

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

KENT L. and LINDA DAVIS, et)
al.,)
) THURSTON COUNTY
Plaintiffs,) NO. 11-2-01925-7
)
vs.)
)
GRACE COX, et al.,)
)
Defendants.)
)
)

COURT'S RULING ON DISCOVERY MOTION

BE IT REMEMBERED that on February 23, 2012,
the above-entitled matter came on for hearing before the
HONORABLE Wm. THOMAS McPHEE Judge of Thurston County
Superior Court.

Reported by: Aurora Shackell, RMR CRR
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APPEARANCES

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1 THE COURT: I'm going to deny the motion for
2 discovery. And in explaining my reason, I'll begin
3 by first reviewing the process of this case so far.
4 This case was filed on September 2, 2011.
5 Fifty-nine days thereafter, this motion was filed,
6 within the time limits permitted by the legislature,
7 which is a 60-day time limit. The legislature, after
8 declaring that these motions must be brought within
9 60 days of filing the case, then declared that the
10 hearing must occur within 30 days of the filing of
11 the motion. The parties determined not to follow
12 that process and, instead, scheduled and rescheduled
13 this hearing on a number of different occasions until
14 we are here now on the 17th of February.

15 The statute goes on to say that, after the
16 hearing, I have seven days in which to make my
17 determination and announce what it is. That's a very
18 short and unusual time limit for the legislature to
19 impose upon courts to act, but it is not unheard of,
20 and it is done in most instances, and I believe here
21 as well, in order to make sure that there is a speedy
22 resolution of this extraordinary process that the
23 legislature created in the anti-SLAPP statute.

24 The request for discovery was made at the time
25 that the plaintiffs filed their brief responding to

1 the defendant's motion, and it has never been
2 scheduled for a time different than the date
3 scheduled for this hearing. There have been three
4 different dates when this hearing has been scheduled.
5 The purpose of the motion as stated in the moving
6 party's papers are, first, to decide the motion in
7 their favor on the record before me, but if I find
8 that I cannot do that, then discovery should be
9 permitted. Under the statute that governs the law of
10 discovery here, Section 525(5)(c), the legislature
11 declares that, in these instances, in these cases,
12 discovery shall be stayed. And then it goes on to
13 say the stay shall remain in effect until the
14 anti-SLAPP motion is decided, a strong statement of
15 what the legislature intends as regards this process.

16 There follows, then, a good-cause exception to the
17 rule that discovery should be stayed, providing that
18 a court for good cause can permit specified
19 discovery. In testing what good cause means here,
20 what I have found is that there is a split of
21 authority among the courts across the United States
22 that have governed this issue. Washington courts
23 have not ruled on the issue, to my knowledge. Some
24 courts apply simply a Civil Rule 56 test, which, in
25 itself, is a specific and targeted exception to the

1 right of a party to move forward with a motion for
2 summary judgment, permitting in some instances
3 additional time to gather declarations to contest the
4 motion when it has been shown that that information
5 could not have been obtained within the schedule for
6 hearing the motion for summary judgment. That is a
7 focused test. It requires an explanation of what the
8 moving party, the party seeking additional discovery
9 or time to prepare declarations, expects to discover
10 and why it's important to the motion.

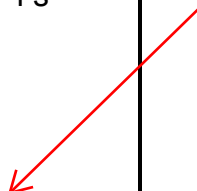
11 I conclude that in the good-cause exception of the
12 anti-SLAPP statute, the test is at least as stringent
13 and as narrow as the Civil Rule 56 test.

14 The anti-SLAPP statute is not a statute enacted by
15 the Washington legislature from whole cloth. It is a
16 statute that has been enacted in many states across
17 the nation, most importantly California, because
18 Washington adopted a very similar statute, and
19 California has a much more developed set of appellate
20 decisions than does Washington. They've had longer
21 at these issues.

22 But if you look at the legislative declarations of
23 other legislatures, the appellate decisions of other
24 courts, and the writings of authorities on the
25 subject of these anti-SLAPP statutes and the issue of

1 discovery, you will see that the intent underlying
2 the statute is for quick resolution of cases that
3 involve fundamental First Amendment rights, the right
4 of free speech, the right of petition. The second
5 governing principle is that it is a process that is
6 to avoid the time and expense of litigation,
7 including discovery. And the third and I think, in
8 the context of this motion for discovery, the most
9 important principle is that it puts persons on
10 notice, persons who would file litigation based upon
11 speaking or petitioning by others on matters of
12 public interest, that they have a responsibility to
13 have facts supporting their contentions that can meet
14 the standards of the anti-SLAPP statute. That's a
15 determination that is expected before the lawsuit is
16 filed when it involves these fundamental First
17 Amendment freedoms.

18 In this case, in my view, the discovery sought
19 fails for two reasons: First, it comes at the end of
20 the process. We are downstream by a long measure,
21 and there's been no attempt to seek enforcement of a
22 right to discovery until here we are at the hearing
23 where I am constrained by a very short time leash.
24 Second, the discovery is not focused. It is
25 broad-ranging discovery encompassing several -- I



1 can't remember if it's two or three depositions and,
2 most importantly, all of the records possessed or
3 seen by any member of the board.

4 For all of those reasons, I am denying the motion.
5 I want to make clear that I am not basing my decision
6 upon the contention that the plaintiffs have weighed
7 their right to make the motion.

8 I'm ready to proceed now to the merits of the
9 case.

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official
Reporter of the Superior Court of the State of
Washington, in and for the County of Thurston, do hereby
certify:

I was authorized to and did stenographically
report the foregoing proceedings held in the
above-entitled matter, as designated by Counsel to be
included in the transcript, and that the transcript is a
true and complete record of my stenographic notes.

Dated this the 13th day of March, 2012.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439