IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RUSSELL PHILLIPS, Appellant/Cross Respondent, v. VALLEY COMMUNICATIONS, INC., Respondent/Cross Appellant.	)	No. 63876-9-I DIVISION ONE UNPUBLISHED FILED: December 27, 2010

Cox, J.—Russell Phillips appeals from the trial court's denial of his requests for relief under the state Public Records Act (PRA). We hold that the trial court properly denied relief and affirm. Because Phillips' appeal of the trial court's decision in this regard is frivolous, we impose sanctions against him.

In its cross-appeal, Valley Communications, Inc. ("Valley Com") argues that the trial court abused its discretion by denying Valley Com's motion for injunctive relief. That motion sought to bar Phillips from requesting public records in the future "for the same documents which were already in Phillips' possession or which previously had been litigated."[1] It also requested that "attorney-client privilege, work-product or litigation matters that would be exempt from disclosure under the law anyway" should not be provided.[2] Because Valley

[1] Brief of Respondent/Cross-Appellant at 46.

Com failed to make the required showing for injunctive relief below, we hold that the trial court properly exercised its discretion and affirm.[3]

Russell Phillips was employed by Valley Com from January 2005 until November 2006, when he was terminated. Valley Com is a 911 call distribution center located in Kent, Washington. It is a "special purpose district" created by the cities of Kent, Federal Way, Renton, Tukwila, and Auburn to act as the 911 dispatch center for South King County. A "special purpose district" is a "local agency" subject to the provisions of the PRA.[4]

During the summer of 2006, Valley Com conducted an internal investigation into a complaint Phillips made about his supervisor. The investigation concluded that the complaint was unfounded and the result of a personality conflict. Phillips then complained about the investigation and Valley Com hired outside counsel to review the propriety of the investigation. Outside counsel reached the same conclusion as the internal investigation.

While outside review of Valley Com's investigation was in progress, Phillips sent an e-mail to the director of Valley Com describing an analogous situation in which a complaining employee took the following action:

> I am a ticking time bomb who one day shows up for work with my own solution. After shooting Bob and anyone else that gets in my way I turn the gun on myself . . . . Not a happy ending. While I

---

[2] Id. at 47.

[3] Counsel of record on appeal for Phillips submitted briefs, but failed to appear at the scheduled oral argument of this case. However, Phillips argued the case himself.

[4] See RCW 42.56.010.

> wish I could say it's too outlandish to ever happen, all you have to do is read the newspaper and realize that it COULD happen.[5]

In response, Valley Com placed Phillips on administrative leave. He was examined by a psychiatrist to determine his fitness for duty. The psychiatrist determined that Phillips was not fit for duty.

A Loudermill[6] hearing followed to give Phillips an opportunity to respond. Prior to the hearing, Phillips received a copy of the psychiatrist's report and a complete copy of his personnel and medical files.[7] Phillips asked for a complete copy of Valley Com's investigative file. Valley Com rejected the request to provide the entire file on the basis that it contained confidential witness interviews and correspondence with the psychiatrist. But it did provide Phillips with some documents from the file.

Valley Com terminated Phillips from his position as a dispatcher in November 2006.

Thereafter, Phillips, pursuant to the PRA, sought records relating to his employment, the investigation of his complaint, and his termination. Unsatisfied with Valley Com's responses, Phillips commenced a proceeding in superior court in January 2008 challenging Valley Com's compliance with the PRA. A superior

---

[5] Clerk's Papers at 151.

[6] See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).

[7] Phillips asserts that these were PRA requests, but it appears that Valley Com treated them as requests to inspect his personnel file under RCW 49.12.240, .250. For the purposes of this appeal, the exact characterization of these requests is not relevant.

court judge conducted an in camera review of records that Valley Com contended were exempt. The judge then entered a series of orders addressing the issues raised in that proceeding. The final order in this series was dated November 10, 2008. Phillips did not appeal from this final order or any of the prior orders in that proceeding.

