

FILED
MAY 10 2012
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
May 10, 2012, 3:57 pm
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

No. 86410-1

THE SUPREME COURT
OF THE STATE OF WASHINGTON

FRANKLIN COUNTY SHERIFF'S OFFICE, et al.,
Appellants,

v.

ALLAN PARMELEE,
Respondent.

ANSWER OF APPELLANTS FRANKLIN COUNTY SHERIFF'S
OFFICE, et al., TO AMICUS CURIAE BRIEF OF WASHINGTON
COALITION FOR OPEN GOVERNMENT

Kenneth W. Harper
WSBA #25578
Menke Jackson Beyer, LLP
807 North 39th Avenue
Yakima, WA 98902
(509) 575-0313
kharper@mjbe.com

Attorneys for Appellants
Franklin County

ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION.....1-2

II. STATEMENT OF THE CASE.....2

III. ARGUMENT.....2-4

IV. CONCLUSION.....4

TABLE OF AUTHORITIES

Cases:

Bldg. Indus. Ass'n of Washington v. McCarthy, 152 Wn. App. 720, 218 P.3d 196 (2009). 2

Franklin County Sheriff's Office v. Parmelee, 162 Wn. App. 289, 253 P.3d 1131 (2011). 3

King County Dep't of Adult and Juvenile Detention v. Parmelee, 162 Wn. App. 337, 254 P.3d 927 (2011). 4

Long v. Odell, 60 Wn.2d 151, 372 P.2d 548 (1962). 2

Statutes:

RCW 42.56.070. 1

RCW 42.56.540. *passim*

RCW 42.56.565. 1, 3, 4

I. INTRODUCTION

Appellants Franklin County Sheriff's Office, Franklin County Correctional Center, and Franklin County Prosecuting Attorney's Office (hereafter "Franklin County"), respond to the brief of amicus curiae Washington Coalition for Open Government (hereafter "COG"). Amicus COG raises issues new to this case regarding the relationship between injunctive relief and the Public Records Act.

Amicus COG reaches beyond the scope of issues raised by the litigants before the trial court or the Court of Appeals. Certain of COG's arguments are not made in a manner that clearly distinguishes injunction proceedings under RCW 42.56.540 from injunction proceedings under RCW 42.56.565. Amicus COG's arguments regarding injunction proceedings arising out of RCW 42.56.540 do not apply to proceedings brought pursuant to RCW 42.56.565.

This Court should reject any view that injunctive relief pursuant to RCW 42.56.565 is limited to actions filed by non-agency third parties. *See* RCW 42.56.565(2)(a) (agency or its representative may request injunction). The Court should also be careful to avoid any result that would make injunctive relief pursuant to RCW 42.56.565 dependent upon a specific PRA exemption "or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). The

Court may avoid unintended consequences by limiting its consideration of COG's amicus brief to the extent that the brief exceeds the issues below.

II. STATEMENT OF THE CASE

As set forth in the parties' briefs.

III. ARGUMENT

Generally, an amicus curiae cannot raise a new issue or theory that has not been placed before the appellate court by the parties. *Bldg. Indus. Ass'n of Washington v. McCarthy*, 152 Wn. App. 720, 749, 218 P.3d 196 (2009). "The case must be made by the parties litigant, and its course and the issues involved cannot be changed or added to by friends of the court." *Long v. Odell*, 60 Wn.2d 151, 154, 372 P.2d 548 (1962) (internal quotation marks and citation omitted).

"It is further well established that appellate courts will not enter into the discussion of points raised only by amicus curiae." *Long*, 60 Wn.2d at 154.

Here, certain issues of COG are entirely its own and do not appear in the parties' briefing to this Court.

Amicus COG argues that the Court of Appeals wrongly decided whether it was proper to consider the identity of a PRA requester in proceedings conducted under RCW 42.56.540. (Brief of Amicus COG at 2). But COG departs from the identified issues in this case when it also

argues that findings relating to injunctive relief under RCW 42.56.540 need only be made where a third party seeks an injunction. (*Id.* at 9). From this point, COG asserts that this case presents an opportunity to adopt a framework for judicial review under the PRA. (*Id.* at 11). According to COG, a set of simple rules will define when and how injunctive relief may be obtained by agencies and third parties. (*Id.* at 12).

Franklin County agrees with COG that the Court should decide this case on narrow grounds. (*Id.* at 2). Franklin County contends that this view renders COG's exegesis of the broader law of injunctive relief under the PRA unnecessary. The future actions of the trial court here may require consideration of the proper weight to be placed on a PRA requester's identity under RCW 42.56.540. This issue is clearly before this Court. But other than finding error by the trial court on this narrow point, the Court of Appeals did not address the trial court's temporary injunction. *Franklin County Sheriff's Office v. Parmelee*, 162 Wn. App. 289, 292, 253 P.3d 1131 (2011) ("We do not disturb the trial court's temporary injunction.")

