

FILED
SUPREME COURT
STATE OF WASHINGTON
6/22/2018 3:36 PM
BY SUSAN L. CARLSON
CLERK

No. 95959-5

SUPREME COURT OF THE STATE OF WASHINGTON

JANELLE RIDDLE, YAKIMA COUNTY CLERK

Petitioner,

v.

DAVID A. ELOFSON, KEVIN S. NAUGHT, MICHAEL G.
McCARTHY, DOUGLAS L. FEDERSPIEL, BLAINE G. GIBSON,
RUTH E. REUKAUF, GAYLE M. HARTHCOCK, and RICHARD H.
BARTHELD, Judges of the Superior Court of the State of Washington for
Yakima County

Respondents.

**RESPONDENT YAKIMA COUNTY SUPERIOR COURT JUDGES'
RESPONSE TO PETITION AGAINST STATE OFFICERS**

WILLIAM D. HYSLOP, WSBA #11256
JENNIFER V. HANSON, WSBA #35476
TORI J. OSLER, WSBA #49117
Attorneys for Respondents

LUKINS & ANNIS, P.S.
1600 Washington Trust Financial Center
717 W Sprague Ave
Spokane, WA 99201-0466
Telephone: (509) 455-9555
Facsimile: (509) 747-2323

I. IDENTITY OF RESPONDENTS

Respondents are the Judges for the Superior Court of Yakima County, State of Washington. Individually, these Judges are Kevin S. Naught, Department 1; Michael G. McCarthy, Department 2; Douglas L. Federspiel, Department 3, Blaine G. Gibson, Department, 4; David A. Elofson, Presiding Judge, Department 5, Ruth E. Reukauf, Department 6, Gayle M. Harthcock, Department 7; and Richard H. Bartheld, Department 8 (collectively referred to herein as “Judges”).

II. DECISION ABOUT WHICH REVIEW IS SOUGHT

Under the authority of RCW 36.23.020, the Judges issued an order dated May 4, 2018 ordering that Janelle Riddle, Clerk of the Court for Yakima County, secure and provide proof of a supplemental bond in the amount of \$200,000.

Petitioner’s Petition opposes the May 4, 2018 order. The Judges ask that her Petition be denied.

III. ISSUES PRESENTED FOR REVIEW

1. Do the Judges have authority under RCW 36.23.020 to issue an order setting an additional bond amount at \$200,000?
2. Must claims be made against the Clerk of the Court’s bond before the Judges are authorized to order an additional bond?

3. Is Petitioner entitled to notice and an opportunity to be heard before the Judges may act pursuant to RCW 36.23.020?

IV. STATEMENT OF THE CASE

This matter is first filed before this Court seeking a writ of prohibition.

Petitioner was elected as Clerk of the Court for Yakima County for the term of January 1, 2015, through December 31, 2018. *Declaration of Janelle Riddle Supporting Petition Against State Officers, Motion to Stay Judges' Order and Motion for Accelerated Consideration of Motion to Stay*, dated June 14, 2018 (“*Riddle Decl.*”), ¶ 2. The amount of the bond Petitioner was required to obtain at the time that she took office was \$200,000. *Riddle Decl.* at ¶ 3.

For the years 2015, 2016, and 2017, the State Auditor issued reports outlining deficiencies in the practices of the Clerk’s Office. The 2017 report was entitled “Fraud Investigation Report” and was published on April 23, 2018. All three reports cited inadequate financial controls in the Clerk’s Office. Additionally, the reports detail specific deficiencies which have lead to the misappropriation of funds of \$13,029 in cash receipts, and “questionable transactions” in the amount of \$2,290; the reports on that issue alone, recommend seeking recovery of at least \$3,599 in misappropriated funds and related investigation costs of \$13,432.

Declaration of the Honorable Judge David Elofson in Support of Respondents Response to Petitioner’s RAP 8.3 Motion to Stay Order and RAP 18.12 Motion for Accelerated Consideration of Motion to Stay, dated and filed June 17, 2018 (“Elofson Decl.”), Ex. E.

Additionally, the reports state estimated losses of \$206,500 for the Clerk’s failures to timely submit documentation for reimbursement of funds related to child support enforcement under RCW 26.23.033, *Elofson Decl.*, Ex. C. The State Auditor’s 2017 report expressly recommended making a claim against Petitioner’s bond. *Elofson Decl.*, Ex. E.

