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Supreme Court No. 94798-8, 94970-1

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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Consolidated cases of:

*In re the Dependency of E.H.;*  
and  
*In re the Dependency of S.K.-P.,*  
Minor Children,

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**SUPPLEMENTAL BRIEF OF PETITIONER S.K.-P. IN SUPPORT  
OF MOTION TO SEAL**

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## **I. IDENTITY OF MOVING PARTY**

Petitioner S.K.-P. is one of thousands of children caught up in Washington's dependency system, which regularly deals with sensitive, private information about alleged child abuse and neglect. Her bravery in requesting counsel, and persisting in that request in the appellate court system, should not result in subjecting her personal information to public disclosure. She therefore requests sealing or redaction of the trial court records in the appellate file in Court of Appeals No. 48288-1-II. The Respondent is in agreement. In the consolidated case of *In re Dependency of E.H.*, the Petitioner, and Respondents jointly moved to seal records.

## **II. STATEMENT OF RELIEF SOUGHT**

Pursuant to GR 15(c)(2)(A) and (F), S.K.-P. moves to seal the trial court<sup>1</sup> records filed in the Court of Appeals, including the following:

1. Designation of Clerk's Papers, Pierce County Juvenile Court Cause No. 14-7-01911-8, filed December 2, 2015.
2. [Index to Clerk's Papers and] Clerk's Papers Per Request of Appellant to the Court of Appeals, Division II, No. 14-7-01911-8, Court of Appeals No.: 482991, filed May 27, 2016.

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<sup>1</sup> The trial court in this matter was a dependency court. Therefore, this brief uses the two terms interchangeably.

3. Transcripts of trial court proceedings on September 17, 2015; October 5, 2015; and October 12, 2015.

In the alternative, if this request is not granted, S.K.-P. requests that she be allowed to redact her name and her parents' and siblings' names from all of the above trial court records and re-file them.

### **III. RELEVANT FACTS**

On December 30, 2015, S.K.-P. moved that the Court of Appeals do the following:

1. Require the use of initials of the children and biological parents in motions and briefs;
2. Seal the appendices and exhibits accompanying her Motion for Discretionary Review (these appendices include the trial court transcripts listed above); and
3. Seal any appendices or exhibits filed in the future by S.K.-P. and/or Respondent(s) before the court.

That motion was granted on February 17, 2016.

On December 11, 2017, the Supreme Court Deputy Clerk issued a letter advising the parties that the documents sealed by the Court of Appeals remained sealed and that the trial court records listed above in Section II would not be posted to the Court's website but would be open to the public. The letter invited the parties to "make a motion to redact or

seal specific documents within the case file.” S.K.-P. moved to seal the entirety of the trial court records on December 15, 2017. No party, non-party, or amicus curiae opposed that motion.

On January 18, 2018, the Supreme Court Deputy Clerk issued a letter confirming that the three requests addressed to and granted by the Court of Appeals remained in effect, including sealing of appendices to S.K.-P’s motion for discretionary review. The letter also indicated that the remaining portion of the motion (i.e., sealing of trial court records) would be addressed in the Court’s opinion and invited the parties to submit “supplemental briefing on the issue of whether trial court records contained in the appellate file in dependency cases should be sealed.”

The Court consolidated S.K.-P.’s case with *In re Dependency of E.H.*, Cause No. 94798-8. All the parties in that case (Petitioner R.R., Respondent State Department of Social and Health Services, and Respondent CASA) filed a joint motion to seal on January 24, 2018.

#### **IV. ARGUMENT**

##### **A. Authorities Support Sealing Dependency Court Records**

Statutes, case law, and court rules all provide authority for sealing of dependency court records when a case is on appeal. Recognizing the sensitivity and privacy of documents related to dependency matters, RCW 13.50.100(2) requires that dependency court records be kept confidential

(“Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.”). RCW 13.50.010(b), (c), and (d) defines “juvenile justice or care agency,” “official juvenile court file” and “records,” and allows access to juvenile court records only under certain delineated circumstances.

