

99-2-13911-4 18808168 MT 04-23-03

HON. KATHERINE M. STOLZ

FILED
IN COUNTY CLERK'S OFFICE

A.M. APR 22 2003 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

No. 99 2 13911 4

Plaintiffs,)

PLAINTIFFS' MOTION
TO UNSEAL THE COURT
RECORD

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

DATE OF HEARING: 5-2-03

Defendants.)

I. RELIEF REQUESTED

Plaintiffs respectfully request that this Court order
the record in this case unsealed for the limited purpose of

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1 providing a complete and accurate record to the Appellate
2 Court.

3 II. STATEMENT OF FACTS

4 Cynthia M. Morgan declares as follows:

5 I am one of the attorneys for the plaintiffs. I make
6 this declaration in support of Plaintiffs' Motion to Unseal
7 the Record in this case.

8 In September of 2001, the parties stipulated to a
9 protective order sealing part of the file in *Kirby v. City of*
10 *Tacoma, et al.*, Pierce County Cause No. 99-2-13911-4. In the
11 interim Defendant moved for summary judgment dismissing
12 Plaintiffs' claims. On January 10, 2003, the Court granted
13 Defendant's motion and dismissed Plaintiffs' age discrimina-
14 tion claim. On January 15, 2003, Plaintiffs filed their
15 Motion for Reconsideration asking the Court to reconsider its
16 ruling of January 10, 2003. The Court denied this motion.

17 On February 4, 2003, Plaintiffs appealed the Court's
18 decision to the Court of Appeals. Plaintiffs have attempted
19 to transfer the Superior Court file to the Court of Appeals;
20 however, the County Clerks have refused to release the record
21 because the file has been sealed.


22 Plaintiffs attempted to resolve this matter without
23 Court intervention by stipulation. Unfortunately, Ms.
24 Kerslake is currently in trial and has been unavailable to
25 discuss this conundrum.

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1 I certify under penalty of perjury under the laws of
 2 the State of Washington that the foregoing is true and cor-
 3 rect.

4 DATED this 16th day of April 2003, at Tacoma, Washing-
 5 ton.

6
 7 
 8 CYNTHIA M. MORGAN 26218

9
 10 **III. EVIDENCE RELIED UPON**

11 Declaration of Cynthia M. Morgan, hereinabove.

12 **IV. AUTHORITY**

13 The Court issued a protective order based on CR 26(c).
 14 Civil Rule 26(c) authorizes the use of protective orders
 15 stating:

16 Upon motion by a party or by the person from whom
 17 discovery is sought, and for good cause shown, the
 18 court in which the action is pending or alterna-
 19 tively, on matters relating to a deposition, the
 20 court in the county where the deposition is to be
 taken may make any order which justice requires to
 protect a party or person from annoyance, embar-
 rassment, oppression, or undue burden or expense...

21 The trial court has substantial latitude to decide when
 22 a protective order is appropriate and what degree of protec-
 23 tion is required given the unique character of the discovery
 24 process. *King v. Olympic Pipeline Co.*, 104 Wn. App. 338
 25 (2000). Modification of a protective order entered under CR

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1 26(c) requires a consideration of the nature and purpose of
2 the original protective order, the degree of reliance on the
3 order by the protected party, the purpose and status of the
4 party requesting modification, and the government's role in
5 the dispute. *Marine Power v. Dept. of Transportation*, 107
6 Wn.2d 872 (1987).

7 The purpose of the protective order issued by the court
8 was to restrict the parties from any public dissemination of
9 the sealed court record. The clerk's office of Pierce County
10 has understood this order to mean that the file cannot be
11 transferred to any entity without a court order. The Plain-
12 tiffs are appealing this case to the Court of appeals. It is
13 essential that the Appellate Court have all of the records in
14 the file so that the Appellate Court can make an informed
15 decision on the case. The Plaintiffs are simply asking the
16 Court to order the court file unsealed for the limited pur-
17 pose of transferring the file to the Appellate Court, so the
18 Appellate Court can make a decision based upon the entire
19 record.

20 V. CONCLUSION

21 Based upon the above the Plaintiffs ask that the Court
22 issue an order, unsealing the file in *Kirby v. City of Ta-*
23 *coma, et al.*, Pierce County Cause No. 99-2-13911-4, for the
24 limited purpose of transferring the file to the Appellant
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1 Court for a full and fair review of the file.

2 DATED this 16th day of April 2003.

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By *Cynthia M. Morgan*
CYNTHIA M. MORGAN 26218
Attorneys for Plaintiffs

CERTIFICATION
I hereby certify that on 4-17-03 I deposited
in the mails of the United States of America and/or
placed with Legal Messengers and/or faxed a copy of the
document to which this certificate is attached, for
delivery to all counsel of record.
Yukie A. Do-Franco
Messina Law Firm

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