During the pendency of the prior proceeding, Phillips continued to make records requests to Valley Com. These requests included both requests for substantially the same documents and requests for "clarification" of earlier responses. In any event, Phillips was not satisfied with Valley Com's responses.

In April 2009, he commenced this proceeding, claiming that Valley Com failed to comply with the requirements of the PRA. In response, Valley Com moved for injunctive relief under RCW 42.56.540.

The trial court denied Phillips' requests for relief on the basis that they were barred by res judicata, collateral estoppel, and the statute of limitations due to the earlier proceeding from which no appeal was taken. The trial court also denied Valley Com's request for injunctive relief.

Phillips timely appealed the court's denial of his requests for relief under the PRA. Valley Com cross-appealed. Thereafter, the trial court awarded substantial CR 11 sanctions against Phillips.

RES JUDICATA & COLLATERAL ESTOPPEL

Phillips primarily argues on appeal that the trial court incorrectly applied res judicata to dismiss this proceeding. He also appears to argue that the trial

court erred in applying collateral estoppel. We disagree.

Under the doctrine of res judicata a party is barred from relitigating "claims and issues that were litigated, or might have been litigated, in a prior action."[8] The doctrine "'puts an end to strife, produces certainty as to individual rights, and gives dignity and respect to judicial proceedings.'"[9] Res Judicata applies "where a prior final judgment is identical to the challenged action in '(1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.'"[10]

To meet the threshold requirement that there be a "final judgment," it is sufficient that the status of the action was such that the parties might have had their suit thus disposed of, if they had properly presented and managed their respective cases.[11] Causes of action are identical for purposes of res judicata if "(1) prosecution of the later action would impair the rights established in the earlier action, (2) the evidence in both actions is [or would have been] substantially the same, (3) infringement of the same right is alleged in both actions, and (4) the actions arise out of the same nucleus of facts."[12]

---

[8] Pederson v. Potter, 103 Wn. App. 62, 69, 11 P.3d 833 (2000).

[9] Marino Prop. Co. v. Port Comm'rs, 97 Wn.2d 307, 312, 644 P.2d 1181 (1982) (quoting Walsh v. Wolff, 32 Wn.2d 285, 287, 201 P.2d 215 (1949)).

[10] Lynn v. Dep't of Labor & Indus., 130 Wn. App. 829, 836, 125 P.3d 202 (2005) (quoting Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763, 887 P.2d 898 (1995)).

[11] Pederson, 103 Wn. App. at 70 (quoting CenTrust Mortgage Corp. v. Smith & Jenkins, P.C., 220 Ga. Ct. App. 394, 397, 469 S.E.2d 466 (1996)).

[12] Yakima County v. Yakima County Law Enforcement Officers Guild, 157

Collateral estoppel is distinct from res judicata ""in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted.""[13] The party seeking to bar litigation of an issue based on collateral estoppel must show: (1) the issue decided in the prior adjudication is identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice.[14] Thus, collateral estoppel may only be applied to bar litigation of those issues that have actually been litigated, resulting in a final judgment in a prior proceeding.[15]

Whether an action is barred by res judicata or collateral estoppel is a question of law that this court reviews de novo.[16]

Here, several preliminary observations are in order. First, much of the opening brief of Phillips is devoted to a description of what allegedly took place

---

Wn. App. 304, 328, 237 P.3d 316 (2010) (citing Civil Service Com'n of City of Kelso v. City of Kelso, 137 Wn.2d 166, 171, 969 P.2d 474 (1999)).

[13] Id. at 331 (quoting Rains v. State, 100 Wn.2d 660, 665, 674 P.2d 165 (1983) (quoting Seattle-First Nat'l Bank v. Kawachi, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978))).

[14] Id. at 331-32.

[15] Id.

[16] Lynn, 130 Wn. App. at 837; LeMond v. Dep't of Licensing, 143 Wn. App. 797, 803, 180 P.3d 829 (2008).

and what rulings were made in the prior proceeding, in which Judge Yu presided. However, the question before us is whether Judge White, who presided in this proceeding, correctly ruled when he dismissed this action. In short, the correctness of Judge Yu's rulings is not before us since Phillips did not appeal the final order in that proceeding.

