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COURT OF APPEALS NO. 66428-0-I

SUPREME COURT OF THE STATE OF WASHINGTON

AARON HUNDTOFTE ET AL.,

Respondent,

v.

IGNACIO ENCARNACION ET AL.,

Appellants.

**SUPPLEMENTAL BRIEF OF KING COUNTY DEPARTMENT OF
JUDICIAL ADMINISTRATION**

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 ORIGINAL

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A. ISSUE PRESENTED

A court record may be redacted pursuant to GR 15 only when the county clerk can also maintain the original, unredacted copy of the same record, albeit inaccessible to the public. Here, the trial court ordered that the King County Superior Court's SCOMIS case management index be redacted so that the names of the parties in one underlying judicial proceeding within the index were eliminated. However, it is impossible to maintain redacted and unredacted copies of the SCOMIS index, and alteration of an existing SCOMIS index permanently destroys the version that existed until the point of alteration. Because redaction of this index cannot be accomplished in accordance with GR 15, and because destruction of a court record under that rule is allowed only in specific circumstances not present here, did the trial court err in ordering redaction?

B. FACTS RELEVANT TO REVIEW

For a complete description of the underlying facts of the instant matter, please see the Court of Appeals' published decision in this matter, found at Hundtofte v. Encarnacion, 169 Wn. App. 498, 502-06, 280 P.3d 513 (2012). Defendants Ignacio Encarnacion and Karla Farias, after settling an unlawful detainer action brought

against them in King County Superior Court by their then-landlords, moved for an order from an ex parte commissioner directing the King County Department of Judicial Administration (the Clerk¹) to substitute their initials (I.E. and K.F.) for their full names in the record of their case as maintained in the Superior Court Management Information System (SCOMIS), a statewide, publicly-available electronic index of court records. Encarnacion's and Farias's stated intent was to prevent anyone from locating their unlawful detainer action via SCOMIS by disabling the ability to use their surnames as a search tool for locating cases; to accomplish this, their surnames were to be replaced within that index with their initials. See Encarnacion, 169 Wn. App. at 503; CP 11.

Encarnacion and Farias sought no other redactions or sealing of the documents within the court file itself; they only wanted the name of their case as it appeared in SCOMIS to be altered. Id. Implicit in their requested relief is the understanding that SCOMIS users generally search for cases by party name, as opposed to cause number, type of action, or other categorization.

¹ The Court of Appeals identified the Department of Judicial Administration as "the Clerk" throughout its opinion. See Encarnacion, 169 Wn. App. at 503 n.2. For consistency's sake, the Department of Judicial Administration will refer to itself as the Clerk herein.

Encarnacion and Farias contended that their interest in avoiding rejection by future potential landlords, who might be put off by the existence of the unlawful detainer action, outweighed the public's right to the open administration of justice. Id. at 503-05.

As thoroughly described in the Court of Appeals' opinion, Encarnacion's motion wended its way through a lengthy review process at King County Superior Court, ultimately ending up before a superior court judge. See id. at 503-05. That court allowed the Clerk to intervene in the matter in order to assert its position that an order granting Encarnacion's requested relief would contravene GR 15, the general rule concerning redaction, sealing, and destruction of records. Id. at 504.

Ultimately, the trial court granted Encarnacion's motion, both rejecting the Clerk's argument regarding GR 15, and also finding that Encarnacion had satisfied the requirements set forth in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982), regarding the balancing of the public's interest in the open administration of justice against the personal interests asserted by a particular individual. Id. at 504.

The Clerk sought review of the trial court's decision from Division One of the Court of Appeals. It should be noted that the

Clerk does not oppose Encarnacion's motion on Ishikawa-related grounds. The Clerk's concern has been limited solely to the relationship of the trial court's order to GR 15. Several *amici* filed briefs with Division One on the Ishikawa test, both in support of and in opposition to the trial court's ruling on that subject. See id. at 500.

The Court of Appeals reversed the trial court solely on the ground that the public's interest in open courts outweighed Encarnacion's interest in avoiding difficulties in securing future rental housing. Id. at 512-18. By footnote, Division One declined to rule on the Clerk's rule-based objection to the trial court's order, concluding that it need not address the Clerk's argument because it had reversed on Ishikawa-related grounds. Id. at 512 n.5.