There is good reason to hew closely to the issues raised in the trial court and the Court of Appeals. Amicus COG points to the "special injunction provisions of RCW 42.56.565" and notes that the County's entitlement "to an injunction under RCW 42.56.565 is not presented, and

should not be addressed by this Court in this case.” (Brief of Amicus COG at 13).

Franklin County agrees. Indeed, injunctive relief pursuant to RCW 42.56.565 may be a viable option for Franklin County and, as COG notes, that issue may be addressed on remand. *See, e.g., King County Dep’t of Adult and Juvenile Detention v. Parmelee*, 162 Wn. App. 337, 254 P.3d 927 (2011). Because of the absence of a full record of decisionmaking by the trial court, this Court should resist use of this case as a means to define the availability and role of various forms of injunctive relief under the PRA.

This case does not present the factual or legal context, at least in its present posture, for COG to obtain the result it seeks even as to injunctions under RCW 42.56.540. Any ruling on the broader availability of injunctive relief under the PRA (particularly as to the “special injunction provisions” of RCW 42.56.565) is premature.

IV. CONCLUSION

The focus of COG on overarching points of injunctive relief under the PRA should not result in an alteration or limitation on the availability of injunctive relief pursuant to RCW 42.56.565 where otherwise appropriate under existing law.

Respectfully submitted this 10th day of May, 2012.

~~Menke-Jackson Beyer, LLP~~

A handwritten signature in black ink, appearing to read "Kenneth W. Harper", written over a horizontal line.

Kenneth W. Harper

WSBA #25578

Attorneys for Franklin County

CERTIFICATE OF SERVICE

The undersigned certifies that on the 10th day of May, 2012, true and correct copies of the attached *Answer of Appellants Franklin County Sheriff's Office, et al., to Amicus Curiae Brief of Washington Coalition for Open Government* were served on each of the parties as follows:

Via Email (.pdf)(by prior agreement) and U.S. Mail:

Mr. William J. Crittenden
300 East Pine Street
Seattle, WA 98122
wjcrittenden@comcast.net

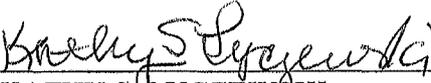
Mr. Ryan E. Verhulp
Mr. Shawn P. Sant
Franklin County Prosecuting Attorney
1016 North 4th Avenue
Pasco, WA 99301-3706
RVerhulp@co.franklin.wa.us

Mr. Tim Lang
Senior Assistant Attorney General
Attorney General's Office
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
TimothyL@ATG.WA.GOV

Via U.S. Mail:

Mr. Allan W. Parmelee
WSP #793782
Wash. State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

Dated this 10th day of May, 2012.


KATHY S. LYCZEWSKI

OFFICE RECEPTIONIST, CLERK

To: Kathy Lyczewski
Cc: rverhulp@co.franklin.wa.us; wjcrittenden@comcast.net; TimothyL@ATG.WA.GOV; Kenneth Harper
Subject: RE: Franklin County Sheriff's Office, et al. v. Allan Parmelee - Case No. 86410-1

Rec. 5-10-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Kathy Lyczewski [<mailto:kathy@mjbe.com>]
Sent: Thursday, May 10, 2012 3:57 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: rverhulp@co.franklin.wa.us; wjcrittenden@comcast.net; TimothyL@ATG.WA.GOV; Kenneth Harper
Subject: Franklin County Sheriff's Office, et al. v. Allan Parmelee - Case No. 86410-1

Dear Clerk of the Court: Attached is Answer of Appellants Franklin County Sheriff's Office, et al., to Amicus Curiae Brief of Washington Coalition for Open Government in the above-entitled matter for filing. Service copies will also be hard copied to the cc list per agreement.

Please contact the undersigned if you have questions about this email or its attachment.

Kathy Lyczewski
Menke Jackson Beyer, LLP
807 North 39th Avenue
Yakima, WA 98902

509-575-0313
509-575-0351 fax
kathy@mjbe.com
www.mjbe.com

This electronic message contains information belonging to the law firm of Menke Jackson Beyer, LLP which may be privileged, confidential, attorney work product and/or protected from disclosure under applicable law. The information is intended only for the use of the individual or entity named above. If you think that you have received this message in error, please notify the sender either by email or telephone. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.