Second, Phillips characterizes Judge Yu's May 12, 2008 order in the prior proceeding as a "final order."[17] This is incorrect. The final order in that prior proceeding was the November 10, 2008 order because it left no further matters for resolution.[18] Because there was no appeal from that final order, the matters litigated in that proceeding are now final and binding on the parties.

With these observations in mind, we address the merits of Phillips' appeal of the orders that are properly before us.

Here, the causes of action (alleged failure to comply with the PRA), persons and parties (Phillips and Valley Com), and the quality of the parties (Phillips and Valley Com) are identical. There is no merit to any suggestion that these elements of res judicata are not met in this case.

The focus of Phillips' challenge to the applicability of res judicata thus appears to be his assertion that the subject matter (the various requested

---

[17] Brief of Plaintiff/Appellant at 12.

[18] See State v. Taylor, 150 Wn.2d 599, 602, 80 P.3d 605 (2003) (A final judgment is: "A court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment." (quoting Black's Law Dictionary 847 (7th ed. 1999)).

records related to Phillips' employment, dismissal, and related litigation) is not the same in these two proceedings. This argument is unpersuasive.

Specifically, Phillips argues that his challenge to Valley Com's responses to his August 24, 2008 and January 19, 2009 PRA requests were improperly dismissed. We disagree.

On August 24, 2008, Phillips sent a letter to Valley Com requesting, among other things, the following:

> Since Valley Com has not created an index of the records, I am requesting the opportunity to inspect every document that Valley Com is claiming to have provided me through public disclosure. This is to make sure that I am actually in possession of them. Ms. Henneke has stated in her declarations that she has copies of every document that I have been provided, and the court requested copies of all documents Valley Com has claimed were responsive to my public disclosure requests, so this should not drain too many resources.[19]

Valley Com responded on September 2, 2008, informing Phillips that it believed that it was not required to continue to provide him with duplicate copies of previously released documents. Valley Com also informed Phillips that it was seeking a protective order confirming this belief in superior court, and that if the protective order was denied, it would turn over any responsive records no more than 30 days after the court's order on the motion for protective relief.

The trial court subsequently denied Valley Com's motion for injunctive relief and Valley Com appears to have responded with several installments of Bates numbered documents from the first proceeding. The date of the last

[19] Clerk's Papers at 93.

response was December 22, 2008. To the extent that Phillips argues that these requests and responses are not properly part of the subject matter of the prior proceeding, this is not supported by the record. First, Phillips fails to cite to the disclosed documents, and our independent review of the record shows that the responsive documents are not part of the record on appeal. Second, the requests and responses cited by Phillips appear to indicate that all of the records requested on August 24, 2008, and subsequently released, were documents provided to the trial court for its in camera review in the prior proceeding. For these reasons, we conclude that this request and all responses to it were properly part of the subject matter of the prior proceeding.

Phillips also challenges that application of res judicata to his January 19, 2009 request for Bates numbered documents 347, 348, 349 and 351. For the same reasons discussed above, these records are properly part of the subject matter of the prior proceeding. Further, it appears that Valley Com responded by providing the requested documents. This request was properly dismissed by the trial court.

Phillips also appears to argue that the trial court improperly dismissed his second action because Valley Com improperly believed that it was not required to continue to provide records that were duplicative of earlier requests. His point appears to be that there is no exemption in the PRA for records "already in [Valley's] possession." But the issue for this court is not whether the decision by the first court with respect to exemptions was correct, but whether the second

court properly dismissed the action on the grounds of res judicata. Because it appears that all of Phillips' record requests that were the subject of this proceeding were for records produced in the first proceeding, res judicata barred further litigation. In the context of this case, Phillips' additional PRA requests arose from the "same transactional nucleus of facts" as the PRA requests that were the subject of his first show cause motion—his less than two year employment and subsequent dismissal from Valley Com.