However, several decades ago, in a case involving multiple parties and non-parties who affirmatively petitioned the Court to allow public access to dependency court proceedings, this Court held that

The confidentiality requirement of RCW 13.50.100 governs only the handling of juvenile justice or care agencies... The statutory definitions for records and files...refer only to the juvenile court and do not mention appellate records. ... RCW 13.34.110 and RCW 13.50 do not apply to appellate proceedings, and the records, briefs, and arguments in an appellate review of a dependency determination are open to the public unless a motion is granted under GR 15 or *Ishikawa* to close the proceedings.<sup>2</sup>

*In re Dependency of J.B.S.*, 122 Wn.2d 131, 136, 140, 856 P.2d 694, 697, 699 (1993).

*J.B.S.* was decided before changes to GR 15, but the relevant requirements remain the same: GR 15(c)(2)(A) permits sealing or redaction of court files and records when permitted by statute, and GR

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<sup>2</sup> *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982).

15(c)(2)(F) permits sealing or redaction under “other identified compelling circumstances.”

In *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982), this Court laid out the factors to be considered in deciding whether to redact or seal records. A court must balance the public’s right to access to court proceedings (Const. art. I, § 10) against other interests, such as privacy of the litigants. But the threshold determination is whether a proceeding at issue even implicates the public trial right. That determination is made by asking whether by “experience and logic,” the substance of the hearing should be open to the public. *State v. Sublett*, 176 Wn.2d 58, 73, 292 P.3d 715 (2012). In *In re Dependency of J.B.S.*, this Court declined to address the issue of “whether public access is constitutionally mandated in juvenile dependency proceedings...” 122 Wn.2d 131 at 138. If Const. art. I, § 10 does not apply to dependency proceedings, then analysis of *Ishikawa* factors is not necessary.<sup>3</sup>

Even if this Court has not explicitly addressed whether Const. art. I, § 10 applies to dependency proceedings, an analogous case raising the same

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<sup>3</sup> Nonetheless, in case the Court deems an *Ishikawa* analysis relevant, it is provided below in Section IV.B.

types of concerns involving juveniles does explicitly address this issue. *State v. S.J.C.*, 183 Wn.2d. 408, 352 P.3d 749 (2015). Applying the *Sublett* “experience and logic” test, this Court upheld sealing of juvenile court records of a juvenile offender without applying *Ishikawa, supra*. The Court ruled that sealing of juvenile offender records was appropriate solely on statutory grounds without an *Ishikawa* analysis, and that “public access to juvenile court records” does not “enhance the competing concerns of public safety and accountability.” 183 Wn.2d at 435, n. 7.

Similarly, in dependencies, the balance of interests weighs in favor of sealing, not opening records to the public. Children are involuntarily placed in dependency proceedings by the actions of adults and have done nothing to put themselves in the public eye. Like juvenile offender proceedings, dependency proceedings can involve intensely private information about mental health diagnoses, special education eligibility, or personal hygiene, for example. As in proceedings involving juvenile offenders, public availability of information about dependency can cause embarrassment and even lead to loss of opportunities like housing and educational opportunities. *See State v. S.J.C.*, 183 Wn.2d 408, 432, 433.

S.K.-P. agrees with the argument made in the consolidated case of *In re Dependency of E.H.* that Const. art. I, § 10 does not apply to juvenile

records, and that dependency records, like juvenile offender records, must be sealed. Joint Motion to Seal Appendices to Court of Appeals Motion for Discretionary Review, filed January 24, 2018.

**B. *Ishikawa* Factors Support Sealing Dependency Court Records**

In the alternative, should the Court decide that Art. I, § 10 does apply to dependencies, an analysis of the five *Ishikawa* factors also favors sealing the records in this case. *Ishikawa*, 97 Wn.2d at 37-39. The factors favor sealing the dependency court records in this case, but also generally in appellate proceedings addressing dependencies.

