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Sep 26, 2016  
Court of Appeals  
Division I  
State of Washington

NO. 73815-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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KING COUNTY, ET AL,

Respondents

v.

DONNA ZINK,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SAMUEL S. CHUNG

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**BRIEF OF KING COUNTY RESPONDENTS**

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## **I. ISSUES ON APPEAL**

1. Is Ms. Zink entitled to appellate review where the trial court has not ruled as to all parties and has not issued a final judgment?
2. Is Ms. Zink entitled to costs from a nominal party -- King County -- on appeal?

## **II. STATEMENT OF THE CASE**

### **A. Substantive Facts**

Beginning in July 2014, Donna Zink requested thousands of documents about sex offenders from the King County's Sheriff's Office and the King County Prosecuting Attorney's Office. Sub. 33, Supp. CP \_\_ (¶¶4-5 and Att. A-C). Ms. Zink first requested all SSOSA evaluations and victim impact statements associated with sex crimes. Sub. 33, Supp. CP \_\_ (¶7 and Att. A). Ms. Zink then asked for any and all sex offender registration forms and for a list of all sex offenders registered in King County. Sub 33, Supp. CP \_\_\_\_ (¶8 and Att. B).

King County chose to release the documents to Ms. Zink, including SSOSA evaluations and sex offender registration forms. Sub. 75, Supp. CP \_\_ (¶¶6, 40); Sub. 76, Supp. CP \_\_ (¶¶3-6). To also ensure that the persons who are the subject of those documents first had an opportunity to be heard in court, King

County gave them third party notice. Sub. 75, Supp. CP \_\_ (¶7);

Sub. 76, Supp. CP \_\_ (¶¶7-15).

The Prosecuting Attorney's Office notified individual offenders that it intended to give Ms. Zink their SSOSA evaluations as follows:

It is our intent to release the evaluation pursuant to our reading of the Public Records Act. The purpose of this letter is to provide you with notice and an opportunity, per RCW 42.56.50 and .540, to seek an [court] order....

Sub. 75, Supp. CP \_\_ (¶10).

Likewise, for sex offender registration documents, the Sheriff's Office announced that it planned to give Ms. Zink copies.

**Our office plans to release your registration form(s) and the list unless our Office receives a court order that prevents us from releasing them. We plan to release all information on the form except your social security number which will be redacted.**

Sub. 76, Supp. CP \_\_ (§4 and Att. A).

King County began giving Ms. Zink the documents she requested -- three initial installments of documents, plus exemption logs for redactions, in October 2014. Sub. 75, Supp. CP \_\_ (¶¶21-28). Shortly thereafter, various parties began securing court orders that prevented King County from releasing some, but not all, of the documents. Sub. 75, Supp. CP \_\_ (¶¶29-37).

King County continued to provide Ms. Zink with documents that it was not enjoined from releasing. *Id.* By June 2015, King County had made some eight installments of records to Ms. Zink plus exemption logs for any redactions. Sub. 75, Supp. CP \_\_\_ (¶¶38-39 and Att. A).

**B. Procedural Facts**

This case began as two separate class actions, and one individual action brought by Brandon Zimmerman, which he later dismissed voluntarily. CP 1001-1002. The classes (of level I offenders, and level II and III offenders combined) sought identical relief -- to stop King County from giving Ms. Zink the records pertaining to them. CP 1-17; CP 1037-1051.

King County moved to consolidate these actions into a single case on December 8, 2014. CP 183-190. The Honorable Mariane Spearman, the Chief Civil Presiding Judge, granted that motion on December 18, 2014. CP 201-203. With that ruling, the Honorable Samuel Chung presided over the consolidated case.

**1. Level I Offenders.**

Commissioner Nancy Bradburn-Johnson ruled that the level I offender class was likely to prevail, and issued a temporary restraining order on November 7, 2014. CP 22-25. The Honorable

Samuel Chung issued a preliminary injunction, on November 20<sup>th</sup>. CP 143-149. Judge Chung granted the class's motion to certify on December 7, 2014. CP 154-158. Judge Chung issued a permanent injunction on behalf of the class of level I offenders on June 19, 2015. CP 922-923.