C. ARGUMENT

As an agency assigned to maintain court records and provide efficient administrative support to the King County Superior Court, the Clerk remains disinclined to speak on behalf of either the general public or Encarnacion and Farias as to the balancing of their competing interests in the accessibility of those individuals' file on SCOMIS. The Clerk continues to assert, however, that the trial court's order to redact their surnames within the SCOMIS index and

replace them with their first and last initials requires the Clerk to engage in actions not allowed by GR 15, and violates the principle of open administration of justice that is inherent in the rule. It is impossible to redact a case name in SCOMIS while also preserving a "sealed" copy of that case name elsewhere in SCOMIS, as required under GR 15(c)(6). In addition, redaction of a party's name within SCOMIS forever alters the pre-existing SCOMIS record, and will make it impossible for a user to locate the pre-existing record thereafter; in this regard, alteration is tantamount to destruction of a court record, which is not lawful under the circumstances of this case.

1. IT IS IMPOSSIBLE TO MAINTAIN TWO COURT FILES – REDACTED AND UNREDACTED – IN SCOMIS AS REQUIRED UNDER GR 15

Encarnacion and Farias's motion to redact their names within the SCOMIS index has been based on a misunderstanding of the practice of redaction as used in GR 15, which expressly provides that, upon the granting of a motion for redaction, both a redacted and an unredacted court record will be maintained by the Clerk. The SCOMIS index is not amenable to duplication, and thus redaction results in alteration of the sole "copy." Because it is impossible to redact a party's name in SCOMIS and maintain

compliance with all relevant provisions of GR 15, Encarnacion and Farias's motion should never have been granted.

GR 15(c)(2) provides that a court "may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted...." Court records are defined in GR 31 to include not only documents and exhibits maintained by a court in connection with a judicial proceeding, but also "any information in a case management system created or prepared by the court that is related to a judicial proceeding." Division One of the Court of Appeals has found that SCOMIS constitutes a "court record" under GR 31(c)(4). See Indigo Real Estate Services v. Rousey, 151 Wn. App. 941, 946-47, 215 P.3d 977 (2009).

Upon the granting of a motion for redaction of a court record, GR 15(c)(6) provides specific instructions to the court clerk:

When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original court record shall be sealed following the procedures set forth in (c)(5).

GR 15(c)(5) directs the clerk to preserve the docket code, document title, sub number, and date of the original record; seal the

relevant, unredacted records and return them to the file; file the sealing order and accompanying written findings (while ensuring that the order and findings remain accessible to the public); and take steps to prevent public access to the unredacted version of the records.

SCOMIS is, as the Court of Appeals has explained, the major Judicial Information System (JIS) application for Washington superior courts. Rousey, 151 Wn. App. at 947. It is a case *management system*, not a record, instrument, or device separately created for each superior court case. See id. (explaining that courts use SCOMIS to “record parties and legal instruments filed in superior court cases, to set cases on court calendars, and to enter case judgments and final dispositions.”). It bears emphasizing that SCOMIS is not primarily a mechanism for the public to obtain access to court documents, but for superior courts to efficiently maintain their records. See Washington Courts website, “Judicial Information System,” located at <http://www.courts.wa.gov/jis/?fa=jis.display&theFile=caseManagementSystems>. SCOMIS does not and cannot maintain separate

records – redacted, and unredacted – for the same cause number. Redaction within SCOMIS alters the sole copy of that index.

As a result, it is impossible for a clerk to comply with the provisions of GR 15(c)(5) and GR 15(c)(6) when presented with a court order to redact a party's name on SCOMIS.² It is a well-settled principle of construction that "each word of a statute [or court rule] is to be accorded meaning." State ex rel. Schillberg v. Barnett, 79 Wn.2d 578, 584, 488 P.2d 255 (1971); see also Roberts v. Johnson, 137 Wn.2d 84, 92, 969 P.2d 446 (1999) (holding that court rules are subject to the same rules of construction as statutes). Court rules must be interpreted "so that all language used is given effect, with no portion rendered meaningless or superfluous." State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

Here, to require redaction of the sole SCOMIS case management index would require the Clerk to simply disregard, and treat as superfluous, the express provisions of GR 15(c)(5) and (6).

² The Clerk does not directly ask this Court to examine the Court of Appeals' determination in Rousey that SCOMIS falls within the definition of a "court record" under GR 31(c)(4), though there is reason to question the common sense of the application of that definition within GR 15. The Clerk's concern here is with its inability to redact a SCOMIS file while observing all other provisions of GR 15. That issue was not before the Court of Appeals in Rousey.

The SCOMIS record would be limited to the single, redacted copy. There is no way to, as GR 15(c)(5)(B) provides, remove the specified court records (i.e., the entire SCOMIS index), seal them, and then somehow return them to “the file” under seal or store them separately.