Phillips cites Mellor v. Chamberlin[20] to support his claim that the subject matter of the two proceedings is not the same. His reliance on that case is misplaced.

In that case, the supreme court determined that a second lawsuit arising out of the sale of property was not barred by a prior action arising out of the same transaction. The court held:

> "Many tests for determining whether the same claim for relief [cause of action] is involved in both cases have been suggested. It has been said that the claim is the same if the same primary right is violated by the same wrong in both actions, or if the evidence needed to support the second action would have sustained the first action[.]" Here, the "primary right" not to misrepresent a sale is distinguishable from the right to enforce a breach of a covenant of title. Moreover, evidence to show who owned the parking lot was not directly pertinent in deciding whether the building encroached a few inches.[21]

This proceeding raised the same primary rights (the right to judicial review

---

[20] 100 Wn.2d 643, 673 P.2d 610 (1983).

[21] Id. at 646 (quoting 2 L. Orland, Washington Practice: Trial Practice § 360, at 400-01 (3d ed. 1972)).

of Valley Com's responses to Phillips' PRA requests) and relied on primarily the same evidence as the first action. That evidence included the records relating to his employment at Valley Com, his termination from Valley Com, and documents involved in the prior proceeding: Bates stamped documents and the indices used by the court for its in camera review.

Phillips next appears to argue that he was not required, under Civil Rule (CR) 18(a), to "join" all of his PRA claims in his first show cause motion. This rule is irrelevant to the question whether res judicata bars this proceeding. CR 18(a) does not require a party to join every ***cause of action*** against a defendant in a single action, even if such joinder is permitted under the rule.[22] "[T]he rule is universal that a judgment upon one cause of action does not bar suit upon another cause which is independent of the cause which was adjudicated."[23] But res judicata does bar future litigation of every question which was properly a part of the matter in controversy, even though it does not bar every claim the plaintiff could have joined.[24] Because the claims asserted in this proceeding were "part of the matter in controversy" in the prior proceeding, those claims were not simply a matter of permissive joinder.

Phillips also argues that the trial court erred in concluding that this proceeding is barred because the court's initial order on exemptions, dated May

---

[22] Dep't of Ecology v. Acquavella, 112 Wn. App. 729, 742, 51 P.3d 800 (2002) (quoting Kawachi, 91 Wn.2d at 226).

[23] Id.

[24] Id.

12, 2008, preceded some of the PRA requests that he raised in this proceeding. This argument is without merit for the reason that we explained earlier in this opinion. The final order of the court in the prior proceeding was entered on November 10, 2008. All requests and responses prior to that either were or could have been decided in that prior proceeding.[25]

In his reply brief, Phillips argues that the trial court "mistakenly" believed that final judgment in the first proceeding occurred in November 2008, rather than May 2008. Phillips is mistaken for the reasons we explained earlier in this opinion.

Phillips also appears to argue that the trial court erred in concluding that other PRA requests could have been raised in the prior litigation. But his references to those documents and requests are not supported by citation to the record. We decline to address these arguments due to his failure to support the argument with relevant citations to the record.[26]

CR 11 SANCTIONS

Phillips argues that the trial court abused its discretion by imposing CR 11 sanctions against him. Because that decision of the trial court is not properly before us, we do not review it.

---

[25] Pederson, 103 Wn. App. at 67.

[26] See Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3. We also note that Phillips' briefs were twice returned to him by the clerk's office for failure to cite to the record and comply with other relevant RAPs. Despite the opportunity to correct this deficiency, Phillips continues to make unsupported assertions and argue about factual disputes without citation to the record.

The only orders that Phillips designated in his notice of appeal are the Order Granting Valley Com's Motion to Dismiss and the Order Denying Phillips' Show Cause Motion and Request for Penalties. He timely appealed both orders. But he neither amended his notice of appeal nor separately appealed the sanctions order, which the trial court entered on November 2, 2009. The trial court entered the latter order after we accepted review of the two orders designated in his notice of appeal.