**2. Level II and III Offenders**

On December 1, 2014, the Honorable Henry Judson ruled that the class of level II and III offenders had established a likelihood of prevailing on the merits, and issued a temporary restraining order barring King County from giving Ms. Zink records pertaining to level II and III sex offenders. CP 1052-1054. Judge Chung issued a preliminary injunction on their behalf on January 20, 2015. CP 365-368. That same day, Judge Chung also granted the class's motion for certification. CP 369-374.

**3. Ms. Zink's Summary Judgment Motion.**

Ms. Zink moved for summary judgment against King County, arguing that by providing third party notice, King County had violated the Public Records Act. Judge Chung denied Ms. Zink's motion on July 2<sup>nd</sup>, 2015. CP 925. Ms. Zink then filed a notice of appeal on July 18<sup>th</sup>, 2015. CP 926-1054.

**4. Current Case Status.**

Judge Chung has not yet received the anticipated motion of the class of level II and III offenders for a permanent injunction. Neither has Judge Chung issued a final order terminating the case, or issued findings that there is no reason to delay.

**III. ARGUMENT**

**A. Ms. Zink Is Not Entitled to Appellate Review.**

Where a trial court has only partially resolved a case, ruling on some but not all parties, there is no “final judgment” unless the court also enters an express order of final judgment supported by findings that there is no reason to delay the appeal. CR 54 (b). Absent this order of final judgment, parties are not generally entitled to appellate review. RAP 2.2 (a) (1) and (3).

In any case with multiple parties or multiple claims for relief...an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay.

RAP 2.2 (d).

Here, Judge Chung has not issued an express order of final judgment or findings of fact. No party asked Judge Chung to do so.

Neither did Ms. Zink move for discretionary review on appeal. Ms. Zink's appeal is premature.

Judge Chung should be allowed to complete his work by ruling on the anticipated motion for a permanent injunction by the class of levels II and III offenders. That way, the Court of Appeals will have a complete record for review.

Further, Judge Chung should be allowed to revise the current injunctions in light of the April 2016 decision of the Washington State Supreme Court in *John Doe A. v. WA State Patrol*, 185 Wn. 2d 363 (2016). That decision, issued subsequent to Judge Chung's rulings, clarified the unknown. It mandated for the first time that sex offender registration documents are not exempt from release. Ironically, if Ms. Zink had simply asked Judge Chung in April to revise the injunctions in lieu of *John Doe A*, he would have undoubtedly done so, and King County would have resumed providing her with sex offender registration documents pertaining to both classes.

**B. Ms. Zink Is Not Entitled to Costs from King County.**

In her appeal brief, Ms. Zink does not challenge Judge Chung's denial of her summary judgment motion against King County, nor does she assign any error to King County. Consequently, King County is a nominal party only.

Yet, in her appeal brief Ms. Zink asks the Court to award her costs against all of the respondents, presumably including King County. However, a nominal party may not be required to pay costs. RAP 14.2.

**IV. CONCLUSION**

King County asks the Court to remand this case to the Superior Court so that Judge Chung can amend the injunctions in light of the April *John Doe A* decision, rule on whether level II and III offenders are entitled to a permanent injunction, or, enter an order of final judgment supported by findings. King County also asks the Court to rule that Ms. Zink is not entitled to an award of costs from King County.

Respectfully submitted this 26<sup>th</sup> day of September, 2016 by



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**Certificate of Service**

I certify on September 26, 2016, I caused true and correct copies of the foregoing via email:

Supplemental Designation of Clerk's Pages, Brief of King County Respondents to all parties.

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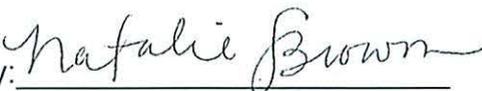
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