The Judges lack confidence that the existing \$200,000 bond is large enough in amount to cover losses sustained during Petitioner’s tenure as County Clerk. *Elofson Decl.* ¶ 24. Accordingly, on May 4, 2018, the Judges entered an order directing Petitioner to provide a supplemental bond. *Elofson Decl.* ¶¶ 3, 25. Pursuant to the terms of the order, Petitioner was required to (1) “secure and provide proof of a supplemental bond in the sum of \$200,000,” (2) provide proof of the bond on or before June 6, 2018, (3) provide proof of the bond to any Judge or the Director of Court Services, and (4) maintain the bond for the remainder of Petitioner’s current term as Clerk. *Elofson Decl.* at ¶ 3 and Ex. A. A copy of the May 4, 2018 order was served to Petitioner, along with a letter, on May 7, 2018. *Id.* at ¶ 4 and Ex. B.

Petitioner failed to request additional time, take action, or secure the additional bond. *Elofson Decl.* ¶ 26.

V. ARGUMENT¹

A. The May 4, 2018 Order is Authorized by RCW 36.23.020.

Official bonds are regulated by the Official Bonds 1890 Act. RCW 42.08.060-.180. County Clerk official bonds are further controlled by RCW 36.23.020 and 36.16.050.

New bond may be required. When the judge or judges of any court of a majority of them, **believe** that the clerk of the court does not have a good and sufficient bond on file, or **that the bond is not large enough in amount**, such judge or judges **shall enter an order** requiring him or her, within such time as may be specified in the order, to execute and present to them a good and sufficient bond, **in such sum as may be fixed by the order**. In case of his or her failure to file the bond within ten days from the expiration of the date fixed the judge or judges **shall** declare the office vacant.

RCW 36.23.020 (*emphasis added*).

Washington law undeniably gives judges the power and discretion to determine whether or not the bond is large enough in amount. In fact, RCW 36.23.020 *compels* entry of an order for an additional bond amount where the judges believe the current amount to be not large enough. RCW 36.23.020. The amount of the bond is required to be “in such sum as may

¹ Petitioner provides no “Argument” section in her Petition Against State Officer and no express arguments and authority are offered. Accordingly, the present response is based upon statement made in the Petition Against State Officers and arguments and authority set forth in Petitioner’s Motion to Stay Order Directing Clerk to Provide Supplemental Bond.

be fixed by the order.” *Id.* No further guidance or requirements as to the appropriate amount of the bond is provided.

Petitioner cites to RCW 36.16.050 as support for her position that the May 4th order exceeds the Judges’ authority. RCW 36.16.050 is not controlling under the present facts. RCW 36.16.050 explains “[e]very county official **before he or she enters upon the duties of his or her office** shall furnish a bond....” (*emphasis added.*) The statute goes on to limit the amount set for a Clerk’s bond and explains that it may not exceed the amount required for the treasurer of the same county (treasurer’s bonds are restricted to a maximum amount of \$250,000). RCW 36.16.050.

Statutes must be enforced in accordance with their plain meanings. *State v. Armendariz*, 160 Wash. 2d 106, 111, 156 P.3d 201 (2007). By its plain terms, RCW 36.16.050 relates to bonds set *at the time that an official takes office*. RCW 36.16.050 does not comment on bonds required later, nor does it seek to limit the authority given to judges by RCW 36.23.020 especially when the conduct of the elected official prompts the need for the increased protection for the county and the public, as is the case here.

Likewise, RCW 36.23.020 does not include language that limits its applicability. *See* RCW 36.23.020. Instead, RCW 36.23.020 gives *express* authority to judges to determine the amount of the additional bond they believe to be sufficient. RCW 36.23.020.

With potential claims already amounting to more than \$200,000, the original bond is not adequate in amount to cover the outstanding liability and any additional claims which may arise during Ms. Riddle's tenure as County Clerk. See *Elofson Decl.*, ¶¶ 23 and 24. "The primary purpose of a bond is to insure third parties against the mistakes and trespasses of officers when officially engaged." *Jahns v. Clark*, 138 Wn. 288, 295, 244 P. 729 (1926); *Greenius v. American Sur. Co. of New York*, 92 Wn. 401, 407, 159 P. 384 (1916). "An official bond is a promise to the state and to all third parties that, in the execution of legal duty, the officer will do it well and without hurt to strangers to his process." *Id.* In order to carry out the intent of these official bonds, it is imperative that the bond be large enough to cover potential damages. If not adequate, taxpaying citizens and the county are left to suffer without any means of protection.

In the present matter, the Judges' belief that the bond is not large enough in amount is supported by that facts detailed in the State Auditor's Reports. RCW 36.23.020 gives the Judges the authority to order an additional bond in an amount that they believe to be large enough in amount. Only if Petitioner fails to act, would RCW 36.23.020 require her position to be declared vacant.

B. Whether the Current Bond is Impaired is not Relevant.

Petitioner further argues that the Judges had no authority to order an additional bond because Petitioner's current bond is unimpaired.

Notably, Petitioner cites no authority for this proposition.

