470. Certifying classes reduces the need for each individual sex offender and also Zink to undertake multiple duplicative litigation involving the same question of law.

Zink does not deny that CR 23 itself allows class certification in this case, and the trial court's certification decision should be affirmed. After all, "[c]lass certification is governed by CR 23." *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 278, 267 P.3d 998 (2011). And civil rules like CR 23 "govern all civil proceedings" except when they are "inconsistent with rules or statutes applicable to special proceedings." CR 81(a). The PRA, however, is not one of those "statutes applicable to special proceedings." As the Supreme Court has held, the PRA does "not create a special proceeding subject to special rules," so "the normal civil rules are appropriate for prosecuting a PRA claim." *Neighborhood Alliance of Spokane Cnty. v. Cnty. of Spokane*, 172 Wn.2d 702, 716, 261 P.3d 119 (2011). Hence, CR 23 controls here, and under it certification was appropriate.

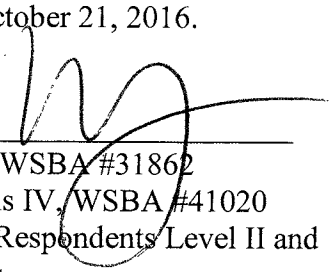
The representative nature of class actions also means that even a statute phrased in individual terms will allow for a class action. So, for example, even though the Consumer Protection Act authorizes money damages and injunctive relief only to those who "bring a civil action," RCW 19.86.090, the Court of Appeals has held that this provision applies not only to the named plaintiffs, but "to the represented class members" too. *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 346, 54 P.3d 665 (2002). Even though those class members did not bring the action at first, they are deemed to be present as parties through the class-action mechanism.

For the same reason, the PRA does not forbid class actions. Through CR 23, class representatives stand in for all other class members "named in [a] record or to whom [a] record specifically pertains." RCW 42.56.540. If the class representatives' "motion and affidavit[s]" supply proof that records name or specifically pertain to both the class representatives and the other members of the class, id., then a classwide injunction under RCW 42.56.540 is proper. Because Plaintiffs supplied precisely that proof here, the trial court's class certification and classwide injunction was proper.

IV. CONCLUSION

The trial court's class certification, summary judgment, and permanent injunction orders regarding SSOSA evaluations should be affirmed.

RESPECTFULLY SUBMITTED October 21, 2016.



Amy I. Muth, WSBA #31862
Harry Williams IV, WSBA #41020
Attorneys for Respondents Level II and Level III Class

CERTIFICATE OF SERVICE

I, IAN D. SALING, state that on the 21st Day of October, 2016, I caused the **Brief of Respondents Level II and Level III Class** to be Filed in the **Court of Appeals - Division Two**, and a true and correct copy of the same to be served on the following in the manner so indicated:

Michelle Luna-Green, WSBA #27088
Pierce County Prosecutor's Office
955 Tacoma Ave. S., Ste. 301
Tacoma, WA 98402-2160
Email: mluna@co.pierce.wa.us

[ ] via facsimile
[ ] via first class U.S. mail, postage prepaid
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Michael Sommerfeld, WSBA #24009
Pierce County Prosecutor's Office
955 Tacoma Ave. S., Ste. 301
Tacoma, WA 98402-2160
Email: msommer@co.pierce.wa.us

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Reuben Schutz, WSBA #44767
Gordon Thomas Honeywell LLP
1201 Pacific Ave., Ste. 2100
Tacoma, WA 1157
Email: rschutz@gth-law.com

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Salvador A. Mungia, WSBA #14807
Gordon Thomas Honeywell LLP
1201 Pacific Ave., Ste. 2100
Tacoma, WA 1157
Email: smungia@gth-law.com

[ ] via facsimile
[ ] via first class U.S. mail, postage prepaid
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[x] via e-mail

William R. Michelman, WSBA #6803
William R. Michelman, Inc. P.S.
7512 Bridgeport Way W., Ste. B
Lakewood, WA 98499-8377
Email: michelman@wa.net

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Barry Wallis, WSBA #37425
Wallis Law Firm, PLLC
1101 Fawcett Ave., Ste. 300
Tacoma, WA 98402-2015
Email: barry@wallislawfirm.com

[ ] via facsimile
[ ] via first class U.S. mail, postage prepaid
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Prachi Dave, WSBA #50498
ACLU of Washington
901 5th Ave., Ste. 630
Seattle, WA 98164
Email: pdave@aclu-wa.org

[ ] via facsimile
[ ] via first class U.S. mail, postage prepaid
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[x] via e-mail

Donna Zink, Pro Se
109 N. Rowell Ave.
Mesa, WA 99343
Email: Donna Zink dzink@centurytel.net

[ ] via facsimile
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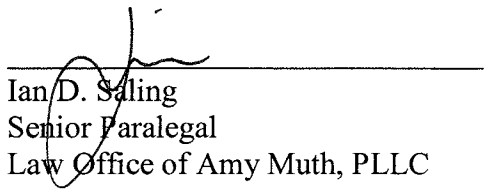
DATED this 21st Day of October, 2016



Ian D. Saling
Senior Paralegal
Law Office of Amy Muth, PLLC

MUTH LAW OFFICE

October 21, 2016 - 9:12 AM

Transmittal Letter

Document Uploaded: 3-483785-Respondent's Brief.pdf

Case Name: Donna Zink v. Pierce County
Court of Appeals Case Number: 48378-5

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Respondent's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Brief of Respondents Level II and Level III Class

Sender Name: Ian D Saling - Email: ian@amymuthlaw.com

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ian@amymuthlaw.com
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