IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

INDIGO REAL ESTATE SERVICES,	)	NO. 61831-8-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	published Opinion
ASHLEE ROUSEY,	)	
	)	
Appellant.	)	FILED: August 31, 2009
	)	

Leach, J. — In this case, we are asked to decide whether the superior court erred when it denied Ashlee Rousey's uncontested motion to redact her full name from the record of a dismissed unlawful detainer action publicly available through the Superior Court Management Information System (SCOMIS), the statewide computer system managed by the Administrator for the Courts. We conclude that the superior court erred. General Rule (GR) 15 and the factors set forth in Seattle Times Co. v. Ishikawa[1] provide the legal standard that a court must apply when ruling on a motion to redact court records. The court failed to apply this standard in deciding whether to redact Rousey's record in the SCOMIS index. Accordingly, we reverse and remand to the superior court to

[1] 97 Wn.2d 30, 640 P.2d 716 (1982).

apply the correct standard.

[2] RCW 59.18.580(1) provides, "A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence."

[3] Indigo did not participate in this appeal. At this court's invitation, the

[4] In re Marriage of Treseler, 145 Wn. App. 278, 283, 187 P.3d 773 (2008) (citing Rufer v. Abbott Lab4

[8] GR 31(c)(4). GR 15(b)(2) cross references the definition of "court record" in GR 31(c)(4).

[9] Washington Courts, http://www.courts.wa.gov/jis/ (last visited Aug. 11, 2009).

[10] Washington Courts, http://www.courts.wa.gov/jis?fa+jis.display &theFile=caseManagementSystems (last visited Aug. 11, 2009). JIS is "the primary information system for courts in Washington. It provides case management automation to appellate, superior, limited jurisdiction and juvenile courts." Washington Courts, http://www.courts.wa.gov/jis/

must weigh the identified privacy concerns against the public interest.[12] Among the six "[s]ufficient privacy or safety concerns that may be weighed against the public interest" listed in GR 15 is an "identified compelling circumstance . . . that requires the . . . redaction."[13] In this case, Rousey asserts that the potential impairment of her future rental opportunities constitutes such a circumstance.

The standard for redacting court records under GR 15(c)(2), however, must be harmonized with the five-part analysis in Ishikawa since any request to redact court records implicates the public's right of access to court records under article I, section 10 of the Washington State Constitution.[14] As the public's right of access "serves to enhance the basic fairness of the proceedings and to safeguard the integrity of the fact-finding process,"[15] this right "may be limited only to protect significant interests, and any limitation must be carefully considered and specifically justified."[16] In Ishikawa, our Supreme Court set forth five factors that a court must consider in deciding whether a motion to restrict access to court records meets constitutional requirements:

> 1. The proponent of closure and/or sealing must make some showing of the need therefor. In demonstrating that need, the movant should state the interests or rights which give rise to that need as specifically as possible without endangering those interests.

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[12] Treseler, 145 Wn. App. at 291.

[13] GR 15(c)(2)(F).

[14] State v. Waldon, 148 Wn. App. 952, 957, 962, 202 P.3d 325 (2009). Article I, section 10 provides, "Justice in all cases shall be administered openly, and without unnecessary delay."

[15] Dreiling v. Jain, 151 Wn.2d 900, 908-09, 931 P.3d 861 (2004).

[16] Dreiling, 151 Wn.2d at 904.

. . .

[17] Ishikawa, 97 Wn.2d at 37-39 (some alterations in original) (internal citations omitted) (quoting Federated Publ'ns, Inc. v. Kurtz, 94 Wn.2d 51, 62, 64, 615 P.2d 440 (1980)).

[18] Waldon, 148 Wn. App. at 960-61.

constitutional benchmark defined in Ishikawa. But it can be harmonized with Ishikawa to preserve its constitutionality." The court concluded that "GR 15 and Ishikawa must be read together when ruling on a motion to seal or redact court records."[20]

In sum, GR 15 authorizes courts to redact information in SCOMIS, and GR 15 and the Ishikawa factors together provide the legal standard for evaluating Rousey's motion to redact her name from the SCOMIS index.

We next consider whether the superior court applied the correct legal standard in denying Rousey's motion to redact. The record of the court's action on the motion consists of the court's oral ruling and two written orders, the order to redact or seal court record-GR15(c) and the order denying motion for reconsideration. It is unclear from examining the oral ruling and written orders whether the court applied GR 15 and the Ishikawa factors.

The court's oral ruling is ambiguous as to what standard it applied in denying the motion to redact. The verbatim transcript of the hearing shows that when Rousey requested redaction of the record of the unlawful detainer action on SCOMIS, the court stated that it did not believe that voluntary dismissal of a case provided a basis for her request. The court reasoned,

> [T]he parties may have stipulated to a dismissal, but I don't know why they dismissed it. And it may well be that . . . Ms. Rousey didn't, in fact, pay her rent or did some other thing that entitled the

[19] 148 Wn. App. 952, 967, 202 P.3d 325 (2009).
[20] Waldon, 148 Wn. App. at 967.

was legally correct and substantially just."

While written findings are not required when a motion to seal or redact is denied,[22] this case illustrates why it is advisable to make them. At best, the court's oral ruling and written orders are ambiguous as to the standard the court applied in deciding Rousey's motion to redact. Since we cannot determine whether the trial court used the correct standard, the appropriate remedy is remand to the trial court to apply it.[23]

Various amici ask that we reach the merits of Rousey's request, but a review of certain requirements under GR 15 and Ishikawa demonstrates why remand is more appropriate. GR 15(c)(2) and Ishikawa require written findings to support an order for redaction.[24] Here, the trial court made no findings. Nor was it presented with any evidence in the form of declarations, affidavits, or live testimony that would support findings of fact. Further, this court does not engage in fact finding.[25] Even if this was permitted, the record contains no evidence to weigh under GR 15 and the Ishikawa factors. We therefore decline to accept amici's invitation to address the merits of Rousey's need for redaction.

Amici have raised several issues, however, to which we provide the following considerations to facilitate proceedings on remand. We first note the

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[22] Treseler, 145 Wn. App. at 290.

[23] Waldon, 148 Wn. App. at 967 n.10.

[24] GR 15(c)(2); Ishikawa, 97 Wn.2d at 38.

[25] Edwards v. Morrison-Knudsen Co., 61 Wn.2d 593, 598-599, 379 P.2d 735 (1963) ("The function of ultimate fact finding is exclusively vested in the trial court.").

analytical framework regarding access to court records provided by our Supreme Court. In its rule-making capacity, the court has declared the policy and purpose of access to court records as follows:

> It is the policy of the courts to facilitate access to court records as provided by article I, section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article I, section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.[26]

Consistent with this policy, the court has identified by rule particular records and information to which access is restricted. These include certain health care and financial records filed in family law and guardianship cases.[27]

[26] GR 31.
[27] GR 22.
[28] GR 15; Rufer, 154 Wn.2d at 535, 549-50.

motion, we remand for application of the correct standard.

Reversed and remanded.

Leach, J.

WE CONCUR:

Dwyer, A.C.J.

Becker, J.