There is no requirement in RCW 36.23.020 that dictates under what circumstances judges may believe a bond not to be large enough in amount. So long as a judge or judges "believe" that the bond is not large enough, they are required to issue an order for an additional bond. RCW 36.23.020.

Moreover, there is no mandate that the Judges justify or support their belief regarding the amount of the bond. The fact that the Judges in this instance chose to provide support for their belief in the May 4, 2018 letter, only buttresses the argument that the May 4th order was based upon a good faith belief that the amount of Petitioner's bond is not large enough.

With no support for her proposition, Petitioner's argument that the bond must be impaired before action may be taken pursuant to RCW 36.23.020 should be disregarded.

C. Petitioner was not Entitled to Notice and an Opportunity to be Heard.

Petitioner complains that she was not given notice and an opportunity to be heard prior to the date that the May 4, 2018 order was

entered. She alleges that the failure to provide her with notice and an opportunity to be heard infringed upon her due process rights. Petitioner's due process claim requires her to have a property interest in her elected position. *See Danielson v. City of Seattle*, 108 Wn.2d 788, 795 (1987) (Plaintiff's due process claim is dependent upon him having a property right in continued employment with the police department.)

It is astounding under the circumstances here the Petitioner appears to put herself before the protection of the public she was elected to serve. She claims a property interest in her position, but neither responds to the Judges' order nor announces any willingness to comply with the posting of the required bond.

Even so, elected positions do not impart a property right upon the elected official. *Taylor v Beckham*, 178 U.S. 548, 600 (1900); *see also Snowden v. Hughes*, 321 U.S. 1, 7 (1944) (Political office carries no property interest); *Wilson v. North Carolina*, 169 U.S. 586, 595 (1898) (Suspension of an elected official does not violate due process because no property right is implicated). Unless such a property right has been expressly conveyed by the state, none exists. *Taylor*, 178 U.S. at 600 While the United States Supreme Court has not provided express guidelines concerning *how* a state imparts a property right upon an elected official, we know that simply defining the term of office is insufficient.

Id. at 599. Washington case law and statutes do not reveal any property right in an elected position. Notably, Petitioner cites no authority to support her claim that she has a property interest in her position.

Aside from any Constitutional right to notice and an opportunity to be heard, Petitioner likewise, is not entitled to notice through any procedural safeguards. Unlike RCW 42.08.110 which conveys a procedural requirement of a show cause hearing upon County Commissioners acting to review the sufficiency of a bond, RCW 36.23.020 imposes no such requirement upon the Judges here. RCW 42.08.110 requires County Commissioners to review the sufficiency of a bond upon the occurrence of specific events. In that statute, the Legislature expressly required that the County Commissioners summon the affected official upon not less than five days notice to “show cause why he or she should not execute an additional official bond.” RCW 42.08.110.

But the Legislature imposed no such similar requirement upon the judges of the superior court when they act pursuant to RCW 36.23.020.

It is fundamental that that a court’s duty in interpreting statutes is to give effect to the unambiguous language selected by the Legislature. *Stater v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Inherent in this process is that courts may not add language to or remove language from

the statute. *Id.* Here, the language of RCW 36.23.020 is unambiguous. The Court may not add language requiring additional actions by judges where no such requirement is indicated by the statute and, thus, the Petitioner is not entitled to such additional requirement by Constitutional mandate.

V. CONCLUSION

In light of Petitioner's inability to demonstrate any debatable issues before this Court, she is not entitled to a Writ of Prohibition. The Judges of the Yakima County Superior Court should not be enjoined from taking further action as required by RCW 36.23.020. The Court's ruling granting a stay dated June 18, 2018, should also be vacated.

Respectfully submitted this 22nd day of June, 2018.



WILLIAM D. HYSLOP, WSBA #11256
JENNIFER V. HANSON, WSBA #35476
TORI J. OSLER, WSBA #49117
Attorneys for Respondents

LUKINS & ANNIS PS

June 22, 2018 - 3:36 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95959-5
Appellate Court Case Title: Janelle Riddle v. David A. Elofson, et al.

The following documents have been uploaded:

- 959595_Answer_Reply_20180622153212SC856182_1071.pdf
This File Contains:
Answer/Reply - Other
The Original File Name was Response to Petition.pdf

A copy of the uploaded files will be sent to:

- jhanson@lukins.com
- joseph.brusic@co.yakima.wa.us
- sclem@co.douglas.wa.us
- tosler@lukins.com

Comments:

Sender Name: William Hyslop - Email: whyslop@lukins.com
Address:
WASH TRUST FIN CTR # 1600
717 W SPRAGUE AVE
SPOKANE, WA, 99201-0466
Phone: 509-455-9555

Note: The Filing Id is 20180622153212SC856182