Based on the above undisputed facts, Valley Com argues that the sanctions order is not properly before us. We agree.

Phillips properly concedes that RAP 2.4(b) does not apply to the sanctions order. An appellate court will review an order or ruling "not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review."[27] Because the sanctions order did not "prejudicially affect" the earlier orders that are properly before us, this rule does not apply.

Nevertheless, Phillips argues that the order on sanctions is properly before us based on RAP 2.4(g). That rule provides:

> An appeal from a decision on the merits of a case brings up for review an ***award of attorney fees*** entered after the appellate court accepts review of the decision on the merits.[28]

---

[27] RAP 2.4(b).

[28] (Emphasis added.)

Phillips argues that the sanctions order is the functional equivalent of an "award of attorney fees" under this rule. However, we need not decide that question.

None of the underlying motions, briefing, or trial court orders supporting the trial court's sanctions order is included in the record before us. Where the portion of the record certified to this court does not contain any of the motions or proceedings relevant to the issue, this court cannot consider the alleged error.[29] Accordingly, we cannot review the ruling.

Phillips also claims the right to raise this issue on appeal based on RAP 2.5(a). "The general rule is that appellate courts will not consider issues raised for the first time on appeal."[30] However, under RAP 2.5(a), a claim of error may be raised for the first time on appeal in a limited number of circumstances.[31] Courts have interpreted RAP 2.5(a) as permitting review of matters of "fundamental justice" when raised for the first time on appeal.[32]

We need not decide whether this rule permits review of the sanctions order. As we have already discussed, Phillips failed to provide in this record the necessary documents to permit us to review the ruling. It is irrelevant that Phillips seeks review under a different rule. In the absence of a sufficient record, no review is possible.

---

[29] State v. Mannhalt, 33 Wn. App. 696, 704, 658 P.2d 15 (1983).

[30] State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007) (citing RAP 2.5(a)).

[31] RAP 2.5(a)(3).

[32] State v. Card, 48 Wn. App. 781, 784, 741 P.2d 65 (1987).

For these reasons, we do not address any further his claim that the sanctions order was improper. That order is now final and binding.

DENIAL OF INJUNCTIVE RELIEF

Valley Com cross-appeals, arguing that the trial court abused its discretion by denying Valley Com's request for injunctive relief. Specifically, Valley Com claims that the court should have granted injunctive relief pursuant to RCW 42.56.540. Alternatively, it claims the court abused its discretion by denying Valley Com's request for injunctive relief on reconsideration based on the court's inherent authority. Neither argument is sound and we reject them both.

Under the PRA, a superior court may enjoin the release of specific public records for the reasons specified in RCW 42.56.540. That statute provides:

> ***The examination of any specific public record may be enjoined if***, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that ***such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions***. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.[33]

A grant or denial of injunctive relief is reviewed for abuse of discretion.[34]

---

[33] (Emphasis added.)

[34] Kucera v. State Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000). This court usually reviews injunctions issued under the PRA de novo. See DeLong v. Parmelee, 157 Wn. App. 119, 143, 236 P.3d 936 (2010.

A trial court abuses its discretion if the decision is based on untenable grounds or if the decision is manifestly unreasonable or arbitrary.[35] A trial court necessarily abuses its discretion where it based its ruling on an erroneous view of the law.[36] This court reviews questions of statutory interpretation de novo.[37]

The plain words of the above statute specify that a precondition to injunctive relief is a court finding either that "such examination would clearly not be in the public interest and would substantially and irreparably damage any person" or that the examination "would substantially and irreparably damage vital government functions." Thus, Valley Com had the burden to show that either of these conditions existed in order to support the court making the required finding.

Here, after Phillips commenced this proceeding, Valley Com sought an order enjoining him from submitting further requests for any documents previously provided to him in the prior proceeding or identified as exempt. It also sought to enjoin requests for any records previously reviewed by him or originating from him as well as any records which involve attorney client

---

However, because the request for injective relief here extended beyond the relief available under the PRA, and the court declined to grant the requested relief, de novo review is not appropriate.