If the drafters of GR 15 meant to allow redaction of a record when doing so would alter the single, unique copy of that record and maintain that single record solely thereafter, they would have stated as such in the court rule. Instead, it is readily apparent that the drafters intended for clerks to store redacted and unredacted copies, thereby preserving the integrity of the judicial process as a whole. The overarching goal of the redaction and sealing provisions of GR 15 is to recognize, where appropriate, the personal privacy interests of parties in a case while also (1) informing the public that it has access only to, at best, a portion of a complete record that is being withheld from it; and (2) providing the public with the trial court’s reasons for limiting or withholding access to those records. See, e.g., GR 15(c)(2) (authorizing redaction and sealing only when a court is presented with “**identified compelling** privacy or safety concerns”) (emphasis in original); GR 15(c)(4) (providing that when an entire court file is sealed, the “existence” of

the file is still available for viewing by the public on court indices, though the details of the file are limited to the cause number, names of the parties, and the cause of action and case type); GR 15(e) (establishing process whereby previously-sealed records may be unsealed, which presumes that it is possible to know that the record has earlier been sealed). That primary goal of recognizing a private interest while ensuring that the public is aware that redaction or sealing has occurred is impossible to meet with regard to redaction of SCOMIS. Thus, to nevertheless order redaction amounts to an unsupportable insistence on disregarding GR 15(c)(6), an absurd reading of GR 15 in its entirety. See State v. Ervin, 169 Wn.2d 815, 823-24, 239 P.3d 354 (2010) (noting well-established presumption that drafters do not intend absurd results when creating statutes and court rules).

The Clerk does not mean to question Encarnacion and Farias's concern that public access to information related to their unlawful detainer action may affect their ability to secure rental housing in the future. Nor is it the Clerk's intent to join or criticize *amici* who contend that the public's constitutionally-protected interest in open court records militates against issuance of a redaction order on the basis of the private interest asserted here.

Rather, the Clerk's apprehension pertains to the order that the trial court issued here, which cannot be effectuated without forcing the Clerk to disregard specific requirements within GR 15.

2. REDACTION OF THE SCOMIS FILE, WHICH IS IMPOSSIBLE TO DUPLICATE, AMOUNTS TO DESTRUCTION OF COURT RECORDS UNDER GR 15(H).

Because, as explained supra, a SCOMIS index is a single case management "record" that cannot be duplicated, the trial court's requirement that the Clerk redact Encarnacion and Farias's names in SCOMIS as it currently exists is tantamount to ordering the Clerk to destroy the existing index. Destruction of a court record is, under GR 15(h), allowed only when specific criteria are present that Encarnacion and Farias have not attempted to meet.

GR 15(b)(3) defines "to destroy" as "to obliterate a court record or file in such a way as to make it permanently irretrievable." Destruction of a court record in a civil case is permitted, pursuant to GR 15(h), only when express statutory authority for such obliteration is presented.

Here, once Encarnacion and Farias's SCOMIS file is altered to replace their names with their initials, the file in its current form will no longer exist. It will be "permanently irretrievable." It is true

that the trial court's order in this case carries with it a 7-year expiration date, but the expiration of the order will not allow access to a heretofore-secreted SCOMIS record. Rather, the Clerk will simply have the authorization to destroy the SCOMIS record that uses Encarnacion and Farias's initials and replace it with a new one that includes their full names.

The trial court was not presented with a motion for destruction of a court record, or with any citation to statutory authority that would allow such an action by the Clerk.

Unfortunately, the trial court's order effectively amounted to a demand that the Clerk engage in such destruction, and render the existing SCOMIS record forever inaccessible. Because the court lacked the authority to require such permanent alteration, its order cannot be considered lawful.

D. CONCLUSION

The trial court's erred when it ordered the redaction of Encarnacion and Farias's names within SCOMIS. Such redaction is impossible to accomplish without rendering express language in GR 15 superfluous, and amounts to an order for destruction of a court record absent the necessary statutory justification for such an extreme act. The Clerk respectfully requests that the decision of

the Court of Appeals, reversing the trial court's order, be affirmed,
albeit on the alternative grounds presented in this brief.

DATED this 4th day of April, 2013.

RESPECTFULLY submitted,

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Attached are:

- (1) Notice of Association of David Seaver;
- (2) Respondent's Answer in Opposition to Petitioner's Petition for Discretionary Review; and
- (3) Proof of Service

in the following case:

Aaron Hundtofte and Kent Alexander v. Ignacio Encarnacion and N. Karla Farias v. King County Superior Court
Office of Judicial Administration
Supreme Court No. 88036-1
Court of Appeals No. 66428-0-I
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