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

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

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

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

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

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

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

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

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

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

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

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

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

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

I'm ready to proceed now to the merits of the 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