[35] Kucera, 140 Wn.2d at 209.

[36] Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

[37] Dot Foods, Inc. v. Dep't of Revenue, 166 Wn.2d 912, 919, 215 P.3d 185 (2009).

privilege that may have existed in the prior litigation, among others. It also requested other relief. Valley Com based its initial request solely on RCW 42.56.540.

At the hearing on the motion on June 19, 2009, the court orally ruled on the motion as follows:

> Just as [the trial court judge in the previous action between these parties] ruled, it is difficult to grant the kind of relief that Valley Com is seeking, although I understand the practical goal that is attempted to be served here and I think, if a motion like that could be granted, in the interest of judicial economy, and there may be support that can be developed.
>
> ***But I will note the absence of a supporting declaration about cost to Valley Com and how, perhaps, more persuasive evidence could be brought to the Court, that this type of injunctive relief is necessary under RCW 42.56.540, on a showing that otherwise there would be substantial and irreparable damage to vital government functions. So, basically, I don't think I have got sufficient authority.***
>
> ***The Court is also uncertain whether, in the end, the type of relief that Valley Com is seeking can properly be based on RCW 42.56.540 or whether it can be exclusively so based. And, again, I'm not suggesting that there is any particular authority. I have not researched this, but, intuitively, the Court believes that there is always some inherent power and the Court may need to have a better – consider the arguments made on applicability of the discovery rules.***
>
> I'm denying it without prejudice for a variety of reasons, also recognizing that Mr. Phillips had a very limited opportunity to respond to this. And, of course, there really wasn't time for Valley Com to reply.
>
> So I think that motion, if pursued as part of this lawsuit, would need to be more fully developed with a fair opportunity for Mr. Phillips to respond and for Valley Com, it if chose to do so, to reply.
>
> . . . .
>
> I would say, in passing, that – and I don't, frankly, know whether the Court is persuaded that things have gotten to this extreme yet. So I'm not intending to telegraph a renewed motion in this case would be successful but, on the other hand, ***I think it has***

some merit.[38]

The fairest reading of this oral ruling is that the court denied the motion on the basis that Valley Com failed to provide evidence to fulfill its obligation to make a showing that either of the preconditions for such an injunction existed. Specifically, the court noted the absence of a declaration as to cost or any other evidence to permit the court to make the required finding under this statute.

On appeal, Valley Com now claims that the trial court abused its discretion by denying the motion for injunctive relief. First, it claims that the trial court based its ruling on an erroneous view of the law when it concluded that it did not have authority to grant the injunction under RCW 42.56.540. Second, Valley Com argues that the trial court stated that the request had merit.

Valley Com's first argument is based both on an unreasonable reading of the record and the premise that a trial court's "[f]ailure to exercise discretion is an abuse of discretion."[39] Fairly read, the trial court's oral comments about authority tie directly to the provisions of the statute that require a specific finding, which in turn must be based on evidence satisfactory to the court. Valley Com submitted no such evidence. And the trial court plainly said so. It had no erroneous view of the law. Rather, its view of the law was correct: absent proper evidence, which Valley Com had the burden to provide, no injunction should have issued.

---

[38] Report of Proceedings (June 19, 2009) at 81-83.

[39] Brief of Respondent/Cross-Appellant at 44 (citing Bowcutt v. Delta North Star Corp., 95 Wn. App. 311, 320, 976 P.2d 643 (1999)).

Moreover, the court did not fail to exercise its discretion. Rather, it exercised its discretion to deny the request for an injunction based on a failure of proof.

Valley Com's reference to the court's statement that "I think it has some merit," does not require a different result. That passing reference did nothing to cure Valley Com's failure to provide the court with the evidence required under the statute. This musing by the court in this particular respect does nothing to cure that fatal defect.

