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JUN 18 2018

WASHINGTON STATE  
SUPREME COURT

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JANELLE RIDDLE, YAKIMA  
COUNTY CLERK,

Petitioner,

v.

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

Respondents.

No. 95959-5

RULING GRANTING STAY

Yakima County Clerk Janelle Riddle moves to stay a Yakima County Superior Court order requiring Ms. Riddle to post an additional bond by June 18, 2018, or vacate her elected office, pending this court's decision on Ms. Riddle's petition for a writ of prohibition, in which she seeks to enjoin the superior court's order, naming as respondents the court's individual judges. Ms. Riddle also moves for accelerated consideration of her motion for a stay. The motion for accelerated consideration and the motion for a stay are granted for reasons explained below.

Ms. Riddle was elected county clerk in 2014. Her term of office started on January 1, 2015, and ends on December 31, 2018. As required by statute, Ms. Riddle

obtained an official bond in the maximum amount of \$200,000, effective January 1, 2015, and expiring on January 1, 2019. *See* RCW 36.16.050(3), (8)(b).

During her term of office, Ms. Riddle became embroiled in controversies that need not be related in detail here. *See generally In re Recall of Riddle*, 189 Wn.2d 565, 403 P.3d 849 (2017). On May 4, 2018, seven of Yakima County's nine superior court judges signed an order requiring Ms. Riddle to obtain, by no later than June 6, 2018, a supplemental bond in the amount of \$200,000. The judges cited as authority RCW 36.23.020, a provision that authorizes superior court judges to order the clerk of their court to obtain a supplemental bond. Also on May 4, 2018, Presiding Judge David Elofson sent a letter to Ms. Riddle explaining the basis for ordering the supplemental bond: alleged financial liabilities potentially exceeding the current bond amount. Judge Elofson advised Ms. Riddle that if she did not obtain the supplemental bond by June 6, 2018, the court would declare her office vacant.

Yakima County Prosecuting Attorney Joseph Brusich appointed Douglas County Prosecuting Attorney Steven Clem to represent Ms. Riddle in relation to the superior court's order. On June 5, 2018, Mr. Clem wrote a letter to Mr. Brusich, asserting that the superior court acted without authority when it ordered Ms. Riddle to obtain the supplemental bond, that the June 6 deadline was statutorily improper and that the correct 10-day compliance deadline under RCW 36.23.020 would be June 18, and that declaring Ms. Riddle's elected office vacant would violate due process principles. On June 6, Mr. Clem sent another letter to Mr. Brusich, arguing that the supplemental bond would be prospective only, and therefore the supplemental bond would not provide enhanced coverage for any alleged misconduct preceding issuance of the bond.

On June 13, 2018, Presiding Judge Elofson sent a letter to Mr. Clem, adhering to the position that Ms. Riddle must provide the supplemental bond by June 18.<sup>1</sup>

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<sup>1</sup> The letter is erroneously dated June 18, 2018.

In the mid-afternoon of June 14, 2018, Ms. Riddle filed the instant motion for a stay and motion for accelerated consideration of the requested stay in this court, together with her original action for a writ of prohibition. Respondents filed their answer to the motions for stay and accelerated consideration on the morning of June 18, the date of this ruling. The petition for writ of prohibition has been set on my July 5, 2018, motion calendar for purposes of an initial disposition under RAP 16.2(d). Now before me for determination is the motion for accelerated consideration and the motion for a stay.

This court “has authority to issue orders, ... in an original action under Title 16 of these rules, to insure effective and equitable review, including authority to grant injunctive or other relief to a party.” RAP 8.3. The court will ordinarily condition the order on furnishing a bond or other security. *Id.* In order to qualify for injunctive relief, a moving party must demonstrate that the review presents debatable issues and that the injunction is necessary to preserve the fruits of the review if it is successful. *Shamley v. Olympia*, 47 Wn.2d 124, 286 P.2d 702 (1955) (involving injunctive relief in aid of the court’s appellate jurisdiction). The “debatability” standard contemplates a limited inquiry, not an extensive assessment of the merits. *Id.* at 127; *see also Kennett v. Levine*, 49 Wn.2d 605, 607, 304 P.2d 682 (1956).<sup>2</sup> The “necessity” requirement involves an

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<sup>2</sup> Although RAP 8.1(b)(3) applies only to delayed enforcement of trial court decisions, it is instructive by analogy. That rule directs the appellate court to “(i) consider whether the moving party can demonstrate that debatable issues are presented ... and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed.” Petitioners reference the “sliding scale” test set forth in *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 716 P.2d 956 (1986). But in response to that decision RAP 8.1(b)(2) was amended in 1990 to make clear that the rule applied to intangible personal property, and subsection (b)(3) was added to address stays of judgments other than money judgments or judgments affecting property. The drafters’ comment to RAP 8.1(b)(3) notes specifically that the above standard was selected to modify the *Sierracin* “sliding scale” test. As the comment explains, “the standard has been rewritten to require that the appeal present ‘debatable’ issues (without regard to the strength of the issues).”

inquiry into the equities of the situation. *Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985).

Ms. Riddle's original action turns on an issue of first impression concerning superior court judges' authority under RCW 36.23.020 to order a clerk of the court to obtain a supplemental bond above the maximum bond amount set by RCW 36.16.050. The former statute authorizes a supplemental bond if the existing bond is inadequate, RCW 36.23.020, but the latter statute sets a maximum bond amount, which is the current level of Ms. Riddle's bond (\$200,000). RCW 36.16.050(3), (8)(b).

The judges here debatably argue that there is no conflict between the statutes: RCW 36.16.050 sets a threshold bond amount that may be supplemented in accordance with RCW 36.23.020 if the need arises. But to date there is no decisional authority that has adopted this interpretation. It may not be the best use of judicial resources at this threshold juncture to take a conclusive position on this question of first impression.

Furthermore, this matter is particularly urgent because the challenged order requires Ms. Riddle to post the supplemental bond today or her elected office is deemed vacated. Though the merits of Ms. Riddle's interpretation of RCW 36.16.050 and RCW 36.23.020 may not be obvious, absent a stay, there is no apparent means of preserving the fruits of a successful original action if Ms. Riddle's office is declared vacant for failure to post the bond while this matter is pending.

Another equitable consideration is the lack of any imminent or definitive action against Ms. Riddle's current bond. The judges may be correct that actual impairment of the existing bond is not a predicate to ordering a supplemental bond under RCW 36.23.020, but the judges' briefing plainly indicates that the claimed liabilities are estimated in multiple instances, potentially actionable, and not imminent. Ms. Riddle has also identified a potentially debatable question whether the supplemental bond will cover already existing liabilities. Balancing the equities, a

temporary stay will not prejudice the judges' opposition to Ms. Riddle's original action. A stay of the judges' order will maintain the status quo until I decide whether to retain the original action in this court, transfer it to a superior court, dismiss it outright, or take some other suitable action. RAP 16.2(d).

Accordingly, the motions for accelerated consideration and for a stay are granted; therefore, the superior court's order requiring Ms. Riddle to obtain a supplemental bond is stayed pending further order of this court.<sup>3</sup>

  
COMMISSIONER

June 18, 2018

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<sup>3</sup> Ms. Riddle need not post a bond for purposes of this stay.