1. S.K.-P shows a strong need for sealing her dependency court records. S.K.-P., and all children involved in appellate proceedings regarding dependency, have a strong interest in sealing dependency court information. By their nature, dependency courts deal with information about children's private family lives during a traumatic period when their parents are accused of abusing or neglecting them. Disclosure of this sensitive information would be detrimental to children. The transcripts of the dependency court proceedings, for example, typically contain information about children's mental and physical health, abuse or neglect allegations, school performance, and medical and psychiatric treatment. S.K.-P's dependency court records address her relationships with her family, the physical and mental health impact of her experience in

dependency, and family conflict. The clerk's papers contain information about the abuse and neglect allegations and their personal impact on S.K.-P. *See, e.g.*, Clerk's Papers, 7-16, 18-24.

2. No party or non-party objected to sealing. Any opponents of sealing have been given an opportunity to object. Unlike in *S.J.C., supra*, no party, amicus curiae, or non-party opposed sealing in this Court or in the Court of Appeals. The Respondent supports this motion, and it joined E.H.'s motion to seal in the consolidated case. Joint Motion to Seal Appendices to Court of Appeals Motion for Discretionary Review and Responses.

3. Sealing is the least restrictive means available to protect the interests at stake and will be effective. Redaction could remove identifying information, but could not remove private details. (*See* Section IV.B.1.). Furthermore, extensive information about this case is already available to the public: hearings held in this Court and the court of appeals; appellate pleadings; and the index of Exhibits to the Motion for Discretionary Review. These documents provide extensive information about the proceedings below. The same is true in all dependency matters on appeal.

4. Weighing the competing interests and consideration of alternative methods of protecting privacy support sealing. S.K.-P. has a strong interest

in the privacy of the trial court record, and the general public does not have an interest in knowing the excruciatingly private details of her family life. S.K.-P. has the spotlight shining on her because of this case—but she respectfully requests that it shine where it is needed, not onto private details of her family life. Redacting identifying names would not satisfy her privacy interest if other information about her living situation and her family life remained open to the public. *See, e.g., State v. A.G.S.*, 182 Wn.2d 273, 277, 340 P.3d 830, 832 (2014) (policy of confidentiality in juvenile court is “designed to protect the privacy of the juvenile’s personal and family matters. [citation omitted].”). Providing only hard copies, rather than posting trial court records on the Court’s website, might reduce public access, but does not suffice to protect children’s privacy interest. The dependency court records that S.K.-P. requests be sealed contain private information that sheds no light on any issue or information that the public has a legitimate interest in knowing.

5. The order is no broader in application or duration than necessary. Dependency court records are voluminous; given the extensive information contained therein about children’s personal lives, it is not feasible to redact these records rather than filing them under seal. The Clerk’s Papers in this case alone are nearly 400 pages long. The

dependency court records must be sealed permanently in order to protect S.K.-P.'s privacy interest; that interest existed at the commencement of the dependency proceeding, and will continue for the rest of her life. All *Ishikawa* factors support sealing S.K.-P.'s dependency records.

**C. Rule 15(c)(2)(F) Supports Sealing**

The *Ishikawa* factors analyzed above also support sealing based on Rule 15(c)(2)(F) because a range of “compelling factors” support sealing.

**D. In the Alternative, S.K.-P. Requests That She Be Permitted to Redact Her Dependency Court Records**

Redaction of S.K.-P.'s name and others' names would not fully meet her need for privacy. Nonetheless, if this Court finds that any information in the record must be disclosed to the public, she requests in the alternative that she be permitted to redact those records pursuant to Rule 15(c)(2)(F), as her privacy interests constitute a “compelling reason” for redaction.

**V. CONCLUSION**

For the foregoing reasons, S.K.-P. respectfully requests that all her trial court records be sealed. In the alternative, S.K.-P. requests that if the motion to seal is denied, the Court allow her to redact identifying information from all trial court records and re-file them.

RESPECTFULLY SUBMITTED this 5th day of February, 2018.

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## CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on February 5, 2018, I caused a true and correct copy of the SUPPLEMENTAL BRIEF OF PETITIONER S.K.-P. IN SUPPORT OF MOTION TO SEAL to be served via electronic mail on the following:

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## Transmittal Information

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