Following the court's oral ruling and entry of an order consistent with that ruling, Valley Com moved for reconsideration. In doing so, it abandoned its argument under RCW 42.56.540. It argued instead that the court's inherent power provided the authority to grant the requested relief.[40]

Additionally, Valley Com revised the requested relief, seeking an order requiring:

> Mr. Phillips to first obtain judicial review of any cause of action he wishes to pursue against Valley Com, or its agents or employees. This requested remedy blends the inherent power of the court, the needs of Valley Com and the financial needs the prior litigation has created . . . but also permits Mr. Phillips continued access to the court system if a claim or cause of action can be properly supported both legally and factually.[41]

Valley Com's motion for reconsideration did not address the trial court's request for additional legal and evidentiary support for an injunction under RCW

---

[40] Clerk's Papers at 1115-16 (citing Yurtis v. Phipps, 143 Wn. App. 680, 693, 181 P.3d 849 (2008)).

[41] Clerk's Papers at 1116.

42.56.540. The trial court denied Valley Com's motion for reconsideration.[42]

On appeal, Valley Com claims the court abused its discretion by denying reconsideration of its prior order. Valley Com is again mistaken.

Valley Com did not propose this alternative legal theory until its motion for reconsideration.[43] Additionally, Valley Com changed the relief requested in its motion for reconsideration, arguing that the court should order Phillips to obtain judicial review of any cause of action that he wishes to bring against Valley Com in the future.

New issues may be raised in a motion for reconsideration where they do not depend on new facts.[44] But it does not follow that a trial court abuses its discretion in denying a CR 59 motion for reconsideration that is based entirely on arguments made after entry of a final order. Rather, it is clear that an argument raised for the first time on reconsideration may properly be dismissed where the analysis would require evaluation of facts or theories not established in the initial proceeding.[45]

---

[42] This order does not appear to be included in the clerk's papers.

[43] Compare Clerk's Papers at 1072-79 and Clerk's Papers at 1114-17. While Valley Com's initial Motion for Injunctive Relief did cite the principle that "every court of justice has inherent power to control the conduct of litigants," no argument based on this principle was developed. Rather, the motion for injunctive relief appears to be based only on the trial court's authority to enjoin examination of exempt records under RCW 42.56.540.

[44] See August v. U.S. Bancorp, 146 Wn. App. 328, 347, 190 P.3d 86 (2008), review denied, 165 Wn.2d 1034 (2009).

[45] Wilcox v. Lexington Eye Institute, 130 Wn. App. 234, 241, 122 P.3d 729 (2005).

In any event, Valley Com's argument on reconsideration is unpersuasive. Citing Yurtis v. Phipps,[46] Valley Com argues that the trial court should have exercised its inherent power to require Phillips to obtain judicial review prior to filing any claim or action against Valley Com. Yurtis is distinguishable.

There, the court issued an injunction prohibiting the plaintiff from filing any further action or appeals related to a real estate transaction that had closed 17 years earlier.[47] The court noted that in the 17 year history of litigation, the plaintiff's claims had repeatedly been rejected and found to be frivolous.[48] But the court did not suggest that such action should be taken without considerable caution.

> It has been established that in Washington, trial courts have the authority to enjoin a party from engaging in litigation upon a "specific and detailed showing of a pattern of abusive and frivolous litigation." However, proof of mere litigiousness is insufficient. When issuing an injunction, the trial court "must be careful not to issue a more comprehensive injunction than is necessary to remedy proven abuses, and if appropriate the court should consider less drastic remedies."[49]

Here, the trial court could have concluded that Valley Com's revised requested remedy on reconsideration was too drastic. That was not an abuse of discretion.

The primary focus of Valley Com's brief on appeal is its final argument.

---

[46] 143 Wn. App. 680, 693, 181 P.3d 849 (2008).

[47] Id. at 683-84.

[48] Id.

[49] Id. at 693 (citing Whatcom County v. Kane, 31 Wn. App. 250, 253, 640 P.2d 1075 (1981)).

Valley Com claims that the trial court based its denial of injunctive relief on an erroneous interpretation of RCW 42.56.540. Specifically, it argues that we should interpret RCW 42.56.540 consistent with Dawson v. Daly[50] rather than Soter v. Cowles Publishing Company[51] and Progressive Animal Welfare Society v. University of Washington[52] (PAWS). Because these later supreme court cases expressly reject Dawson, we disagree.

In Dawson, the supreme court held that RCW 42.17.330 (recodified as RCW 42.56.540) created an independent basis upon which a court may find that disclosure is not required. This was conditioned on the court finding that (1) the disclosure is not in the public interest, and (2) that disclosure would cause substantial and irreparable damage to a person or a vital government function.[53]

The next year, in PAWS, the supreme court declined to extend this holding, characterizing it as dicta.[54] Specifically, the PAWS court held:

> RCW 42.17.330 is simply an injunction statute. It is a ***procedural*** provision which allows a superior court to enjoin the release of ***specific*** public records if they fall within ***specific*** exemptions found elsewhere in the Act. Stated another way, section .330 governs access to a remedy, not the substantive basis for that remedy.[55]

---

[50] 120 Wn.2d 782, 794, 845 P.2d 995 (1993), abrogated in part by Progressive Animal Welfare Society v. University of Washington, 125 Wn.2d 243, 884 P.2d 592 (1994).

[51] 162 Wn.2d 716, 174 P.3d 60 (2007).

[52] 125 Wn.2d 243, 884 P.2d 592 (1994).

[53] Dawson, 120 Wn.2d at 794.

[54] PAWS, 125 Wn.2d at 261 n.7.

[55] Id. at 257-58.

This interpretation was reaffirmed by the supreme court in Soter and has been unchanged by the legislature for over a decade.[56] There is no room for further debate on this point.

Valley Com urges this court to adopt a different interpretation of RCW 42.56.540 than the PAWS court. We are bound by supreme court precedent and see no reason to distinguish those cases from this one.[57]

Valley Com argues in the alternative that the proposed injunction was consistent with the requirements of RCW 42.56.540 as interpreted by PAWS. The record does not support this claim. Valley Com sought relief that was broader than what is permitted under the PRA, failed to identify the specific exemptions claimed for each document, and failed to provide any evidence to support the argument that its function as a vital government agency would be substantially and irreparably harmed by continuing to respond to Phillips' PRA requests.

The court properly exercised its discretion in denying injunctive relief.

ATTORNEY FEES AND COSTS

Valley Com requests an award of attorney fees under RAP 18.9 on the ground that Phillips' appeal is frivolous and because Phillips failed to comply with the applicable Rules of Appellate Procedure. We agree and impose terms for a frivolous appeal against Phillips.

---

[56] Soter, 162 Wn.2d at 754-55.

[57] See State v. Gore, 101 Wn.2d 481, 487, 681 P.2d 277 (1984).

An appeal is frivolous if there are no debatable issues on which reasonable minds can differ and is so totally devoid of merit that there was no reasonable possibility of reversal.[58] The court considers the record as a whole and resolves all doubts against finding an appeal frivolous.[59]

Here, viewing the record as a whole, Phillips' appeal is frivolous. Phillips' arguments are directly contrary to well-established legal principles of res judicata and collateral estoppel that preclude relitigating previously adjudicated matters. Accordingly, we award Valley Com attorney fees and costs as sanctions against Phillips solely for this frivolous appeal by Phillips. The award is subject to Valley Com complying with the provisions of RAP 18.1.

We affirm the orders that are properly before us and award fees and costs to Valley Com only for the frivolous appeal by Phillips.

Cox, J.

WE CONCUR:

[58] In re Recall of City of Concrete Mayor Robin Feetham, 149 Wn.2d 860, 872, 72 P.3d 741 (2003).

[59] Delany v. Canning, 84 Wn. App. 498, 510, 929 P.2d 475 (1997).